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Thursday,
March 29, 1984

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Federal Communications Commission
Immigration and Naturalization Service

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Aviation Safety
Federal Aviation Administration

Banks, Banking
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Agricultural Marketing Service

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

Animal and Plant Health Inspection Service

7 CFR Part 354

Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations which established charges for reimbursable overtime work performed by employees of Plant Protection and Quarantine at border ports, seaports and airports. Plant Protection and Quarantine Officers of the United States Department of Agriculture are charged with performing inspection duties relating to imports and exports at border ports, ocean ports and airports of entry. Such services may be performed outside the regular tour of duty of the employee when requested by persons having ownership, custody or control of plants, plant products, or other articles subject to such port of entry inspection, treatment or testing and the charges for such premium pay service are recoverable through reimbursement from those for whom the services are performed. The payrolling procedures under which port of entry inspectors are paid have been changed insofar as entitlement to commuted traveltime allowances is concerned. In the past, entitlement to commuted traveltime allowances has been based on the performance of additional travel solely on account of the overtime service. This entitlement has been changed to permit the substitution of certain time elements in lieu of a positive travel requirement when overtime service begins less than one hour before the regular tour of duty or begins shortly after the completion of the daily tour of duty. At the same time, the amount of commuted traveltime allowance paid is reduced from a full allowance to ½ an allowance in most instances where only one-way travel is involved. This change in the method of computing commuted traveltime entitlements necessitates a change in the regulations under which reimbursement for such sums paid out for such services is made under the reimbursable features of the Act of August 28, 1950. (7 U.S.C. 2260).

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: John C. Frey, Classification, Employment and Executive Resources Program, Human Resources Division, U.S. Department of Agriculture, Room 221, Federal Building, 6505 Belcrest Rd., Hyattsville, MD 20782 [301–436–6466.]

SUPPLEMENTARY INFORMATION: The Act of August 28, 1950 (64 Stat. 561; 7 U.S.C. 2260) authorizes the Secretary of Agriculture to pay employees of the Department performing inspection and quarantine services relating to imports into and exports from the United States for all overtime, night or holiday work at such rates as he may determine and to accept from persons for whom such work is performed, reimbursement for any sums paid out by him for such work. Thus, the amounts reimbursed to the Department by owners or custodians of plants and plant products or other articles who request the services of Plant Protection and Quarantine employees at ports of entry outside their regular tour of duty or at night or on a holiday, need to be computed on the same basis as is the pay of those employees actually performing the work. Under the current payrolling practices, entitlement to commuted traveltime allowances is based primarily on the performance of additional travel solely on account of the overtime services. This pay entitlement qualification has been changed, when inspection services are performed on a reimbursable basis immediately before or immediately after the regular scheduled daily tour of duty, to permit substitution of designated periods of elapsed time in lieu of the positive travel heretofore required.

This amendment has been issued in conformance with Executive Order 12291 and Secretary's Memorandum 1512–1 and has been determined to be not a "major rule." This final rule will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, or investment, productivity innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Mr. Harvey L. Ford, Deputy Administrator, Plant Protection and Quarantine, APHIS, has determined that this action will not have a substantial impact on a significant number of small entities. Specifically, this amendment affects only those entities that request the services of an inspector on a holiday or on an overtime basis. Services of an inspector during regularly established hours of service at a port are still furnished free of charge to those requiring the service. The pay provisions determined by the Secretary to be appropriate for employees performing inspection and quarantine services at ports of entry, the established hours of service for such ports, and the features of the reimbursable plan for recovering the costs of furnishing port of entry inspection on an appeal basis depend upon facts within the knowledge of the Department of Agriculture. Public participation in this rulemaking proceeding would not make additional relevant information available to the Department. The Agency has no alternatives to establishing procedures to effect reimbursement which utilize the same basis for recovery as is used in paying the employees who perform the work. By law, importers/exporters are required to reimburse the Agency for costs associated with services requested and rendered. Unless reimbursable amounts are calculated in the same manner as sums paid for the personal services provided, the reimbursement achieved will not equal the cost of providing the service. Accordingly, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedures on these amendments are impracticable and unnecessary and good cause is found for making these amendments effective less than 30 days after publication in the **Federal Register.**

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (agriculture), Quarantine, Transportation.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Accordingly, Part 354, Chapter III, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 354 reads as follows:

Authority: 7 U.S.C. 2260 and Sec. 15, Pub. L. 94–353 (49 U.S.C. 1741).

2. Section 354–1(a) (1) and (2) is revised to read as follows:

§ 354.1 Overtime work at border ports, seaports, and airports.

(a)(1) Any person, firm, or corporation having ownership, custody or control of plants, plant products, animals, animal products or other commodities subject to inspection, laboratory testing, certification or quarantine under this chapter and Subchapter D of Chapter I, Title 9 CFR, who requires the services of an employee of Plant Protection and Quarantine on a Sunday or holiday or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of Sunday or holiday or overtime service request the Plant Protection and Quarantine inspector in charge to furnish inspection, laboratory testing, certification or quarantine service during such overtime or Sunday or holiday period, and shall pay the Government therefor at the rate of $28.92 per work-hour per employee on a Sunday and at the rate of $21.84 per work-hour per employee for holiday or any other period except that for any services performed on a Sunday or holiday or at any time after 5 p.m. or before 8 a.m. on a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspectional services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture; and except that owners and operators of aircraft will be provided service without reimbursement during regularly established hours of service on a Sunday or holiday; and except that the overtime rate to be charged owners and operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of aircraft, for work performed outside of the regularly established hours of service on a Sunday will be $23.68 and for work performed outside the regularly established hours of service for holiday or any other period will be $16.44 per hour, which charges exclude administrative overhead charges.

(2) A minimum charge of 2 hours shall be made for any Sunday or holiday or unscheduled overtime duty performed by an employee on a day when no work was scheduled for him or which is performed by an employee on his regular workday beginning either at least 1 hour before his scheduled tour of duty or which is not in direct continuation of the employee's regular tour of duty. In addition, each such period of Sunday or holiday or unscheduled overtime work to which the 2-hour minimum charge provision applies may include a commuted traveltime period (CTT) the amount of which shall be prescribed in administrative instructions to be issued by the Deputy Administrator, Plant Protection and Quarantine for the areas in which the Sunday or holiday or overtime work is performed and such period shall be established as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which the employee performs such Sunday or holiday or overtime duty. With respect to places of duty within the metropolitan area of the employee's headquarters, such CTT period shall not exceed 3 hours. It shall be administratively determined from time to time which days constitute holidays. The circumstances under which such CTT periods shall be charged and the percentage applicable in each circumstance are as reflected in the following table:

	Actual time[1] charge—no minimum	2-hour guarantee charge	Commuted[2] traveltime (CTT) charge
Charges for Inspection Within Metropolitan Area of Employee's Headquarters			
Work beginning before daily tour begins:			
8 to 59 minutes	Yes	No	None.
60 to 119 minutes.		Yes	½ CTT.
120 minutes or more.		Yes	Full CTT.
Work beginning after daily tour ends:			
Direct continuation.	Yes	No	None.
Break-in-service of:			
2–29 minutes		Yes	None.
30–60 minutes		Yes	½ CTT.
61 minutes or more.		Yes	Full CTT.
Charges for Inspection Services Performed Outside Metropolitan Area of Employee's Headquarters			
Work beginning before daily tour begins:			
8 to 59 minutes	Yes	No	½ CTT.
60 minutes or more.		Yes	Full CTT.
Work beginning after daily tour ends:			
Direct continuations.	Yes	No	½ CTT.
2–59 minutes	No	Yes	½ CTT.
60 minutes or more.	No	Yes	Full CTT.
Charges for Call Out Inspection Service on Holiday or Nonworkday			
Work beginning at any time.	No	Yes	Full CTT.

[1] Actual time charged when work is contiguous with the daily tour will be in quarter hour multiples, with service time of 8 minutes or more rounded up to the next quarter hour and any time of less than 8 minutes will be disregarded.
[2] The full CTT allowance will be the amount of commuted traveltime prescribed for the place at which the inspections are performed. See Part 97.2. One-half CTT is ½ of the full CTT period.

* * * * *

3. The introductory paragraph of § 354.2 is revised to read as follows:

§ 354.2 Administrative instructions prescribing commuted traveltime.

Each period of overtime and holiday duty as defined in § 354.1 shall, in addition, include a commuted traveltime period for the respective ports, stations, and areas in which employees are located. The prescribed commuted traveltime periods are set forth below:

* * * * *

Done at Washington, D.C., on March 23, 1984.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 84-8465 Filed 3-28-84; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 417

[Amendment No. 2]

Sugarcane Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This action makes final an amendment to the Sugarcane Crop Insurance Regulations (7 CFR Part 417), effective for the 1983 and succeeding crop years. The amendment was implemented by the Federal Crop

Insurance Corporation (FCIC) on an interim basis to provide insureds with sufficient time to consider changes being made in the policy for insuring sugarcane and to comply with the regulations with respect to placing these changes on file in a timely manner. The intended effect of this action is to confirm the interim rule.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: On Friday, August 20, 1982, FCIC published an interim rule in the **Federal Register** at 47 FR 36405, amending the Sugarcane Crop Insurance Regulations (7 CFR Part 417), effective for the 1983 and succeeding crop years to (1) add a Section 11 to the Appendix to the Policy to describe FCIC's liability in cases of loss by fire when the insured has other insurance covering fire losses, (2) prescribe the interest to be charged when premiums payments are not made within a certain time, and (3) add a provision to require the insured to file a notice when the crop is damaged to the extent that a loss is probable and leave intact a representative sample of the unharvested crop.

In accordance with the provisions of these regulations for insuring sugarcane, any amendments to these regulations must have been placed on file 15 days prior to the cancellation date in order to provide sufficient time for the policyholder to consider the changes being made. There would not have been sufficient time for notice and public comment prior to the implementation of this rule and still comply with the regulations with respect to placing this rule on file in the required time to be effective for the 1983 crop year.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order No. 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

It has been determined that this action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under the provisions of Departmental Regulations 1512–1. The sunset review date established for these regulations is April 1, 1988.

List of Subjects in 7 CFR Part 417

Crop insurance, Sugarcane.

Final Rule

Accordingly, the interim rule, published in the **Federal Register** of Friday, August 20, 1982, is hereby adopted as final.

Done in Washington, D.C., February 21, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 22, 1984.

Edward Hews,

Acting Manager.

Approved by:

[FR Doc. 84–8475 Filed 3–28–84; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 431

Soybean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This action makes final a revision and reissuance of the Soybean Crop Insurance regulations, effective for the 1983 and succeeding crop years. The revision and reissuance of the regulations was implemented by the Federal Crop Insurance Corporation (FCIC) on an interim basis to allow insureds sufficient time to consider changes in the regulations for insuring sugar beets. The intended effect of this action is to confirm the interim rule as published.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: On December 21, 1982, FCIC published an interim rule in the **Federal Register** at 47 FR 56820, revising and reissuing the Soybean Crop Insurance Regulations (7 CFR Part 431), effective for the 1983 and succeeding crop years in order to provide sufficient time for insureds to consider changes in the regulations for insuring soybeans. Under the regulations, any amendments must be placed on file in the service office by a date 15 days prior to the cancellation date in order to be effective for the crop year. It was determined that there would not have been sufficient time to allow insureds to consider such changes and still comply with the regulations with respect to placing the changes on file 15 days prior to the cancellation date. The public was given 60 days after publication of the interim rule in which to submit comments, data, and opinions on the rule and the rule was scheduled for review in order to provide for any amendments made necessary by such public comment, but no comments were received.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order No. 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

This action has been reviewed under USDA procedures established in Departmental Regulation No. 1512–1 (December 15, 1983). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is October 1, 1987.

List of Subjects in 7 CFR Part 431

Crop insurance; Soybeans.

Final Rule

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*),

the Interim Rule, revising and reissuing the Soybean Crop Insurance Regulations as published in the **Federal Register** at 47 FR 56820 on December 21, 1982, is hereby adopted as final.

Done in Washington, D.C., on February 24, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Date: March 22, 1984.

Edward Hews,

Acting Manager.

Approved by:

[FR Doc. 84-8477 Filed 3-28-84; 8:45 am]

BILLING CODE 3410-08-M

Soil Conservation Service

7 CFR Part 613

Plant Materials Centers; Technical Amendments

AGENCY: Soil Conservation Service, USDA.

ACTION: Final rule; amendment to the rule.

SUMMARY: Minor editorial changes are being made to clarify and update the material published October 31, 1974, and April 17, 1975, in the **Federal Register.**

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas N. Shiflet, Director, Ecological Sciences Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 447-2587.

SUPPLEMENTARY INFORMATION: Since this rule became effective, several inconsistencies have been brought to light requiring the need to update it with several minor editorial changes. These changes do not significantly affect the rule.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures are impractical and contrary to the public interest, and good cause is found for making this rule effective on publication in the **Federal Register.** Since this rule relates to internal agency management, it is exempt from the provisions of E.O. 12291. Finally, this action is not a rule as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 613

Plants (agriculture), Soil conservation.

PART 613—[AMENDED]

Accordingly, 7 CFR Part 613 is revised to read as follows:

Sec.

613.1 Purpose.
613.2 Policy.
613.3 SCS responsibilities in plant materials.
613.4 Special production of plant materials.
613.5 Plant materials centers.

Authority: Pub. L. 74-46, 49 Stat. 163 (16 U.S.C. 590a-f); Pub. L. 74-210, 50 Stat. 525 (7 U.S.C. 1010-1011).

§ 613.1 Purpose.

This part provides Soil Conservation Service (SCS) policy on the operations of plant materials centers. The centers have responsibilities for assembling, testing, releasing, and providing for the commercial production and use of plant materials for programs of soil, water, and related resource conservation and development.

§ 613.2 Policy and objectives.

(a) It is SCS policy to assemble, comparatively evaluate, release, and distribute for commerical increase new or improved plant materials needed for broad programs of resource conservation and development for agriculture, wildlife, urban, recreation, and other land uses and environmental needs. It is SCS policy to conduct plant materials work in cooperation with other agencies of the U.S. Department of Agriculture, such as the Agricultural Research Service, and with other federal and state research agencies including state agricultural experiment stations. The emphasis of the SCS plant materials work is to find suitable plants for erosion control adapted to soil and site conditions where vegetation is difficult to establish. In contrast, the emphasis of research agencies and organizations in plant development is to improve economically important crops. The SCS program of testing and releasing new seed-progagated plant materials follows the guidelines in "Statement of Responsibilities and Policies Relating to the Development, Release, and Multiplication of Publicly Developed Varieties of Seed-Propagated Crops," which was adopted in June 1972 by land grant colleges and interested federal agencies. SCS releases improved conservation plant materials requiring vegetative multiplication in ways appropriate for particular states and particular species by working with experiment stations, crop improvement associations, and other state and federal agencies.

(b) The objective of the plant materials activity is to select or develop special and improved plants, and techniques for their successful establishment and maintenance to solve conservation problems and needs relate to:

(1) Controlling soil erosion on all lands.

(2) Conserving water.

(3) Protecting upstream watersheds.

(4) Reducing sediment movement into waterways and reservoirs through the stabilization of critical sediment sources such as surface mined lands, highway slopes, recreation sites, and urban and industrial development areas.

(5) Stabilizing disposal areas for liquid and solid wastes.

(6) Improving plant diversity and lengthening grazing season on dryland pastures and rangelands.

(7) Replacing brush on mountain slopes with fire-retarding plant cover to reduce the possiblity of fires that threaten life and property or result in serious sediment sources.

(8) Improving the effectiveness of windbreaks and shelterbelts for reducing airborne sediment, controlling snow drifting, and preventing crop damage from wind erosion.

(9) Protecting streambank, pond, and lake waterlines from erosion by scouring and wave action.

(10) Improving wildlife food and cover.

(11) Selecting special-purpose plants to meet specific needs for environment protection and enhancement.

(12) Selecting plants that tolerate air pollution agents and toxic soil chemicals.

§ 613.3 SCS responsibilities in plant materials.

SCS operates or enters into agreements with state universities or other state organizations to operate plant materials centers. SCS employs specialists for selecting and using plant materials. SCS responsibilities are to:

(a) Identify the need for suitable plant materials and cultural and management methods in resource conservation and for environmental protection and enhancement.

(b) Assemble and comparatively evaluate plant materials at the plant materials centers and on sites where soil, climate, or other conditions differ significantly from those at the centers.

(c) Make comparative field plantings for final testing of promising plants and techniques in cooperation with conservation districts and other interested cooperators.

(d) Release cooperatively improved conservation plants and maintain the breeder or foundation stocks in ways appropriate for particular state and

plant species by working with experiment stations, crop improvement associations, and other state and federal agencies.

(e) Produce limited amounts of foundation or foundation-quality seed and plants available by grant to or by exchange with conservation districts, experiment stations, other federal and state research agencies, and state seed certifying organizations that will use the material to establish seed fields, seed orchards or plantings for vegetative increase.

(f) Encourage conservation districts, commercial seed producers, and commercial and state nurseries to produce needed plant materials for conservation uses and to assist them in this production.

(g) Encourage the use of improved plant materials in resource conservation and environmental improvement programs.

§ 613.4 Special production of plant materials.

SCS can produce plant materials in the quantity required to do a specific conservation job if this production will serve the public welfare and only if the plant materials are not available commercially. This function will be performed only until the plant materials are available commercially. Specific production of plant materials by SCS requires the approval of the Chief.

§ 613.5 Plant materials centers.

(a) The National Plant Materials Center. The National Plant Materials Center at Beltsville, Maryland, serves as the central facility for assembling, increasing, and determining the characteristics of plant materials from foreign and domestic sources. Plant materials with potential value for conservation and related uses are distributed to other plant materials centers.

(b) Other Plant Materials Centers. There are 23 other plant materials centers. Each serves several major land resource areas. Seventeen of these other centers are operated by SCS, and six by cooperating agencies, as follows:

(1) Operated by SCS:

Tucson, Arizona
Lockeford, California
Brooksville, Florida
Americus, Georgia
Molokai, Hawaii
Aberdeen, Idaho
Manhattan, Kansas
Quicksand, Kentucky
East Lansing, Michigan
Coffeeville, Mississippi
Elsberry, Missouri
Bridger, Montana
Cape May Courthouse, New Jersey
Big Flats, New York
Corvallis, Oregon
Knox City, Texas
Pullman, Washington

(2) Operated by cooperating agencies with financial and technical assistance from SCS:

Los Lunas, New Mexico (New Mexico State University)
Bismarck, North Dakota (North Dakota Association of Soil Conservation Districts)
Meeker, Colorado (White River and Douglas Creek Soil Conservation Districts with partial funding from SCS)

(3) Operated by cooperating agencies with technical assistance from SCS:

Palmer, Alaska (State of Alaska)
Kingsville, Texas (Caesar Kleberg Wildlife Research Institute, Texas Agricultural and Industrial University, and South Texas Association of Conservation Districts)
Nacogdoches, Texas (Stephen F. Austin University and the East Texas Association of Conservation Districts)

Dated: March 21, 1984.

Peter C. Myers,

Chief.

[FR Doc. 84-8261 Filed 3-28-84; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100 and 103

Statement of Organization; Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This document reflects the recent reorganizational changes that occurred within the office of Information Systems. These changes were necessary to provide better management and technical support for INS' expansion of automated systems.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: On January 9, 1984, the Attorney General signed the reorganization of the office of Information Systems as previously approved by OMB and Congress. This reorganization established a Project Control and Integration Division to provide for better management and technical support for the expansion of automated systems. This division is to be headed by an Assistant Commissioner for Project Control and Integration.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates solely to agency management.

This order will not have a significant impact on a substantial number of small entities and is not a rule within the definition of section (1)(a) of EO 12291 as it relates to agency management.

List of Subjects

8 CFR Part 100

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

8 CFR Part 103

Administrative practice and procedure, Archives and records, Authority delegations (government agencies), Organization and functions (government agencies).

Accordingly, Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

In § 100.2, paragraph (c)(2)(iv) is revised to read as follows:

§ 100.2 Organization and functions.

* * * * *

(c) * * *

(2) * * *

(iv) Project Control and Integration Division

* * * * *

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

In § 103.1, paragraph (e) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(e) *Associate Commissioner for Information Systems.*

Under the direction of the Executive Associate Commissioner, the Associate Commissioner for Information Systems is delegated authority and responsibility for program planning, development, coordination, evaluation, counseling, and staff direction of the Records

Systems, Data Systems, Policy Directives and Instructions, and Project Control and Integration programs, and general direction to and supervision of:

(1) Assistant Commissioner for Records Systems

(2) Assistant Commissioner for Data Systems

(3) Director for Policy Directives and Instructions, and

(4) Assistant Commissioner for Project Control and Integration.

* * * * *

(Sec. 103, Immigration and Nationality Act, as amended; (8 U.S.C. 1103))

Dated: March 26, 1984.

John W. Murray,

Associate Commissioner, Information Systems, Immigration and Naturalization Service.

[FR Doc. 84-8450 Filed 3-28-84; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 84-026]

Change in Disease Status of Chile Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document removes Chile from the list of countries declared to be free of rinderpest and foot-and-mouth disease. This is necessary because the existence of foot-and-mouth disease has been confirmed in Chile. The effect of this action is to prohibit or restrict the importation into the United States from Chile of cattle, sheep, or other ruminants, or swine, or fresh, chilled, or frozen meats of such animals. This is warranted as an emergency measure in order to protect the livestock of the United States from the threat of introduction or dissemination of foot-and-mouth disease into the United States.

DATES: Effective date is March 26, 1984.

Written comments must be received on or before May 29, 1984.

ADDRESS: Written comments concerning this interim rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. M. R. Crane, Import/Export Animals and Products Staff, VS, APHIS, USDA, Room 846, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1984, the Department was notified by the International Office of Epizootics that an outbreak of foot-and-mouth disease has been diagnosed in cattle in Chile. The outbreak was confirmed by the Government of Chile. The diagnosis of foot-and-mouth disease, Type 01, was based on clinical signs and laboratory confirmation. Consequently, it is necessary to remove Chile from the list of areas determined to be free of rinderpest and foot-and-mouth disease.

Foot-and-mouth disease is a dangerous and destructive communicable disease of ruminants and swine. The morbidity rate within a herd usually approaches 100 percent.

The effect of this action is to prohibit or restrict the importation into the United States from Chile of cattle, sheep, or other ruminants, or swine, or fresh, chilled, or frozen meats of such animals.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. The interim rule should be made effective immediately in order to protect the livestock of the United States from the threat of introduction or dissemination of foot-and-mouth disease.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making this interim rule effective upon signature. Comments are solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register.**

Executive Order 12291 and Regulatory Flexibility Act

The emergency nature of this action makes it impracticable for the Agency to follow the procedures of Executive Order 12291 with respect to this interim rule. Immediate action is warranted in order to protect the livestock of the United States from the threat of introduction or dissemination of foot-and-mouth disease into the United States.

This emergency situation also makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the Final Regulatory Impact Analysis, if required, will address the issues required in section 604 of the Regulatory Flexibility Act.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Rinderpest, Swine vesicular disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, 9 CFR Part 94 is amended as follows:

§ 94.1 [Amended]

2. In § 94.1(a)(2), "Chile" is removed.

§ 94.11 [Amended]

1. In § 94.11(a), "Chile" is removed.

Authority: Sec. 2, 32 Stat. 792, as amended; sec. 306, 46 Stat. 689, as amended; secs. 2, 3, 4, 11, 76 Stat. 129, 130, 132; 19 U.S.C. 1306; 21 U.S.C. 111, 134a, 134b, 134c, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 26th day of March, 1984.

Saul T. Wilson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-8554 Filed 3-27-84; 3:22 pm]

BILLING CODE 3410-34-M

9 CFR Part 97

Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulation which establishes charges for reimbursable overtime work performed by Veterinary Services inspectors at laboratories, border ports, ocean ports and airports. Veterinary Services inspectors of the United States Department of Agriculture are charged with performing inspection duties relating to imports and exports at laboratories, border ports, ocean ports and airports of entry. Such services may be performed outside the regular tour of duty of the employee when requested by the owner or custodian of the animals, animal products or other commodities subject to such port of entry inspection or testing and the charges for such premium pay service are recoverable through reimbursement from those for whom the services are performed. The payrolling procedures under which port of entry inspectors are paid have been changed insofar as entitlement to commuted traveltime allowances is concerned. In the past, entitlement to commuted traveltime allowances has been based on the performance of additional travel solely on account of the overtime service. This entitlement has been changed to permit the substitution of certain time elements in lieu of a positive travel requirement when overtime service begins less than one hour before the regular tour of duty, or begins shortly after the completion of the daily tour of duty. At the same time, the amount of commuted traveltime allowances paid is reduced from a full allowance to ½ an allowance in most instances where only one-way travel is involved. This change in the method of computing commuted traveltime entitlements necessitates a change in the regulations under which reimbursement for such sums paid out for such services is made under the reimbursable features of the Act of August 28, 1950 (7 U.S.C. 2260).

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: John C. Frey, Classification, Employment and Executive Resources Program, Human Resources Division, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 221 Federal Building, Hyattsville, MD 20782, (301–436–6466.).

SUPPLEMENTARY INFORMATION: The Act of August 28, 1950, 64 Stat. 561; 7 U.S.C. 2260) authorizes the Secretary of Agriculture to pay employees of the Department performing inspection and quarantine services relating to imports into and exports from the United States for all overtime, night or holiday work at such rates as he may determine and to accept from persons for whom such work is performed, reimbursement for any sums paid out by him for such work. Thus, the amounts reimbursed to the Department by owners or custodians of animals, animal products or other commodities who request the services of Veterinary Services employees at ports of entry outside their regular tour of duty or at night or on a holiday, need to be computed on the same basis as is the pay of those employees who actually performed the work. Under the current payrolling practices, entitlement to commuted traveltime allowances is based primarily on the performance of additional travel solely on account of the overtime service. This pay entitlement qualification has been changed, when inspection services are performed on a reimbursable basis immediately before or immediately after the regularly scheduled daily tour of duty, to permit substitution of designated periods of elapsed time in lieu of the positive travel heretofore required. In addition, a proviso limiting periods of unscheduled overtime for laboratory personnel to hours which normally constitute a regular workday has been removed.

This amendment has been issued in conformance with Executive Order 12291 and Secretary's Memorandum 1512–1 and has been determined to be not a "major rule." This final rule will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, state or local Government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, or investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Dr. John K. Atwell, Deputy Administrator, Veterinary Services, APHIS, has determined that this action will not have a substantial impact on a significant number of small entities. Specifically, this amendment affects only those entities that request the services of an inspector on a Sunday or a holiday or on an overtime basis. Services of an inspector during regularly established hours of service at a port are still furnished free of charge to those requiring the service. The pay provisions determined by the Secretary to be appropriate for employees performing inspection and quarantine services at ports of entry, the established hours of service for such ports, and the features of the reimbursable plan for recovering the costs of furnishing port of entry inspection on an appeal basis depend upon facts within the knowledge of the Department of Agriculture. Public participation in this rulemaking proceeding would not make additional relevant information available to the Department. The Agency has no alternatives to establishing procedures to effect reimbursement which utilize the same basis for recovery as is used in paying the employees who perform the work. By law, importers/exporters are required to reimburse the Agency for costs associated with services requested and rendered. Unless reimbursable amounts are calculated in the same manner as sums paid for the personal services rendered, the reimbursement achieved will not equal the cost of providing the service. Accordingly, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedures on these amendments are impracticable and unnecessary and good cause is found for making these amendments effective less than 30 days after publication in the **Federal Register.**

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Accordingly, Part 97, Subchapter D, Title 9, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 97 reads as follows:

Authority: Act of August 28, 1950 (64 Stat. 561; 7 U.S.C. 2260, and the Airports and Airways Development Act Amendments of July 12, 1978 (90 Stat. 882; 49 U.S.C. 1741).

2. Section 97.1(a) is revised to read as follows:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.[1]

(a) Any person, firm, or corporation having ownership, custody or control of

[1] For designated ports of entry for certain animals, animal semen, poultry, and hatching eggs see 9 CFR

Continued

animals, animal byproducts, or other commodities subject to inspection, laboratory testing, certification or quarantine under this subchapter and subchapter G of this chapter, and who requires the services of an employee of Veterinary Services on a holiday or Sunday or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of overtime or holiday or Sunday service request the Veterinary Services inspector in charge to furnish inspection, laboratory testing, certification or quarantine service during such overtime or holiday or Sunday period, except as provided in paragraph (b) of this section, and shall pay the Government therefor at the rate of $28.92 per work hour per employee on Sunday and at a rate of $21.84 per work hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, except as provided in paragraph (b) of this section for inspection or quarantine services requested by an owner or operator of an aircraft at an airport on a Sunday or holiday which are performed within the regularly established hours of service, or at any time after 5 p.m. or before 8 a.m. on a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspectional services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture. A minimum charge of 2 hours shall be made for any Sunday or holiday or unscheduled overtime duty performed by an employee on a day when no work was scheduled for him or which is performed by an employee on his regular work day beginning either at least 1 hour before his scheduled tour of duty or which is not in direct continuation of the employee's regular tour of duty. In addition, each such period of Sunday or holiday or unscheduled overtime work to which the 2-hour minimum charge applies may include a commuted traveltime period (CTT) the amount of which shall be prescribed in administrative instructions to be issued by the Deputy Administrator, Veterinary Services for the areas in which the Sunday or holiday or overtime work is performed and such period shall be established as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which the employee performs such Sunday, holiday or overtime duty. With respect to places of duty within the metropolitan area of the employee's headquarters, such CTT period shall not exceed 3 hours. It shall be administratively determined from time to time which days constitute holidays. The circumstances under which such CTT periods shall be charged and the percentage applicable in each circumstance are as reflected in the following table:

	Actual time [1] charge—no minimum	2-hour guarantee charge	Commuted [2] traveltime (CTT) charge
Charges for Inspection Within Metropolitan Area of Employee's Headquarters			
Work beginning before daily tour begins:			
8 to 59 minutes.	Yes	No	None.
60 to 119 minutes.		Yes	½ CTT.
120 minutes or more.		Yes	Full CTT.
Work beginning after daily tour ends:			
Direct continuation.	Yes	No	None.
Break-in-service of:			
2–29 minutes		Yes	None.
30–60 minutes		Yes	½ CTT.
61 minutes or more.		Yes	Full CTT.
Charges for Inspection Services Performed Outside Metropolitan Area of Employee's Headquarters			
Work beginning before daily tour begins:			
8 to 59 minutes.	Yes	No	½ CTT.
60 minutes or more.		Yes	Full CTT.
Work beginning after daily tour ends:			
Direct continuations.	Yes	No	½ CTT.
2–59 minutes	No	Yes	½ CTT.
60 minutes or more.	No	Yes	Full CTT.
Charges for Call Out Inspection Service on Holiday or Nonworkday			
Work beginning at any time.	No	Yes	Full CTT.

[1] Actual time charged when work is contiguous with the daily tour will be in quarter hour multiples, with service time of 8 minutes or more rounded up to the next quarter hour and any time of less than 8 minutes will be disregarded.
[2] The full CTT allowance will be the amount of commuted traveltime prescribed for the place at which the inspections are performed. See Part 97.2. One-half CTT is ½ of the full CTT period.

* * * * *

3. The introductory paragraph of § 97.2 is revised to read as follows:

§ 97.2 Administrative instructions prescribing commuted traveltime.

Each period of overtime and holiday duty as prescribed in § 97.1 shall in addition include a commuted traveltime period for the respective ports, stations, and areas in which employees are located. The prescribed computed traveltime periods are as follows:

* * * * *

Done at Washington, D.C., on March 23, 1984.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 84-8466 Filed 3-28-84; 8:45 am]

BILLING CODE 3410-34-M

92.1 through 92.3 and for designated ports of entry for certain purebred animals see 9 CFR 151.1 through 151.3.

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 20

FEDERAL RESERVE SYSTEM

12 CFR Part 211

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 351

Accounting for International Loan Fees

AGENCIES: Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation.

ACTION: Joint notice of final rules.

SUMMARY: These regulations establish uniform requirements for the accounting for fees associated with the restructuring of international lending arrangements and nonrefundable fees charged by banking institutions in connection with other international loans. These regulations implement one aspect of the joint program of the Federal banking agencies to strengthen the supervisory and regulatory framework relating to foreign lending by U.S. banking institutions, incorporated in section 906 of the International Lending Supervision Act of 1983.

EFFECTIVE DATES: The effective date of the regulations is June 30, 1984, except for §§ 20.9(a), 211.45(a) and 351.2(b) which are effective March 29, 1984.

FOR FURTHER INFORMATION CONTACT:

Comptroller of the Currency: Zane D. Blackburn, Director, Bank Accounting or Eugene Green, Senior Accountant, Bank Accounting (202/447–0471); Harold Schuler, Director, International Relations & Financial Evaluation (202/447–1747); Dorothy Sable, Senior Attorney (202/447–1880).

Federal Reserve System: Michael G. Martinson, Projects Manager,

International Activities, Division of Banking Supervision and Regulation (202/452–3621); or Stanley C. Weidman, Senior Accountant-Analyst, Division of Banking Supervision and Regulation (202/452–3502); or Nancy P. Jacklin, Assistant General Counsel (202/452–3428); Kathleen O'Day, Senior Counsel, Legal Division (202/452–3786).

Federal Deposit Insurance Corporation: Paul L. Sachtleben, Planning and Program Development Branch, Division of Bank Supervision (202/389–4761) or Peter M. Kravitz, Senior Attorney, Legal Division (202/389–4171).

SUPPLEMENTARY INFORMATION: On February 13, 1984, the agencies published for comment regulations to implement section 906 of the International Lending Supervision Act of 1983 (12 U.S.C. 3901 et seq., 3905) ("Act"). The proposed regulations set forth the accounting for various fees received by banking institutions when making international loans.

The agencies received 67 letters of comment on the proposed regulations as follows: The Board received 32 comments; 6 from trade or professional associations, 17 from banks and bank holding companies, 3 from accounting firms and 6 from Federal Reserve banks; the Comptroller of the Currency received 21 comments; 13 from national banks, 4 from trade or professional associations or firms and 4 from accounting firms or groups; and the Federal Deposit Insurance Corporation received 14 comments which were duplicative of those received by the other agencies.

In the explanatory materials accompanying the proposed regulations, the agencies specifically requested comments on: (1) Whether the rules should differentiate between fees related to restructured loans and other international loans, and if so, how restructured loans should be defined; (2) whether all or certain costs should be capitalized rather than expensed as incurred; (3) whether commitment fees should be deferred and recognized over the combined commitment and expected loan period as adjustments to yield; (4) how banking institutions should account for the costs of, and fee income attributable to, their merchant banking activities; and (5) whether any aspects of the proposed rules were inconsistent with the accounting treatment for domestic loans. Those submitting comments addressed these and other issues. In light of the comments received, the agencies have made several revisions to improve the proposed regulations. Following are the major topics raised in the comments and the agencies' responses thereto:

(1) Scope of the Rules

Many commenters objected to the issuance of rules on the treatment of international loan fees other than fees received in connection with restructured international loans. They argued that Congress only intended the agencies to address restructured loan fees. However, the agencies believe that Section 906 and its legislative history clearly require the agencies to issue rules addressing fees on both types of international loans. Section 906(a) is directed to restructured loans and authorizes the agencies to issue necessary implementing rules. Section 906(b) is directed to all international loans and requires the agencies, subject to the specific requirements for restructured loan fees, to issue rules governing the treatment of all international loan fees.

Most commenters, including the Banking Committee of the American Institute of Certified Public Accountants (AICPA), urged the agencies not to establish accounting rules now that differ significantly from Generally Accepted Accounting Principles (GAAP), especially in view of the current status of consideration by the accounting profession of issues of fee accounting. Accordingly, several commenters urged the agencies to adopt accounting rules for fees on restructured loans as specified in section 906(a) but to adopt current GAAP rules for all other fee accounting for international loans, thereby leaving the resolution of these issues to the accounting profession.

The suggestion that Congress was solely concerned that the Federal banking agencies promulgate regulations for fees on restructured loans and that GAAP should otherwise apply, would make superfluous the legislative requirements in section 906(b). To the contrary, the Federal banking agencies in proposing to Congress the provisions now contained in section 906(b), and Congress in adopting those provisions, considered that the application of the broad fee accounting principles for banks contained in GAAP were insufficient to accomplish adequate uniformity in accounting practices in this area. Further, Congress determined that more appropriate accounting rules were necessary in order to avoid artificial incentives for banking institutions to make international loans.

In connection with this issue, several commenters requested that implementation of rules on fees other than those received in a restructuring be delayed until final decisions are reached by the Financial Accounting Standards Board (FASB). The FASB has scheduled the issue of accounting for nonrefundable loan fees for its current agenda. The FASB itself, although not commenting specifically on the proposal, noted that it will address this issue through its "due process" procedures and will keep the agencies informed of developments. The agencies do no believe that delaying the rules to an idefinite date would be in accordance with the intention of Congress. However, in order to allow reasonable time for adjustment of accounting methods, the rules are effective June 30, 1984, except for the rules on fees for restructured loans which are effective immediately. Finally, in recognition of the current consideration of these issues by the accounting profession, the agencies intend to reexamine their regulations to assess the need for modification in the event the FASB issues a final pronouncement or standard on loan fees.

(2) Accounting Rules Related to Restructured Loans and Other International Loans

The proposed regulations did not differentiate between restructured and all other international loans. Uniform accounting rules were specified for commitment an agency fees, and the rules required that any other fee received in connection with an international loan in excess of adminisrative costs be deferred and amortized over the effective life of the loan. The reason given for such a requirement was that the fees on restructured international loans and all other international loans are similar in substance and therefore should be treated in the same manner. In addition, it would be burdensome to distinguish between restructurings and other international loans.

The commenters generally were opposed to treating all international loans alike. They cited the statutory provision which mandates certain accounting treatment of fees on restructured loans but provides the banking agencies with discretion as to other international loans. They also stated that the legislative history of the Act shows the major Congressional concern was with restructured loans to debtor countries, and the need to avoid imposing excessive debt burden in those instances.

Section 906(b) of the Act, unlike section 906(a), provides that the bank regulatory agencies shall establish rules

that require that the "appropriate portion" of fees related to international loans be taken into income over the effective life of the loan. In implementing this section of the law, the commenters considered that the agencies should adopt rules that recognize the economic substance of the transactions for which fees are charged. The commenters stated that some fees in excess of administrative costs are compensation for services provided, are unrelated to yield adjustment, and therefore should not be deferred and amortized.

In light of the language and legislative history of the provision and in response to the comments, the final regulations distinguish between restructured international loans and other international loans in the required accounting treatment for fees.

(3) Definition of "Restructured International Loan"

In order to distinguish between restructured international loans and all other international loans for purposes of accounting for fees, it is necessary that "restructured international loan" be defined to meet the particular scope and purpose of section 906(a). The commenters generally suggested that the definition cover restructured loans to borrows in countries with severe foreign exchange or liquidity problems. Several indicated that the definition of a restructured loan could be linked to loans made to countries that had been classified by the agencies for transfer risk purposes.

Some commenters suggested that restructured loans include refinancings or loans the terms of which had been modified or maturities extended in order to permit the loan to be repaid. Others suggested using the definition of "troubled debt restructuring" in the Statement of Financial Accounting Standard No. 15 (SFAS 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings"), issued by the FASB.

Because section 906(a) refers to restructurings of international loans to avoid excessive debt service burden on debtor countries, the regulations provide that the definition of restructured loan contain two criteria. First, the borrower whose loan is being restructured because of debt service difficulties must be a resident of a foreign country experiencing a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, foreign exchange in that country. Second, in a restructuring, the terms of the loan are revised to extend the original schedule of payments or reduce stated interest, or the restructuring takes the form of provision of new funds for the benefit of the borrower that has the same effect as extending the schedule of payments or reducing stated interest on the original loan. These criteria are intended to cover loans restructured to meet debt service difficulties, but not ordinary refinancings.

For any loan that meets the definition of restructured international loan, the regulations prohibit a banking institution from charging any fee unless the portion of the fee in excess of administrative costs is deferred and amortized over the effective life of the loan. If any loan meets the more restrictive category of a "troubled debt restructuring" under the terms of SFAS 15, it should be accounted for in accordance with that Standard. Moreover the definition of "restructured loan" adopted to implement the fee accounting rules mandated by statute is in no way intended to categorize any particular loan as a "restructured loan" for purposes of applying any other accounting standard.

(4) Syndication Fees

As indicated above, fees on international loans other than restructured international loans need not all be amortized but, pursuant to section 906(b), must be accounted for in a manner to accrue an appropriate portion of the fee as income over the life of the loan. The purpose of this provision is to assure that any portion of the fee that is in actuality a yield adjustment be accounted for as interest and amortized.

In those instances where a banking institution is managing or syndicating the loan, the proposed rule established a presumption that a portion of a managing banking institution's fees (other than commitment or agency fees) would be considered an adjustment to yield. This portion would be equal to the proportion of fees in relation to loan principal received by the largest non-managing loan participant. The remainder of the fee would be presumed to be a syndication fee and the proposed rule provided that the syndication fee could be recognized as revenue when received only to the extent it equals administrative costs directly identifiable with the syndication process. The excess was to be deferred and amortized over the loan period.

Many commenters agreed that some portion of a syndication fee normally represents an adjustment to yield because a portion of the fee is passed on to participating banks as an incentive to participate in the loan. The commenters concurred with the proposal that this yield adjustment component should be deferred and amortized over the loan period. Most of the commenters agreed also with the presumption in the proposal that the yield adjustment component is that portion of the fee equal to the fee received by the non-managing bank with the largest proportionate share in the syndication. Several commenters, however, disagreed with the presumption, indicating that the greater the participation, the higher the fee that is passed to that bank. Therefore, the regulation should use a weighted method for determining the yield adjustment component of a syndication fee.

The final regulations retain the requirement that, in all international loans (except restructured international loans for which no fee exceeding specified administrative costs may be taken into income immediately), a banking institution shall recognize that portion of syndication fees that represent an adjustment to yield as interest to be amortized over the loan period, using the interest method.

The presumption in the proposal as to the yield adjustment component in a syndication fee has been altered in the final rules. Because a non-managing participating bank performs no syndication services, whatever fee it receives is a yield adjustment. Therefore, the interest yield component of the syndication fee should be based upon the largest fee received by a non-managing loan participant on a pro rata basis. Accordingly, the managing bank's effective yield on its portion of the loan should be at least equal to that of the non-managing loan participant receiving the largest fee.

The commenters strongly disagreed with the requirement that the remainder of a syndication fee also be deferred as a yield adjustment. Most stated that the proposal misconstrues the nature of the management or syndication fee as comprised only of reimbursement of administrative costs and an adjustment to yield. These commenters stated that the syndication fee is a charge for separate services unrelated to the actual lending of money. These "merchant banking functions," for which banking institutions should be separately compensated, include the arranging of the loan (bringing together third parties), using associated expertise, assuming the underwriting risk of the loan, and negotiating the terms of the loan. These fees also include a "profit" on the provision of the services.

Because the fee is compensation for such services, the commenters stated that GAAP provides that the income should be recorded when the service is rendered. Several commenters stated that the services provided by commercial banks are like those provided by merchant banks in the syndication process and that to apply different accounting rules for fee income for such services earned by commercial banks would place them at a competitive disadvantage.

There can be little dispute that banking institutions that are "lead" or "managing" banks provide services, as described by the commenters, in connection with international loan syndications. These banking institutions also frequently participate in the loan, and often their share in the loan is among the largest of all participants. In such circumstances, the activities of the institution in syndicating the loan are, to at least some extent, integral to the lending of funds.

What additional portion of the syndication fees is intended to compensate a managing bank for making the loan, as compared with arranging loans for others, is not easily determined using any generalized standard and may vary from case to case. In those cases where all or a portion of the remaining fee represents a yield adjustment, as noted above, such income must be amortized over the loan period. Where all or a portion of the remaining fee instead represents compensation for services provided in arranging the loan, the final regulations allow it to be taken into income when the loan agreement is signed.

In order to assure that, in practice, the appropriate portion of the fee is amortized, the final regulations allow the banking institution to take the fee into income when the loan is closed only to the extent the institution can identify and document the services for which the specified fee was received. Documentation for this purpose shall include the loan agreement, signed by all of the parties to the loan, which identifies the services provided and the total fee received by the institution for provision of such syndication or management services. Normally, these agreements contain the amount, terms and conditions of the loan, and the interest and fees to be paid by the borrower. If the portion of fees received representing compensation for such services cannot be so identified and documented, then the fee will be presumed to be an adjustment to yield and must be amortized over the life of the loan. Fees received by a "managing bank" in name only are not compensation for syndication services and must be amortized over the life of the loan.

(5) Commitment Fees

The proposed regulations required banking institutions to defer all commitment fees over the term of the combined commitment and expected loan period. Commenters generally opposed this requirement, indicating that such fees should be recognized as income over the commitment period. Objections largely centered on the impracticability of the requirement and the fact that commitment fees are intended as compensation for guaranteeing the funding of a loan and are not yield related. Therefore, the deferral of these fees beyond the commitment period is inconsistent with their nature and purpose. Commenters cited revolving credit arrangements as an example where the proposed rule is particularly inappropriate. Fees on revolving credit commitments are based on the unused line of credit and typically are received periodically in arrears, clearly evidencing their purpose to compensate the bank for the funding risk assumed. Moreover, in such cases, the "loan period" would be particularly difficult to estimate. Many commenters indicated that commitment fees should be recognized in income based on their economic substance consistent with the requirements of the Bank Audit Guide issued by the AICPA.

In light of these comments, the agencies have determined to revise the proposed regulations as they relate to commitment fees to be consistent with the treatment of such fees in the Bank Audit Guide. Accordingly, commitment fees could be taken into income over the commitment period alone. The final regulations retain the requirement to defer commitment fees over the combined term of the loan and commitment period only in those situations when it is not practicable to identify that portion of the fee related to making the commitment as compared with any portion related to lending funds. This includes instances where the fee is unreasonable in comparison with normal banking practices whereby, as indicated by banking industry commenters, such fees typically fall within a narrow range (currently ¼% to ½% per annum) regardless of customer. As required by section 906(a) of the Act, a commitment fee received in connection with a restructured international loan must be amortized over the loan period.

Further, based on responses that commitment fees on revolving loan arrangements are generally received periodically in arrears during the commitment period and are based on the amount of the unused loan commitment, the regulations permit such fees to be recognized as income on a cash basis provided the result would not be materially different from deferring these fees and amortizing them over the commitment period. Finally, the regulations were clarified to state that, if the loan is funded before the end of the commitment period, any unamortized commitment fees may be recognized as revenue at that time.

(6) Administrative Costs

Under the proposed regulations, administrative costs for originating or restructuring a loan, or managing a syndicated loan were similarly defined and were required to be expensed as incurred. Such costs were defined as those which are specifically identified with processing the loan or negotiating and consummating the lending arrangement in the case of an international syndicated loan. These costs included, but were not necessarily limited to: legal fees; costs of preparing and processing loan documents; an allocable portion of salaries and related benefits of employees engaged in the international lending function or, for managing banks, employees, engaged in the syndication function; and an allocable portion of occupancy and other similar costs.

In the preamble to the proposed regulation, the agencies specifically asked whether all or certain costs should be capitalized rather than expensed as incurred and how banking institutions should account for the costs of their merchant banking activities.

The majority of the commenters agreed that costs in both activities should be expensed as incurred. They indicated this is the generally accepted practice in the industry. Some commenters mentioned that the AICPA's Accounting Standards Executive Committee recommendation of capitalizing costs is not a currently accepted practice and represents only a recommendation to the FASB for its consideration in addressing the loan fee issue. Other commenters indicated that the capitalization of such costs would inflate the balance sheet and require the burdensome development of accounting systems to accumulate and track the information. Some of these commenters contended that the initial cost of establishing such an accounting system would outweigh the benefits.

On the issue of defining administrative costs, only a few

commenters thought that the proposed definition was too restrictive and suggested that general overhead costs in addition to those specifically identifiable with processing or consummating a loan should be included. Most commenters considered that the definition encompassed too many allocated costs and suggested that only incremental costs be included. They noted that inclusion of these allocated costs is not current accounting practice and would require establishment of new cost accounting systems. A number of commenters indicated the definition should be consistent with that set forth in SFAS 17 (Accounting for Leases—Initial Direct Costs) and the Bank Audit Guide.

In light of these comments, the agencies have determined that, consistent with GAAP, administrative costs will be required to be expensed as incurred and defined to include only specifically identified direct costs as provided in SFAS 17. Accordingly, supervisory and administrative expenses or other indirect expenses such as occupancy and other similar costs may not be included.

The rule thus would be consistent with GAAP and the Bank Audit Guide, and will not create an undue burden for banking institutions.

(7) Other Issues

There was no disagreement with the basic rules requiring that fees be deferred and amortized over the effective life of the loan unless specific treatment for a particular fee is specified elsewhere in the regulations. Therefore, no change was made in these provisions. The effective life of the loan in this context and in the regulations generally, is meant to be the term of the loan. This may, however, differ from the stated loan period, where, for example, a short-term loan is expected to be rolled-over at maturity.

Several commenters requested the option to amortize the entire fee, whether received in connection with a restructuring or other international loan, rather than being required to recognize a portion of the fee equal to administrative costs as income in the same period such costs are expensed. While immediate recognition of this portion of the fee is the preferred accounting treatment, the final rule also allows deferral and amortization of the entire fee.

Those comments discussing agency fees agreed with the treatment of such fees in the proposed rules and, accordingly, no change in this provision was made in the final rules.

Several comments raised the issue of materiality. Determinations of materiality for the purpose of application of the rules should be made in accordance with GAAP with the exception of the rule on treatment of fees for restructured international loans. That rule must be applied regardless of materiality because it is based on a specific statutory requirement.

One commenter asked how the unamortized balance of fees should be treated when the asset is sold. Sufficient accounting guidance already is provided on this question in GAAP and the agencies do not believe that a specific rule on this point is necessary.

Finally, the Federal banking agencies intend, through the examination process, to oversee good faith compliance with the Act and these regulations. In the event that the regulations do not achieve the objective of assuring that the appropriate portion of fee income is recognized as an interest yield adjustment, the agencies will revise the regulations or review individual institutions' accounting practices as needed.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.) the agencies certify that the regulations will not have a significant economic impact on a substantial number of small entities since small banks generally do not engage extensively in international lending and would not be affected by these regulations.

Executive Order 12291

The Comptroller of the Currency has determined that the proposed regulation does not constitute a "major rule" and therefore does not require a regulatory impact analysis.

List of Subjects in 12 CFR Parts 20, 211, and 351

Accounting for international loan fees, Banks, banking, Federal Reserve System, Foreign banking, Investments, Reporting and recordkeeping requirements, Export trading companies, Allocated transfer risk reserve, National banks, International operations, Reserves on certain international assets, Reporting and disclosure of international assets, State nonmember banks.

Authority and Issuance

Pursuant to their respective authorities, the agencies are amending Title 12 of the Code of Federal Regulations, Parts 20, 211 and 351, as follows:

COMPTROLLER OF THE CURRENCY

[Docket No. 84-11]

PART 20—[AMENDED]

1. The authority citation for 12 CFR Part 20 reads as follows:

Authority: 12 U.S.C. 1 *et seq.* unless otherwise noted.

2. Part 20 is amended by redesignating paragraph (d) of § 20.7 as paragraph (h) and by adding new paragraphs (d), (e), (f), and (g) to read as follows:

§ 20.7 Definitions.

* * * * *

(d) "International loan" means a loan as defined in the instructions to the "Report of Condition and Income" for the respective banking institution (FFIEC Nos. 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(e) "International syndicated loan" means a loan characterized by the formation of a group of "managing" banking institutions and, in the usual case, assumption by them of underwriting commitments, and participation in the loan by other banking institutions.

(f) "Loan agreement" means the documents signed by all of the parties to a loan, containing the amount, terms and conditions of the loan, and the interest and fees to be paid by the borrower.

(g) "Restructured international loan" means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inablilty of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) The terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) A new loan is made to, or for the benefit of, the borrower, enabling the borrower to service or refinance the existing debt.

3. Part 20 is amended by adding a new § 20.9 to read as follows:

§ 20.9 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge any fee in connection with a restructured international loan unless all fees

exceeding the banking institution's administrative costs, as described in paragraph (c)(2) of this section, are deferred and recognized over the term of the loan as an interest yield adjustment.

(b) *Amortizing fees.* Except as otherwise provided by this section, fees received on international loans shall be deferred and amortized over the term of the loan. The interest method should be used during the loan period to recognize the deferred fee revenue in relation to the outstanding loan balance. If it is not practicable to apply the interest method during the loan period, the straight-line method shall be used.

(c) *Accounting treatment of international loan or syndication administrative costs and corresponding fees.* (1) Administrative costs of originating, restructuring, or syndicating an international loan shall be expensed as incurred. A portion of the fee income equal to the banking institution's administrative costs may be recognized as income in the same period such costs are expensed.

(2) The administrative costs of originating, restructuring, or syndicating an international loan include those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: Legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function and, where applicable, the syndication function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(d) *Fees received by managing banking institutions in an international syndicated loan.* Fees received on international syndicated loans representing an adjustment of the yield on the loan shall be recognized over the loan period using the interest method. If the interest yield portion of a fee received on an international syndicated loan by a managing banking institution is unstated or differs materially from the pro rata portion of fees paid other participants in the syndication, an amount necessary for an interest yield adjustment shall be recognized. This amount shall at least be equivalent (on a pro rata basis) to the largest fee received by a loan participant in the syndication that is not a managing banking institution. The remaining portion of the syndication fee may be recognized as income at the loan closing date to the extent that it is identified and documented as compensation for services in arranging the loan. Such documentation shall include the loan agreement. Otherwise, the fee shall be deemed an adjustment of yield.

(e) *Loan commitment fees.* (1) Fees which are based upon the unfunded portion of a credit for the period until it is drawn and represent compensation for a binding commitment to provide funds or for rendering a service in issuing the commitment shall be recognized as income over the term of the commitment period using the straight-line method of amortization. Such fees for revolving credit arrangements, where the fees are received periodically in arrears and are based on the amount of the unused loan commitment, may be recognized as income when received provided the income result would not be materially different.

(2) If it is not practicable to separate the commitment portion from other components of the fee, the entire fee shall be amortized over the term of the combined commitment and expected loan period. The straight-line method of amortization should be used during the commitment period to recognize the fee revenue. The interest method should be used during the loan period to recognize the remaining fee revenue in relation to the outstanding loan balance. If the loan is funded before the end of the commitment period, any unamortized commitment fees shall be recognized as revenue at that time.

(f) *Agency fees.* Fees paid to an agent banking institution for administrative services in an international syndicated loan shall be recognized at the time of the loan closing or as the service is performed, if later.

Dated: March 22, 1984.

H. Joe Selby,

Acting Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

Regulation K

[Docket No. R-0509]

PART 211—[AMENDED]

Pursuant to the Board's authority under sections 9, 25 and 25(a) of the Federal Reserve Act (12 U.S.C. 221 *et seq.*, 601–604a, and 611 *et seq.)*, section 5 of the Bank Holding Company Act (12 U.S.C. 1844) and section 906 of the International Lending Supervision Act of 1983 (12 U.S.C. 3905), the Board has amended 12 CFR Part 211, Subpart D, as follows:

1. By redesignating paragraph § 211.42(d) as 211.42(h) and by adding new paragraphs § 211.42 (d), (e), (f) and (g), to read as follows:

§ 211.42 Definitions.

* * * * *

(d) "International loan" means a loan as defined in the instructions to the "Report of Condition and Income" for the respective banking institution (FFIEC Nos. 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(e) "International syndicated loan" means a loan characterized by the formation of a group of "managing" banking institutions and, in the usual case, assumption by them of underwriting commitments and participation in the loan by other banking institutions.

(f) "Loan agreement" means the documents signed by all of the parties to a loan, containing the amount, terms and conditions of the loan, and the interest and fees to be paid by the borrower.

(g) "Restructed international loan" means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) the terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) a new loan is made to, or for the benefit or, the borrower, enabling the borrower to service or refinance the existing debt.

* * * * *

2. By adding a new section 211.45, to read as follows:

§ 211.45 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge any fee in connection with a restructured international loan unless all fees exceeding the banking institution's administrative costs, as described in paragraph (c)(2) of this section, are deferred and recognized over the term of the loan as an interest yield adjustment.

(b) *Amortizing fees.* Except as otherwise provided by this section, fees received on international loans shall be deferred and amortized over the term of the loan. The interest method should be used during the loan period to recognize the deferred fee revenue in relation to the outstanding loan balance. If it is not practicable to apply the interest method

during the loan period, the straight-line method shall be used.

(c) *Accounting treatment of international loan or syndication administrative costs and corresponding fees.* (1) Administrative costs of originating, restructuring or syndicating an international loan shall be expensed as incurred. A portion of the fee income equal to the banking institution's administrative costs may be recognized as income in the same period such costs are expensed.

(2) The administrative costs of originating, restructuring, or syndicating an international loan include those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function and, where applicable, the syndication function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(d) *Fees received by managing banking institutions in an international syndicated loan.* Fees received on international syndicated loans representing an adjustment of the yield on the loan shall be recognized over the loan period using the interest method. If the interest yield portion of a fee received on an international syndicated loan by a managing banking institution is unstated or differs materially from the pro rata portion of fees paid other participants in the syndication, an amount necessary for an interest yield adjustment shall be recognized. This amount shall at least be equivalent (on a pro rata basis) to the largest fee received by a loan participant in the syndication that is not a managing banking institution. The remaining portion of the syndication fee may be recognized as income at the loan closing date to the extent that it is identified and documented as compensation for services in arranging the loan. Such documentation shall include the loan agreement. Otherwise, the fee shall be deemed an adjustment of yield.

(e) *Loan commitment fees.* (1) Fees which are based upon the unfunded portion of a credit for the period until it is drawn and represent compensation for a binding commitment to provide funds or for rendering a service in issuing the commitment shall be recognized as income over the term of the commitment period using the straight-line method of amortization. Such fees for revolving credit arrangements, where the fees are received periodically in arrears and are based on the amount of the unused loan commitment, may be recognized as income when received provided the income result would not be materially different.

(2) If it is not practicable to separate the commitment portion from other components of the fee, the entire fee shall be amortized over the term of the combined commitment and expected loan period. The straight-line method of amortization should be used during the commitment period to recognize the fee revenue. The interest method should be used during the loan period to recognize the remaining fee revenue in relation to the outstanding loan balance. If the loan is funded before the end of the commitment period, any unamortized commitment fees shall be recognized as revenue at that time.

(f) *Agency fees.* Fees paid to an agent banking institution for administrative services in an international syndicated loan shall be recognized at the time of the loan closing or as the service is performed, if later.

Board of Governors of the Federal Reserve System, March 26, 1984

William W. Wiles,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

In consideration of the foregoing, the FDIC hereby amends Part 351 of its rules and regulations (12 CFR Part 351) by adding a new § 351.2 thereto.

PART 351—[AMENDED]

1. The authority citation for 12 CFR Part 351 is as follows:

Authority: Title 1X, Pub. L. 98–181, 97 Stat. 1153, 12 U.S.C. 3901 *et seq.*

2. Part 351 is amended by adding a new section 351.2 as follows:

§ 351.2 Accounting for fees on international loans.

(a) *Definitions.* For the purpose of this subpart:

(1) "International loan" means a loan as defined in the instructions to the "Report of Condition and Income" for the respective banking institution (FFIEC Nos. 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(2) "International syndicated loan" means a loan characterized by the formation of a group of "managing" banking institutions and, in the usual case, assumption by them of underwriting commitments and participation in the loan by other banking institutions.

(3) "Loan agreement" means the documents signed by all of the parties to a loan, containing the amount, terms and conditions of the loan, and the interest and fees to be paid by the borrower.

(4) "Restructured international loan" means a loan that meets the following criteria: (i) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and either (ii) the terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or (iii) a new loan is made to, or for the benefit of, the borrower, enabling the borrower to service or refinance the existing debt.

(b) *Restrictions on fees for restructured international loans.* No banking institution shall charge any fee in connection with a restructured loan unless all fees exceeding the banking institution's administrative costs, as described in subsection (d)(2) of this section, are deferred and recognized over the term of the loan as an interest yield adjustment.

(c) *Amortizing fees.* Except as otherwise provided by this section, fees received on international loans shall be deferred and amortized over the term of the loan. The interest method should be used during the loan period to recognize the deferred fee revenue in relation to the outstanding loan balance. If it is not practicable to apply the interest method during the loan period, the straight-line method shall be used.

(d) *Accounting treatment of international loan or syndication administrative costs and corresponding fees.* (1) Administrative costs of originating, restructuring, or syndicating an international loan shall be expensed as incurred. A portion of the fee income equal to the banking institution's administrative costs may be recognized as income in the same period such costs are expensed.

(2) The administrative costs of originating, restructuring, or syndicating an international loan include those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related

benefits of employees engaged in the international lending function and, where applicable, the syndication function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(e) *Fees received by managing banking institutions.* Fees received on international syndicated loans representing an adjustment of the yield on the loan shall be recognized over the loan period using the interest method. If the interest yield portion of a fee received on an international syndicated loan by a managing banking institution is unstated or differs materially from the pro rata portion of fees paid other participants in the syndication, an amount necessary for an interest yield adjustment shall be recognized. This amount shall at least be equivalent (on a pro rata basis) to the largest fee received by a loan participant in the syndication that is not a managing banking institution. The remaining portion of the syndication fee may be recognized as income at the loan closing date to the extent that it is identified and documented as compensation for services in arranging the loan. Such documentations shall include the loan agreement. Otherwise, the fee shall be deemed an adjustment of yield.

(f) *Loan commitment fees.* (1) Fees which are based upon the unfunded portion of a credit for the period until it is drawn and represent compensation for a binding commitment to provide funds or for rendering a service in issuing the commitment shall be recognized as income over the term of the commitment period using the straight-line method of amortization. Such fees for revolving credit arrangements, where the fees are received periodically in arrears and are based on the amount of the unused loan commitment, may be recognized as income when received provided the income result would not be materially different.

(2) If it is not practicable to separate the commitment portion from other components of the fee, the entire fee shall be amortized over the term of the combined commitment and expected loan period. The straight-line method of amortization should be used during the commitment period to recognize the fee revenue. The interest method should be used during the loan period to recognize the remaining fee revenue in relation to the outstanding loan balance. If the loan is funded before the end of the commitment period, any unamortized commitment fees shall be recognized as revenue at that time.

(g) *Agency fees.* Fees paid to an agent banking institution for administrative services in an international syndicated loan shall be recognized at the time of the loan closing or as the service is performed, if later.

Dated: March 26, 1984.

By Order of the Board of Directors.

Hoyle L. Robinson,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 84-8491 Filed 3-28-84; 8:45 am]

BILLING CODES 4810-33, 6210-01, 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-15-AD; Amdt. 39-4833]

Airworthiness Directives; Short Brothers Ltd. Model SD3-30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Short Brothers Ltd. Model SD3-30 series airplanes which requires insulating the body of certain line contactors on the electrical power panels. There have been several incidents of short circuits, including one in which severe damage occurred. This action is necessary to prevent short circuits which could cause a fire.

EFFECTIVE DATE: April 9, 1984.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority of the United Kingdom (CAA) has classified Short Brothers Ltd. Service Bulletin SD3-24-18 as mandatory. There have been several reported cases of a short circuit occurring between a live contact and contactor body on the electrical power panels. Extensive damage resulted when a contactor end cap failed and the live contact touched the contactor body. Arcing, which accompanied the short circuit, resulted in a fire. The service bulletin requires that the body of the line contactor be insulated.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, the FAA has determined that an AD is necessary which requires insulating the body of line contactors on the electrical power panels.

Further, since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Short Brothers Ltd.: Applies to Model SD3-30 series airplanes as listed in Short Brothers Ltd. Service Bulletin SD3-24-18 dated November 1983, certificated in all categories. Compliance is required as indicated unless previously accomplished. To prevent short circuiting of the ECE141CC01A line contactor, accomplish the following:

A. Within the next 60 days or 300 hours time in service, whichever occurs first after the effective date of this AD, modify the ECE141CC01A line contactor on the 1C and 2C panels in accordance with Short Brothers Ltd., Service Bulletin SD3-24-18 dated November 1983.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective April 9, 1984.

(Sections 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (445 FR 11034; February 26, 1979), and if this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on March 19, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-8376 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-17-AD; Amdt. 39-4834]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm GmbH HFB-320 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain HFB-320 airplanes which requires a one-time inspection of the stabilizer/elevator outboard bearing housing fittings for cracks. Cracked fittings have been discovered on several airplanes in service. This action is necessary to prevent failure of the fitting which could result in loss of elevator control.

EFFECTIVE DATE: April 9, 1984.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Messerschmitt-Bolkow-Blohm GmbH, Unternehmensbereich, Transport Und Verkehrsflugzeuge, TV 454, 2874 Lemwerder (01db), Germany, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for West Germany, has classified Messerschmitt-Bolkow-Blohm GmbH HFB-320 Service Bulletin 55-8 as mandatory. Cracks have been discovered in the stabilizer/elevator outboard bearing housing fittings on some HFB-320 airplanes. The cracks may result from excessive clamp-up forces, and can compromise the structural integrity of the fitting. The service bulletin requires a one-time inspection of the fittings and the installation of new fittings if cracks are discovered which are beyond certain limits.

This airplane model is manufactured in Germany and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, the FAA has determined that an AD is necessary which requires the inspection and eventual replacement of all cracked fittings regardless of crack length.

Further, since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Messerschmitt-Bolkow-Blohm GmbH: Applies to HFB-320 airplanes as listed in HFB-320 Service Bulletin 55-8 dated September 14, 1983, certificated in all categories. Compliance is required as indicated unless previously accomplished. To prevent failure of the stablilzer/elevator outboard bearing housing fittings accomplish the following:

A. Within the next 25 hours time in service or 45 days after the effective date of this AD, whichever occurs first, perform a one-time inspection of the stabilizer/elevator outboard bearing housing fittings in accordance with HFB-320 Service Bulletin 55-8 dated September 14, 1983. Fittings with cracks greater than 0.79 inches must be replaced prior to further flight. Fittings cracked 0.79 inches or less must be stop drilled per the service bulletin, but also must be replaced within six months.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective April 9, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and if this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington on March 19, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-8376 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-14-AD; Amdt. 39-4836]

Airworthiness Directives; (NAMC) Nihon Airplane Manufacturing Company, YS-11/-11A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain NAMC YS-11/-11A series airplanes fitted with a main deck cargo door, which requires a modification of the cargo door handle locking mechanism. There have been three

incidents reported in which the door opened during flight. Modification is required to prevent inadvertent opening of the door in flight.

EFFECTIVE DATE: April 9, 1984.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Mitsubishi Heavy Industries, Ltd., No. 10 Oye-cho, Minato-ku, Nagoya, Japan, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. H. N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Japanese Civil Aviation Bureau (JCAB) has issued an AD which requires mandatory compliance with NAMC Service Bulletin 52-92. Three incidents have occurred in which the main deck cargo door inadvertently opened during flight. The service bulletin requires modifications to the main cargo door handle lock mechanism to ensure that the locking mechanism is properly engaged.

This airplane model is manufactured in Japan and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, the FAA has determined that an AD is necessary which requires modification of the main cargo door locking mechanism in accordance with the service bulletin. Further, since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

NAMC: Applies to all model NAMC YS-11/-11A series airplanes fitted with a main deck cargo door certificated in all categories. To prevent inadvertent opening of the main deck cargo door during flight, accomplish the following, unless already accomplished:

A. Within 450 flight hours time in service or 90 days after the effective date of this AD, whichever occurs first, modify the main cargo door handle lock mechanism in accordance with NAMC YS-11 Service Bulletin 52-92, Revision 1, dated September 29, 1983.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective April 9, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and if this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington, on March 20, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84-8374 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-16-AD; Amdt. 39-4835]

Airworthiness Directives; Short Brothers Ltd. Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Agency (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Short Brothers Ltd. Model SD3-60 series airplanes which requires installation of additional mass balance weights on the elevator tab and elevator. The necessity for this action was demonstrated during an evaluation by the manufacturer, which showed that, with the present design, an elevator tab drive failure will result in an unacceptable vibration level.

EFFECTIVE DATE: April 9, 1984.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority of the United Kingdom (CAA) has classified Short Brothers Ltd. Service Bulletin SD360-55-02 as mandatory. Evaluation by the manufacturer has shown that in the event of an elevator tab drive failure, an unacceptable level of vibration will occur. The service bulletin requires the installation of additional mass balance weights on the elevator and tab to eliminate this vibration in the event of a tab drive system failure.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, the FAA has determined that an AD is necessary which requires the installation of the additional mass balance weights.

Further, since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation

Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Short Brothers Ltd.: Applies to SD3-60 airplanes as listed in Short Brothers Service Bulletin SD360-55-02, dated November 1983, certificated in all categories. Compliance is required as indicated unless previously accomplished. To prevent vibration in the event of an elevator tab drive system failure, accomplish the following:

A. Within 60 days after the effective date of this AD, modify the elevator and elevator tab mass balance weights in accordance with Short Brothers Ltd. Service Bulletin SD360-55-02 dated November 1983.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective April 9, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 [49 U.S.C. 1354(a), 1421 through 1430, and 1502]; 49 U.S.C. 106[g] [Revised, Pub. L. 97-449, January 12, 1983]; and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and if this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington on March 20, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84-8373 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

[Docket No. 23950; Amdt. No. 1265]

14 CFR Part 97

Air Traffic and General Operating Rules, Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

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

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

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

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

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

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

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

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

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

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

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

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and

contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Standard instruction approaches, Aviation safety.

Adoption of the Amendment

PART 97—[AMENDED]

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

1. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

** * * Effective July 5, 1984*

Los Angeles, CA—Los Angeles Intl, VOR or TACAN RWY 7L/R, Amdt. 17
Los Angeles, CA—Los Angeles Intl, VOR or TACAN RWY 25L/R, Amdt. 13

** * * Effective May 10, 1984*

Eureka, CA—Murray Field, VOR-A, Amdt. 6
West Palm Beach, FL—Palm Beach Intl, VOR RWY 9L, Amdt. 11, Cancelled
West Palm Beach, FL—Palm Beach Intl, VOR RWY 9L, Orig.
West Palm Beach, FL—Palm Beach Intl, VOR RWY 13, Orig.
West Palm Beach, FL—Palm Beach County Park, VOR RWY 15, Amdt. 3, Cancelled
West Palm Beach, FL—Palm Beach County Park, VOR RWY 15, Orig.
West Palm Beach, FL—Palm Beach Intl, VOR RWY 31, Orig.
Coeur d Alene, ID—Coeur d Alene Air Term, VOR RWY 5, Amdt. 3
Abilene, KS—Abilene Muni, VOR/DME-A, Orig.
Atchison, KS—Amelia Earhart, VOR/DME-A, Amdt. 1
Ft. Leavenworth, KS—Sherman AAF, VOR-A, Amdt. 2
Biddeford, ME—Biddeford Muni, VOR-A, Amdt. 4
Cheboygan, MI—Cheboygan City-County, VOR RWY 9, Amdt. 4
Pellston, MI—Emmet County, VOR RWY 23, Amdt. 11
Pellston, MI—Emmet County, VOR/DME RWY 5, Amdt. 6
Camdenton, MO—Camdenton Memorial, VOR-A, Orig.
Elko, NV—Elko Muni-J.C. Harris Field, VOR-A, Amdt. 3
Elko, NV—Elko Muni-J.C. Harris Field, VOR/DME-B, Amdt. 1
Perry, OK—Perry Muni, VOR/DME RWY 17, Orig.
Orange, VA—Orange County, VOR/DME-A, Amdt. 2
Beckley, WV—Raleigh County Memorial, VOR RWY 10, Amdt. 11
Beckley, WV—Raleigh County Memorial, VOR RWY 19, Amdt. 2
Beckley, WV—Raleigh County Memorial, VOR/DME RWY 1, Amdt. 1
Fairmont, WV—Fairmont Muni, VOR/DME RWY 22, Amdt. 3
Pineville, WV—Kee Fld, VOR RWY 25, Amdt. 2
Newcastle, WY—Mondell Field, VOR RWY 31, Amdt. 2

** * * Effective March 17, 1984*

Corvallis, OR—Corvallis Muni, VOR-A, Amdt. 7
Corvallis, OR—Corvallis Muni, VOR/DME RWY 17, Amdt. 5
Corvallis, OR—Corvallis Muni, VOR/DME RWY 35, Amdt. 8

** * * Effective March 16, 1984*

Eufaula, AL—Weedon Field, VOR RWY 18, Amdt. 5

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

** * * Effective May 10, 1984*

West Palm Beach, FL—Palm Beach Intl, LOC BC RWY 27R, Amdt. 10
St Joseph, MO—Rosecrans Memorial, LOC BC RWY 17, Amdt. 6
Elko, NV—Elko Muni-J.C. Harris Field, LDA/DME RWY 23, Orig.

** * * Effective March 17, 1984*

Corvallis, OR—Corvallis Muni, LOC RWY 17, Amdt. 2

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

** * * Effective May 10, 1984*

West Palm Beach, FL—Palm Beach Intl, NDB RWY 9L, Amdt. 18
Coeur d Alene, ID—Coeur d Alene Air Term, NDB RWY 5, Amdt. 1
Des Moines, IA—Des Moines Muni, NDB RWY 30R, Amdt. 15
Eagle Grove, IA—Eagle Grove Muni, NDB RWY 13, Orig.
Eagle Grove, IA—Eagle Grove Muni, NDB RWY 31, Orig.
Keokuk, IA—Keokuk Muni, NDB RWY 13, Amdt. 10
Ft Leavenworth, KS—Sherman AAF, NDB RWY 33, Amdt. 2
St. Francis, KS—Cheyenne County Muni, NDB RWY 31L, Orig.
Fryeburg, ME—Eastern Slopes Regional, NDB-A, Amdt. 3, Cancelled
Fryeburg, ME—Eastern Slopes Regional, NDB-B, Orig.
Charlevoix, MI—Charlevoix Muni, NDB RWY 8, Amdt. 7
Charlevoix, MI—Charlevoix Muni, NDB RWY 26, Amdt. 8
Warroad, MN—Warroad Intl-Swede Carlson Field, NDB RWY 31, Amdt. 1
St Joseph, MO—Rosecrans Memorial, NDB RWY 17, Amdt. 7
St Joseph, MO— Rosecrans Memorial, NDB RWY 35, Amdt. 27
Charlottesville, VA—Charlottesville-Albemarle, NDB RWY 3, Amdt. 13
Lewisburg, WV—Greenbrier Valley, NDB RWY 4, Amdt. 3
Rawlins, WY—Rawlins Muni, NDB-A, Amdt. 8

** * * Effective March 21, 1984*

Tupelo, MS—C.D. Lemons Muni, NDB RWY 36, Amdt. 1

4. By amending § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

** * * Effective July 5, 1984*

Los Angeles, CA—Los Angeles Intl, ILS RWY 6L, Amdt. 5
Los Angeles, CA—Los Angeles Intl, ILS RWY 6R, Amdt. 11
Los Angeles, CA—Los Angeles Intl, ILS RWY 7L, Amdt. 2
Los Angeles, CA—Los Angeles Intl, ILS RWY 24L, Amdt. 18
Los Angeles, CA—Los Angeles Intl, ILS RWY 25R, Amdt. 3

** * * Effective May 10, 1984*

West Palm Beach, FL—Palm Beach Intl, ILS RWY 9L, Amdt. 20
Coeur d Alene, ID—Coeur d Alene Air Term, ILS RWY 5, Amdt. 2
Des Moines, IA—Des Moines Muni, ILS RWY 12L, Amdt. 4
Des Moines, IA—Des Moines Muni, ILS RWY 30R, Amdt. 16
Pellston, MI—Emmet County, ILS RWY 32, Amdt. 6
St Joseph, MO—Rosecrans Memorial, ILS RWY 35, Amdt. 27
Lancaster, PA—Lancaster, ILS RWY 8, Amdt. 9
Charlottesville, VA—Charlottesville-Albemarle, ILS RWY 3, Amdt. 9
Beckley, WV—Raleigh County Memorial, ILS RWY 19, Amdt. 2
Bluefield, WV—Mercer County, ILS RWY 23, Amdt. 6
Lewisburg, WV—Greenbrier Valley, ILS RWY 4, Amdt. 6

** * * Effective April 26, 1984*

Carlsbad, NM—Cavern City Air Terminal, ILS RWY 3, Orig.

** * * Effective March 21, 1984*

Tupelo, MS—C.D. Lemons Muni, ILS RWY 36, Amdt. 2

5. By amending § 97.31 RADAR SIAPs identified as follows:

** * * Effective May 10, 1984*

King Salmon, AK—King Salmon, RADAR-1, Amdt. 8
West Palm Beach, FL—Palm Beach Intl, RADAR-1, Amdt. 8

6. By amending § 97.33 RNAV SIAPs identified as follows:

** * * Effective May 10, 1984*

Eureka, CA—Murray Field, RNAV RWY 11, Amdt. 5
West Palm Beach, FL—Palm Beach Intl, RNAV RWY 13, Amdt. 5 Cancelled
Atchison, KS—Amelia Earhart, RNAV RWY 16, Amdt. 1
St Joseph, MO—Rosecrans Memorial, RNAV RWY 17, Amdt. 4
Charlottesville, VA—Charlottesville-Albemarle, RNAV RWY 3, Amdt. 3

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

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

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C., on March 30, 1984.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 84-8380 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 201

[Release No. 34-20783; IC-13839; IA-903; File No. S7-1001]

Applications by Barred Individuals for Consent to Associate With a Registered Broker, Dealer, Municipal Securities Dealer, Investment Adviser or Investment Company

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the "Commission") has adopted a new Rule of Practice, 17 CFR 201.29 ("Rule 29"), that sets forth the procedures to be followed by certain individuals who are barred by Commission order, and thereafter submit an application to the Commission for consent to associate, or to change the terms and conditions of association, with a registered broker, dealer, municipal securities dealer, investment adviser, or investment company ("registered entities"). Rule 29 clarifies policies and practices relating to applications by such individuals.

EFFECTIVE DATE: April 30, 1984.

FOR FURTHER INFORMATION CONTACT: Mary A. Binno (202) 272-2318, Office of Chief Counsel, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: A number of provisions of the Securities Exchange Act of 1934 ("Exchange Act") authorize the Commission to institute administrative proceedings and impose sanctions against a person associated with a broker-dealer or municipal securities dealer if such person has engaged in certain acts or omissions, has been convicted of particular offenses, or has been enjoined from specified acts.[1] Among the remedial sanctions which may be imposed against such persons is a bar from being associated with a broker-dealer or municipal securities dealer.[2] The Commission has similar disciplinary authority over members of, and participants in, self-regulatory organizations ("SROs"),[3] persons associated with investment advisers, and certain affiliated persons and principal underwriters of registered investment companies.[4] When the Commission issues an order barring an individual from association with a registered entity, it is unlawful for that person to be, or to become, so associated without the consent of the Commission.[5]

In addition to direct regulation of registered entities by the Commission, the statutory scheme for regulation of the securities industry contemplates self-regulation through SROs. For example, Section 6 of the Exchange Act requires a commitment by an exchange to discipline members for conduct inconsistent with "just and equitable principles of trade," the provisions of the Exchange Act and the rules and regulations thereunder, and the rules of the exchange.[6] The same general approach applies to registered securities associations [7] and registered clearing agencies.[8] Additionally, a national securities exchange,[9] registered securities association,[10] or registered clearing agency,[11] may bar any person from association with a member of the SRO if that person is "subject to a statutory disqualification."[12] When an individual is "subject to a statutory disqualification", he or she must seek the consent of the SRO before associating with a member of that SRO.[13]

Most applicants, the majority of whom seek to associate with registered broker-dealers, apply for consent to associate with the assistance of their prospective employer through the employer's SRO. These applications are processed pursuant to Exchange Act Rule 19h-1 (17 CFR 240.19h-1) ("Rule 19h-1"). However, a number of applicants seek to become associated with an entity that is not a member of an SRO and must apply directly to the Commission, or, because of the wording of a Commission bar order, are permitted to apply directly to the Commission for consent to associate. New Rule 29 of the Commission's Rules of Practice [14] sets forth steps to be followed with respect to applications made directly to the Commission for consent to associate, or to change the terms and conditions of association.[15]

The Commission solicited public comment on Rule 29 in Release No. 34-20393 (November 18, 1983), 48 FR 54039 (November 30, 1983). No comment letters were received. The Commission has determined to adopt the Rule as proposed.

Applications which may be made under Rule 29 include applications by individuals barred pursuant to

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[1] *See, e.g.*, Exchange Act section 15(b)(6) and 15B(c)(4), 15 U.S.C. 78*o*(b)(6) and 78*o*-4(c)(4), respectively.

[2] *Id.*

[3] As defined by Exchange Act § 3(3)(26), 15 U.S.C. 78c(a)(26), an SRO is any national securities exchange, registered securities association, or registered clearing agency.

[4] Exchange Act § 19(h), 15 U.S.C. 78s(h); Investment Advisers Act of 1940 ("Advisers Act") section 203(f), 15 U.S.C. 80b-3(f); Investment Company Act of 1940 ("Investment Company Act") section 9(b), 15 U.S.C. 80a-9(b).

[5] *See* note 1, *supra.*

[6] Exchange Act section 6(b) (1) and (5), 15 U.S.C. 76f(b) (1) and (5).

[7] Exchange Act section 15A(b) (2) and (6), 15 U.S.C. 78*o*-3(b) (2) and (6).

[8] Exchange Act section 17A(b)(4)(A), 15 U.S.C. 78q-1(b)(4)(A).

[9] Exchange Act section 6(c)(2), 15 U.S.C. 78f(c)(2).

[10] Exchange Act section 15A(g)(2), 15 U.S.C. 78*o*-3(g)(2).

[11] Exchange Act section 17A(b)(4)(A), 15 U.S.C. 78q-1(b)(4)(A).

[12] *See* Exchange Act section 3(a)(39), 15 U.S.C. 78c(a)(39); among other disqualifications, this section includes the existence of a present suspension or bar from association with SRO members, a Commission order barring the individual's association with a registered entity, and those situations described in Exchange Act section 15(b)(4) (B) through (E), 15 U.S.C. 78*o*(b)(4)(B)-(E). For purposes of determining whether a person is subject to a statutory disqualification under Exchange Act sections 6(c)(2), 15(A)(g)(2), or 17A(b)(4)(B), the term "Commission" in Exchange Act § 15(b)(4)(B) means "exchange", "association", or "clearing agency", respectively. *See* Exchange Act section 15(b)(10), 15 U.S.C. 78*o*(b)(10).

[13] *See* notes 8, 9 and 10, *supra.*

[14] 17 CFR 201.1-201.29.

[15] Applications that are governed by Rule 29 previously were subject to the guidelines announced by the Commission in Exchange Act Release No. 11267 (February 26, 1975).

Investment Company Act Section 9(b).[16] However, they should not be confused with applications under Rule 19h–1 or investment Company Act Section 9(c).[17] Rule 19h–1 permits application by individuals subject to a broader range of disqualifications and specifies appropriate procedures for applications thereunder.[18] Under the Rule 19h–1 process, the Commission reviews SRO determinations on such applications. Investment Company Act Section 9(c) applies only to persons who are ineligible to serve in certain positions in connection with investment companies by reason of certain misdemeanor or felony convictions or injunctions by a court of competent jurisdiction.[19]

I. Relief Obtained Through Applications for Consent

Once an individual is barred by a Commission order from the securities business or some aspect thereof, it is unlawful for him or her to become associated with a registered entity without the consent of the Commission.[20] Commission approval of an application for consent to associate, however, does not modify or vacate the Commission order nor does it remove or lift the bar; the order and bar remain in effect.[21]

Accordingly, if the individual does not comply with the terms or conditions under which his or her application was approved, the individual is in violation of the Commission's order and the Commission may take appropriate enforcement action.[22]

Commission approval of an application for consent to associate, or to change the terms and conditions of association, with a registered entity should not be construed to be consent by an SRO for the individual to associate with one of its members. That consent must be given by the particular SRO.

II. Procedural Channels for Individuals Barred by Commission Order

For those barred individuals who seek to associate with a broker-dealer, an application for consent to associate, or to change the terms and conditions of association, must be submitted by the individual's prospective employer to the employer's SRO. In those cases where the SRO gives its consent, and the Commission does not veto that action pursuant to the provisions of Rule 19h–1, the Commission gives: (a) Consent to the SRO to permit the individual to associate with a member of the SRO, notwithstanding his or her disqualification; and (b) consent to the individual to associate with an entity registered with the Commission.

Direct application to the Commission pursuant to Rule 29 *may* be utilized where the individual has been barred by Commission order and seeks to associate, or to change the terms and conditions of association, with a broker-dealer that is a member of an SRO, provided that the order states that application may be made "to the Commission" after a specified period of time.[23] Rule 29 provides that individuals subject to such orders may elect either: (a) To have the prospective employer apply to the employer's SRO, subject to Commission review under Rule 19h–1; or (b) to apply directly to the Commission pursuant to Rule 29 and, if the Commission approves the application, thereafter to the appropriate SRO. An application pursuant to the Rule 19h–1 process would eliminate the necessity for two separate applications which require substantially the same information.[24]

Applications by those barred individuals who seek to associate with an investment adviser, investment company, or other entity that is not a member of an SRO, should be submitted directly to the Commission pursuant to Rule 29.

III. Delegation of Authority

Currently, the Commission's rules governing delegation of authority to the Director of the Division of Enforcement (the "Director") authorize the Director to approve applications by barred individuals, who have previously been granted Commission consent to associate, to change employers, provided that the conditions of the new employment are substantially similar to those of the previously approved employment.[25] In order to expedite the processing of all direct applications for consent to associate, the Commission is amending its rules to authorize the Director to approve or deny applications made pursuant to Rule 29. Notwithstanding this delegation, in any case where the Director believes it appropriate, the matter may be submitted to the Commission.[26] In the event that the Director denies an application for consent to associate, the applicant will be notified that the denial may be appealed to the Commission for review pursuant to Rule 26 of the Commission's Rules of Practice, provided, however, that the notice of intention to petition for review required of the applicant by that rule may be communicated within the shorter of (a) ten days after the receipt of actual notice of the denial or (b) fifteen days after mailing of the notice of denial.[27]

IV. Regulatory Flexibility Act

A copy of the Regulatory Flexibility Act certification was previously published in Release No. 34–20393 (November 18, 1983), 48 FR 54039 (November 30, 1983).

List of Subjects in Parts 200 and 201

Administrative practice and procedure, Freedom of Information, Investigations, Privacy, Securities.

V. Text of Revised Rule 200.30–4 and Rule 29

Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATIONS; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. By revising paragraph (a)(5) of § 200.30–4 as follows:

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[16] 15 U.S.C. 80a–9(b).

[17] 15 U.S.C. 80a–9(c).

[18] Rule 19h–1 permits application by individuals subject to an "applicable disqualification", defined to include not only Commission bar orders but also any conviction or injunction under Exchange Act section 15(b)(4) (B) or (C), 15 U.S.C. 78o(b)(4) (B) and (C), and a failure to meet certain qualification standards under Rule G–4 of the Municipal Securities Rulemaking Board. *See* Rule 19h–1(f).

[19] Any person who seeks an exemption from the provisions of Investment Company Act section 9(a), 15 U.S.C. 80a–9(a), should continue to file an application pursuant to Investment Company Act section 9(c), 15 U.S.C. 80a–9(c). Investment Company Act Rules 2 and 5, 17 CFR 270. 0–2 and 0–5, set forth the procedures with respect to such applications.

[20] Exchange Act sections 15(b)(6) and 15B(c)(4), 15 U.S.C. 78o(b)(6) and 78o–4(c)(4); Investment Advisers Act section 203(f), 15 U.S.C. 80b–3(f); *see also* Investment Company Act section 9, 15 U.S.C. 80a–9.

[21] Commission approval of an application is limited to association in a specified capacity with a particular registered entity and is subject to specific terms and conditions. If any of the individual's duties or responsibilities vary materially from the terms and conditions under which the application was approved, or if he or she seeks to become associated with another registered entity, a new application must be submitted.

[22] *See, e.g.*, Exchange Act section 21(e), 15 U.S.C. 78u(e); Advisers Act section 209(e), 15 U.S.C. 80b–9(e); Investment Company Act section 42(e), 15 U.S.C. 80a–41(e).

[23] In those cases where the Commission bar order specifies that a person may apply for consent to associate after a specified period of time, the Commission generally will grant the application upon a proper showing made after expiration of the specified period of time.

[24] The Commission has previously expressed a preference, where both it and the SROs have authority, for having applications for consent to associate presented first to the SRO concerned. *See*, Securities Exchange Act Release No. 18278 (November 20, 1981).

[25] 17 CFR 200.30–4(a)(5).

[26] 17 CFR 200.30–4(b).

[27] 17 CFR 201.26.

[1] The Phase I regulations are set forth in 18 CFR Part 282.

§ 200.30–4 Delegation of authority to Director of Division of Enforcement.

* * * * *

(a) * * *

(5) To grant or deny applications made pursuant to Rule 29 of the Commission's Rules of Practice (17 CFR 201.1–201.29), provided, that, in the event of a denial, the applicant shall be notified that such a denial may be appealed to the Commisson for review.

* * * * *

The Commission finds, in accordance with 5 U.S.C. 553(b)(A) of the Administrative Procedure Act ("APA"), that the amendment of Rule 30–4(a)(5) relates solely to agency organization, procedure, or practice, and that notice and public procedure in accordance with the APA are not necessary. In addition, the Commission finds that the foregoing action does not impose any burden on competition.

PART 201—RULES OF PRACTICE

2. By adding § 201.29 as follows:

§ 201.29 Applications by barred individuals for consent to associate with registered brokers, dealers, municipal securities dealers, investment advisers or investment companies.

Preliminary Note

This rule governs applications by certain persons, barred by Commission order from association with entities registered with the Commission, for consent to become so associated. Applications made pursuant to this rule must show that the proposed association would be consistent with the public interest. In addition to the information specifically required by the rule, applications should be supplemented, where appropriate, by written statements of individuals (other than the applicant) who are competent to attest to the applicant's character, employment performance, and other relevant information. Intentional misstatements or omissions of fact may constitute criminal violations of 18 U.S.C. 1001 and other provisions of law.

The nature of the supervision that an applicant will receive or exercise as an associated person with a registered entity is an important matter bearing upon the issue of the public interest. In meeting the burden of showing that the proposed association is consistent with the public interest, the application and supporting documentation must demonstrate that the proposed supervision, procedures, or terms and conditions of employment, are reasonably designed to prevent a recurrence of the conduct that led to imposition of the bar. As an associated person, the applicant will be limited to association in a specified capcity with a particular registered entity and may also be subject to specific temrs and condtions.

Normally, the applicant's burden of demonstrating that the proposed association is consistent with the public interest will be difficult to meet where the applicant is to be supervised by, or is to supervise, another barred individual. In addition, where an applicant wishes to become the sole proprietor of a registered entity and, thus, is seeking Commission consent notwithstanding an absence of supervision, the applicant's burden will be difficult to meet.

In addition to the factors set forth in paragraph (d) of this rule, the Commission will consider the nature of the findings that resulted in the bar in determining whether the proposed association is consistent with the public interest. In this regard, attention is directed to Rule 5(e) of the Commission's Rules on Informal and Other Procedures. Among other things, Rule 5(e) sets forth the Commission's policy "not to permit a * * * respondent [in an administrative proceeding] to consent to * * * [an] order that imposes a sanction while denying the allegations in the * * * order for proceeding." Consistent with the rationale underlying that policy, and in order to avoid the appearance that an application made pursuant to this rule was granted on the basis of such denial, the Commission will not consider any application that attempts to re-argue or collaterally attack the findings that resulted in the Commission's bar order.

(a) *Scope of rule.* Applications for Commission consent to associate, or to change the terms and conditions of association, with a registered broker, dealer, municipal securities dealer, investment adviser, or investment company ("registered entities") may be made pursuant to this rule where a Commission order bars the individual from association with a registered entity and:

(1) Such barred individual seeks to become associated with an entity that is not a member of a self-regulatory organization; or

(2) The order contains a proviso that application may be made to the Commission after a specified period of time.

(b) *Form of application.* Each application shall be supported by an affidavit, manually signed by the applicant, which addresses the factors set forth in paragraph (d) of this rule. One original and four copies of the application shall be filed with the Office of the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Each application shall include as exhibits: (1) A copy of the Commission order imposing the bar; (2) an undertaking by the applicant immediately to notify the Commission in writing if any information submitted in support of the application, while pending, becomes materially false or misleading; (3) a copy of a completed Form U–4, where the applicant's proposed association is with a broker-dealer or municipal securities dealer; (4) a copy of a completed Form MSD–4, where the applicant's proposed association is with a bank municipal securities dealer; (5) the information required by Form ADV with respect to the applicant, where the applicant's proposed association is with an investment adviser; and (6) a written statement by the proposed employer that describes (i) the terms and conditions of employment and supervision to be exercised over such applicant and, where applicable, by such applicant; (ii) the qualifications, experience, and disciplinary records of the proposed supervisor(s) of the applicant; (iii) the compliance and disciplinary history, during the two years preceding the filing of the application, of the office in which the applicant will be employed; and (iv) the names of any other associated persons in the same office who have previously been barred by the Commission, and whether they are to be supervised by the applicant.

(c) *Required showing.* The applicant shall make a showing satisfactory to the Commission that the proposed association would be consistent with the public interest.

(d) *Factors to be addressed.* The affidavit required by paragraph (b) shall address each of the following:

(1) The time period which has elapsed since the imposition of the bar;

(2) Any restitution or similar action taken by the applicant to recompense any person injured by the misconduct that resulted in the bar;

(3) The applicant's compliance with the order imposing the bar;

(4) The applicant's employment during the period subsequent to imposition of the bar;

(5) The capacity or position in which the applicant proposes to be associated;

(6) The manner and extent of supervision to be exercised over such applicant and, where applicable, by such applicant;

(7) Any relevant courses, seminars, examinations or other actions completed by the applicant subsequent to imposition of the bar to prepare for his or her return to the securities business; and

(8) Any other information material to the application.

(e) *Notification to applicant and written statement.* In the event an adverse recommendation is proposed by the staff with respect to an application made pursuant to this rule, the applicant shall be so advised and provided with a written statement of the reasons for such recommendation. The applicant shall then have 30 days to submit a written statement in response.

(f) *Concurrent applications.* The Commission will not consider any application submitted pursuant to this rule, if any other application for consent to associate concerning the same applicant is pending before any self-regulatory organization.

VI. Statutory Basis

Rule 29 is adopted pursuant to the authority of Sections 15, 15B, 19, 23 (a) and (c) of the Securities Exchange Act of 1934, (15 U.S.C. 78*o*, 78s, 78w (a) and (c)); Sections 203 and 211 of the Investment Advisers Act of 1940, (15 U.S.C. 80b–3, 80b–11); and Sections 9 and 38 of the Investment Company Act of 1940, (15 U.S.C. 80a–9, 80a–38).

The Amendment to Rule 30–4(a)(5) of the Commission's Rules on Organization; Conduct and Ethics; and Information and Requests is adopted pursuant to Sections 19 and 20 of the Securities Act of 1933 (15 U.S.C. 77s and 77t); Sections 21 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78u and 78w); Sections 38 and 42 of the Investment Company Act of 1940 (15 U.S.C. 80a–37 and 80a–41); Sections 209 and 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9 and 80b–11); and the Act of August 20, 1962, Pub. L. No. 87–592, 76 Stat. 344 (15 U.S.C. 78d–1, 78d–2), as amended by the Securities Act Amendments of 1975, Pub. L. No. 94–29, 89 Stat. 163 (June 4, 1975).

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 8415 Filed 3–28–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM80–10–002; Order No. 363]

Rule Required Under Section 202 of the Natural Gas Policy Act

Issued: March 15, 1984.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: On December 1, 1983, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (48 FR 55294, December 12, 1983) proposing not to implement the regulations promulgated in Order No. 80 (45 FR 31622, May 13, 1980). The Commission proposed to use its exemptive authority under section 206(d) of the Natural Gas Policy Act of 1978 (NGPA) to issue a final rule exempting all Phase II users from the Order No. 80 regulations. The Commission has considered the 51 comments filed in response to the Notice. For the reasons discussed in the rule, the Commission, instead of relying on the exemptive authority under section 206(d) of the NGPA, revokes Order No. 80 and issues a new Phase II rule, providing incremental pricing applies only to the boiler fuel uses covered by Phase I and not to any other industrial uses of natural gas.

EFFECTIVE DATE: The final rule becomes effective April 12, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara K. Christin, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8033.

I. Summary

The Federal Energy Regulatory Commission is issuing this final rule on Phase II of the incremental pricing program under section 202 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432 (Supp. V 1981). The final rule limits the scope of the incremental pricing program to the boiler fuel uses of natural gas covered by Phase I of the program. To accomplish this, the Commission revokes the regulations issued in Order No. 80 and adds a new paragraph (a)(2) to § 282.102 of its regulations. The new paragraph provides that the requirements of the rule under section 201 apply only to the use of natural gas by industrial boiler fuel facilities, and not by any other category of industrial facilities.

II. Background

Title II of the NGPA requires that the Commission issue regulations to channel to industrial users of natural gas a specified portion of the higher gas costs allowed by Title I.

The "incremental costs" of natural gas are to be passed through from interstate pipelines to industrial users by a surcharge pricing mechanism. Congress designed this program to prepare the natural gas market for deregulation in 1985 and to provide some shelter from rising gas prices to residential and other high priority customers.

Under Title II, the Commission must implement the incremental pricing program in two phases. Section 201 requires that the first phase of the program apply to large industrial facilities that use natural gas as boiler fuel (Phase I).[1]

Section 202 required the Commission to issue an amendment to the Phase I rule by May 9, 1980 (Phase II). That section provides that Phase II of incremental pricing will apply to (1) the industrial boiler fuel facilities covered by the Phase I rule, and (2) any industrial facility in a category defined by the Commission. Section 202 also directed the Commission to submit the Phase II rule to Congress for review. The rule would not become effective if disapproved by either House within a thirty-day review period.

The Commission issued a Phase II rule on May 6, 1980 (Order No. 80).[2] Although commenters overwhelmingly opposed any expansion of incremental pricing, the final rule broadened the scope of incremental pricing to include all industrial users of natural gas except those exempted specifically by the NGPA or exempted by the Commission under section 206(d). The Commission had serious reservations about issuing Order No. 80 because it doubted that an expansion of incremental pricing could achieve the goals of the program. It declined, however, to consider whether market conditions had "so changed as to render the program inappropriate," believing that it was without authority "to second-guess the social and economic judgments that the Congress made in enacting Title II." [3] The Commission left that determination to Congress, which had reserved the right to review the Commission's rule.

Order No. 80 was submitted to Congress pursuant to section 202(c) of the NGPA. The House of Representatives passed a resolution of disapproval of the Phase II rule by a vote of 360–34. Subsequently, the Commission attempted to revoke the Phase II rule because it had not "independently evaluated whether the Phase II rule meets the social and economic goals" of incremental prfcing.[4]

In *Consumer Energy Council of America* v. *Federal Energy Regulatory Commission (CECA),*[5] the United States

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[1] The Phase I regulations are set forth in 18 CFR Part 282.

[2] Order No. 80, issued May 6, 1980, Docket No. RM80–10, 45 FR 31,622 (May 13, 1980); FERC Stat. & Regs., Reg. Preambles ¶ 30,157.

[3] 45 FR at 31,622; FERC Stat. & Regs., Reg. Preambles at 31,058.

[4] Order Denying Rehearing and Revoking Amendments Made by Order No. 80, Docket No. RM80–10, issued August 1, 1980, 45 FR 54,741 (Aug. 18, 1980), FERC Stat. & Regs., Reg. Preambles ¶ 30,182.

[5] 673 F.2d 425 (D.C. Cir. 1982); *aff'd. nom. sub nom.* Process Gas Consumers Group v. Consumer Energy

Continued

Court of Appeals for the District of Columbia Circuit held the legislative review provision unconstitutional and severable from section 202 of the NGPA. The court also held that the Commission's attempted revocation of the Phase II rule was invalid because the Commission did not provide adequate notice and opportunity for public comment. As a result, the Commission became obligated to exercise its independent judgment and reconsider Order No. 80 in light of the objectives of incremental pricing and current market conditions.

The rule was due to become effective on October 15, 1983, but the Commission stayed the effective date until December 14, 1983, and proposed to continue the stay for an additional 120 days.[6] On December 1, 1983, the Commission issued an order extending the stay until April 12, 1984, or until the Commission completes reconsideration of Order No. 80, whichever is earlier.[7]

On December 1, 1983, the Commission also issued a Notice of Proposed Rulemaking that proposed not to implement the regulations promulgated in Order No. 80 because an expansion of incremental pricing would not achieve the goals of the program.[8] The Commission received 51 written comments in response to the Notice. In addition, 7 persons presented oral comments at a public hearing held on January 10, 1984.[9] In issuing this final rule, the Commission has considered the written and oral comments in this docket, including those filed before Order No. 80 was issued.

III. Discussion

A. Scope of Incremental Pricing

All the comments in response to the Notice support the Commission's proposal not to implement the Order No. 80 regulations. They agree with the Commission that an expanded incremental pricing program would not help prepare the natural gas market for deregulation and, in fact, would be contrary to present Commission programs aimed at improving market conditions.

As the commenters and the Commission have noted, incremental pricing was intended to shift a greater portion of increasing wellhead prices of natural gas to price-sensitive industrial users at what was expected to be a time of excess demand. In this manner it was supposed to curb the bidding by interstate pipelines for gas, thus carrying out a "market ordering" function. At the time the Commission issued Order No. 80, it expressed doubt that an expanded incremental pricing program could achieve market ordering under those circumstances. This doubt was based on the fact that industrial users with little or no alternative fuel capability would be in a relatively weak position to influence prices that pipelines will pay for natural gas.[10]

Under today's actual market conditions, (*i.e.*, high gas prices, the narrow gap between gas and oil prices, and the large deliverability surplus[11]) implementing and expanded incremental pricing program would compound the present market imbalance by further reducing the demand for gas by industrial users. This decreased demand would require a pipeline's remaining customers to bear a greater share of the fixed costs.

In addition, the commenters agree with the Commission that an expansion of incremental pricing is inconsistent with the Commission's goal of lowering gas prices through the use of competition and market forces.[12] In fact, an expanded incremental pricing program would severely hamper the Commission's and the gas industry's efforts at recovery of the natural gas market. Keeping gas prices at artifically high levels could motivate an increasing number of industrial users to switch to alternative fuels or to look for other sources of gas that are not subject to incremental pricing, such as intrastate supplies, natural gas purchased directly from producers, or gas reserves developed by the user.

In the Notice, the Commission also stated that an expanded incremental pricing program would not significantly further the price shielding objective of incremental pricing. The commenters agree with the Commission that the record in this proceeding supports such a finding. The record established before Order No. 80 was issued showed that, even during periods when alternative fuel prices would exceed base gas prices and incremental pricing surcharges would be collected widely, the price-shielding benefits to residential users would be *de minimus*. Since then, the gap between natural gas and fuel oil prices has closed, further reducing the minimal price-shielding effect of incremental pricing. One commenter noted, for example, that the weighted average price of natural gas sold by the major interstate pipelines to industrial users was $4.24/Mcf in July 1983.[13] For that same month, the alternative fuel price ceilings ranged from $3.30 to $3.99/MMBtu. When the gas price is higher than the alternative fuel price ceilings, there are no incremental pricing surcharges.

For these reasons, and the reasons discussed in the Notice, the Commission has determined that an expanded incremental pricing program would not further the Congressional objectives of Title II, and would be contrary to the public interest and counter-productive in today's natural gas market. Therefore, the Commission revokes the Order No. 80 regulations and issues a new Phase II rule that does not expand the scope of incremental pricing beyond the boiler fuel uses of natural gas covered by Phase I.

B. Commission's Authority

In the Notice, the Commission proposed not to implement the Order No. 80 regulations by using its exemption authority under section 206(d) of the NGPA. That section gives the Commission the authority to exempt from incremental pricing, in whole or in part, any incrementally priced industrial facility or category thereof.

The commenters agree with the Commission that section 206(d) is broad enough to permit the Commission to exempt Phase II users from incremental pricing. As discussed in detail in the Notice,[14] the court's decision in *Ohio Association of Community Action Agencies* v. *FERC*[15] confirms that the

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Council of America, 51 U.S.L.W. 3935 (U.S. July 6, 1983), *reh. denied* 52 U.S.L.W. 3187 (U.S. Sept. 9, 1983).

[6] Order Granting Stay of Effective Date and Proposing Continuation of Stay for an Additional 120 Days, issued October 5, 1983, Docket No. RM80-10, 48 FR 45,759, 45,787 (Oct. 7, 1983).

[7] Order Extending Stay of Effective Date of Order No. 80, issued December 1, 1983, Docket No. RM80-10-001, 48 Fed. Reg. 55,121 (Dec. 9, 1983).

[8] Docket No. RM80-10-002, 48 Fed. Reg. 55,294 (Dec. 12, 1983). The Notice fully sets forth the factual and procedural background of the Phase II proceedings. 48 Fed. Reg. at 55,295.

[9] Representatives of the Chemical Manufacturers Association, Interstate Natural Gas Association of America, United Distribution Companies, Mountain Fuel Supply Company, American Gas Association, Petrochemical Energy Group, and Process Gas Consumers Group *et al.* presented oral comments at the hearing.

[10] 45 Fed. Reg. at 31,633–635; FERC Stat. & Regs., Reg. Preambles at 31,078–081.

[11] The Notice discusses current market conditions in detail. 48 Fed. Reg. at 55,296.

[12] The Commission is encouraging pipeline companies to develop new programs to lower wellhead prices and retain industrial markets. *See e.g.*, Order Amending Rate Settlement and Certificates of Public Convenience and Necessity, Transcontinental Gas Pipeline Corp., Docket Nos. RP83-11-000, *et al.*, November 10, 1983, 25 FERC ¶62,219; April 21, 1983, 23 FERC ¶61,199.

[13] Comments of Petrochemical Energy Group, citing to DOE/EIA, Natural Gas Monthly, Table 13: Volumes and Prices of Natural Gas Sold by Major Interstate Natural Gas Pipeline Companies 29 (November 1983).

[14] 48 FR at 55,296–297.

[15] 654 F.2d 811 (D.C. Cir. 1981).

Commission could issue the exemption. For example, after discussing the legislative history of section 206(d), the court concluded:

> it may be reasonably inferred that the section 206(d) exemption * * * could be used to accommodate the myriad of concerns raised by legislators about the impacts of incremental pricing, *e.g.*, promoting essential industrial users and *preventing market distortions* incident to deregulation. (Emphasis added.)[16]

Although the commenters agree that the Commission may use its section 206(d) exemptive authority as proposed, most prefer instead that the Commission revoke Order No. 80 and issue a Phase II rule that does not expand incremental pricing beyond Phase I uses. Under the approach proposed in the Notice, the Commission would let the stay of Order No. 80 expire and simultaneously would issue a final rule exempting Phase II users.

Many commenters object to this approach because the Order No. 80 regulations, which the Commission has acknowledged were not the product of reasoned decisionmaking, would become part of the Code of Federal Regulations (CFR). The commenters are concerned that, if the regulations are in the CFR, there is a possibility that, at some point, they could become effective.

The Commission proposed to use its exempting authority because it was not convinced that it has the authority to revoke the regulations promulgated in Order No. 80. The Commission said in the Notice that the statute appeared to require an expansion of the incremental pricing program. The Commission, therefore, proposed to issue a final rule that exempted Phase II users instead of a final rule that revoked the Phase II regulations.

Most of the commenters, however, disagree with the Commission's assessment in the Notice of its authority to revoke the regulations promulgated in Order No. 80. The commenters agree with the Commission that the NGPA requires the promulgation of a Phase II rule but they convincingly argue that the Phase II rule does not have to expand incremental pricing beyond the mandatory Phase I uses. They note that the statute only requires the Commission to *consider* whether an expansion of incremental pricing would be appropriate in light of the objectives of incremental pricing and current market conditions. To support their argument, the commenters note that section 202 of the NGPA requires that the Commission prescribe, by rule, an amendment to the rule required under section 201. The section 201 rule must apply to the boiler fuel use of natural gas by industrial boiler fuel facilities. In contrast, the Phase II rule, while continuing this mandatory application of incremental pricing to Phase I boiler fuel uses, only requires the inclusion of additional Phase II uses of gas as may be defined by the Commission. Thus, section 202 does not require that Phase II apply to any industrial facilities other than the boiler fuel facilities covered by Phase I.

The commenters argue that Congress contemplated that it would make the major policy determinations with regard to a Phase II rule. However, with the invalidation of the Congressional review provisions of section 202(c), the Commission is left to exercise its discretion to determine the scope of Phase II that would best meet Congress' objectives, without benefit of Congressional review. The commenters cite the court's decision in *CECA* as support for this argument. There, for example, the court observed that, without the legislative veto, "the *scope* of the Phase II rule would have been left to the Commission's discretion which would include consideration of the effect of changed market conditions on the usefulness of incremental pricing." (Emphasis added.)[17]

As further support for the breadth of the Commission's discretion, many commenters point out that the legislative history of the NGPA does not require an expansion of the incremental pricing program. For example, Congressman Dingell, a member of the Conference Committee and principal proponent of Title II, recognized that "the mandatory requirements of incremental pricing apply only to boiler fuel users".[18] Similarly, Senator Jackson, Manager of the Senate Bill and a key member of the Conference Committee, stated that Title II "does not compel incremental pricing with respect to any industrial use other than in large boilers".[19]

The Commission is persuaded by the commenters that it has the discretion to issue a Phase II rule that includes either no additional category of industrial uses under the Title II rule, or some additional categories, or all categories of industrial uses (and to exempt such uses under section 206(d)) so long as it engages in reasoned decisionmaking based on consideration of the Congressional objectives. All that is required is that the Commission use the rulemaking process to consider what expansion, if any, would be appropriate.

The commenters have also convinced the Commission that revoking the Order No. 80 regulations and issuing a new rule that does not expand incremental pricing is preferable to using the Commission's section 206(d) exemption authority. It does not appear that incremental pricing will serve any useful purpose in the foreseeable future. Even if conditions were to change, there is no reason to believe that the Order No. 80 regulations could fulfill future needs in any different market setting. In any event, the Commission further believes, and the commenters agree, that section 201(a) of the NGPA provides clear authority for the Commission to amend the rule in the future.

Some commenters suggest that the Commission, in addition to revoking Order No. 80 and issuing a rule that does not expand incremental pricing, also issue a rule using its exemptive authority. This suggestion is based on their concern that a reviewing court might determine that an expansion of the program is required by section 202 and would require a reinstatement of the Order No. 80 regulations. In that event, a rule providing for a section 206(d) exemption would already be in place to effectively limit the scope of an expanded program to Phase I users.

The Commission declines to use this dual approach because it is unnecessary at this time. As noted, the Commission has determined that it does have the authority to revoke Order No. 80 and to issue a Phase II rule that does not expand the program to other industrial facilities. Should the need arise in the future, the Commission believes that it could use its section 206(d) authority, at that time, to exempt from Phase II of incremental pricing industrial facilities other than those covered by the Phase I rule.

Accordingly, for the reasons discussed above, the Commission (1) revokes the regulations promulgated in Order No. 80 and (2) issues in their place a final rule under section 202 which provides that no additional category of industrial facilities is subject to the rule required under section 201 of the NGPA. The final rule implements this latter decision by adding a new paragraph (a)(2) to § 282.102 which states that the requirements of the rule under section 201 of the NGPA shall apply only to the use of natural gas by industrial boiler fuel facilities, and not to the use of gas by any other category of industrial facilities.

[16] 654 F.2d at 823.

[17] 673 F. 2d at 444–45.

[18] 124 Cong. Rec. H11314–15 (Oct. 14, 1978).

[19] 124 Cong. Rec. S15221 (Sept. 15, 1978).

IV. Certification Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to prepare certain statements, descriptions, and analyses of rules that will have "a significant economic impact on a substantial number of small entities." The Commission is not required to make such analyses if a rule will not have such an impact.

Most pipelines and distribution companies may not fall within the RFA's definition of small entity.[20] Most large industrial users of natural gas, on the other hand, may fall within the small entity definition. The economic impact and the record retention burden on all these types of entities remains unchanged from what it is at present because the rule revokes regulations that never became effective. In addition, the new regulations being promulgated have no additional economic impact and do not impose any record retention burden. Therefore, pursuant to section 605(b) of the RFA, the Commission certifies that this rule will not have "a significant economic impact on a substantial number of small entities."

V. Effective Date

For the reasons discussed above, the Order No. 80 regulations must not become effective. Since the stay of those regulations is due to expire at 11:59 p.m. e.s.t. on April 11, 1984, this final rule, which revokes the Order No. 80 regulations, must be effective by April 12, 1984. Therefore, in accordance with section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553, the Commission finds good cause to waive the requirement for publication thirty days before the effective date and make the final rule effective April 12, 1984.

List of Subjects in 18 CFR Part 282

Intergovernmental Relations, Natural Gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

In consideration of the foregoing, the Commission amends § 282.102 of Part 282, Title 18, code of Federal Regulations, as set forth below, effective April 12, 1984.

[20] 5 U.S.C. 601(3) *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (Supp. IV 1980). Section 3 of the Small Business Act defines "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also* SBA's Small Business Size Standards, 13 CFR Part 121 (1982).

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 282—[AMENDED]

1. The authority citation for Part 282 reads as follows:

Authority: Natural Gas Policy Act of 1978, Pub. L. 95–621, 92 Stat. 3350, 15 U.S.C. 3301–3432 (Supp. V 1981).

2. Section 282.102(a) is amended by designating the text as paragraph (1) and adding new paragraph (a)(2) to read as follows:

§ 282.102 Applicability and effective date.

(a) *Uses*

(1) * * *

(2) Pursuant to section 202(b) of the NGPA, the requirements of the rule under section 201 shall apply, as of May 9, 1980, only to the use of natural gas by industrial boiler fuel facilities, and not to any other category of industrial facilities.

* * * * *

3. The Commission revokes the regulations promulgated in Order No. 80 published at 45 FR 31622, May 13, 1980.

[FR Doc. 84–7552 Filed 3–28–84; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 282

[Docket No. RM79–14]

Natural Gas Policy Act; Publication of Incremental Pricing Acquisition Cost Thresholds

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, (202) 357–8500.

SUPPLEMENTARY INFORMATION: .

Issued: March 26, 1984.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of April 1984 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to January 1984 are found in the tables in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	Calendar year 1984			
	January	February	March	April
Incremental Pricing Threshold	$2.283	$2.291	$2.299	$2.307
NGPA Section 102 Threshold	3.586	3.609	3.632	3.656
NGPA Section 109 Threshold	2.359	2.367	2.375	2.383
130% of No. 2 Fuel Oil in New York City Threshold	7.730	7.570	7.570	6.550

[FR Doc. 84–8476 Filed 3–28–84; 8:45 am]

BILLING CODE 6717–01–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 504

Organization

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: The United States Information Agency on a yearly basis updates Part 504 outlining the organizational changes and office moves which have occurred during the past year.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Dina Andrews, Management Plans and Analysis Staff, Bureau of Management, Room 818, 301 4th Street

SW., Washington, D.C. 20547, (AC) 202–485–8676.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 22 CFR Part 504

Organization and functions (Government agencies).

E.O. 12291 Federal Regulations

USIA has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Date: March 22, 1984.

Charles Z. Wick,

Director, United States Information Agency.

Part 504 of Title 22 of the Code of Federal Regulations is revised to read as follows:

PART 504—ORGANIZATION

Sec.

504.1 Introduction.
504.2 Description of central and field organization established places at which, officers from whom, and methods whereby the public may obtain information.
Appendix I—USIA Office Locations in Washington, D.C. Area
Appendix II—USIA Office Locations Outside the Washington, D.C. Area

Authority: Sec. 4, 63 Stat. 111, as amended, sec. 501, 65 Stat. 290; 22 U.S.C. 2658, 31 U.S.C. 483a, 5 U.S.C. 301, 552, E.O. 10477, as amended, 18 FR 4540, 3 CFR 1949–1953 Comp., page 958, E.O. 10501, 18 FR 7049, 3 CFR 1949–1953 Comp., page 979. Reorganization Plan No. 2 of 1977, Pub. L. 97–241, 96 Stat. 291, Pub. L. 98–111.

§ 504.1 Introduction.

It is the policy of the United States Information Agency that information about its operations, organization, procedures, and records be freely available to the public in accordance with the provisions of Pub. L. 89–487, the "Public Information Act of 1966", referred to hereinafter as "The Act", which amended the "Public Information" section of the Administrative Procedure Act (5 U.S.C. 552).

§ 504.2 Description of central and field organization, established places at which, officers from whom, and methods whereby the public may obtain information.

(a) The United States Information Agency, redesignated by Section 303(a) of the United States Information Agency Authorization Act, Fiscal Years 1982 and 1983 (Pub. L. 97–241, Stat. 291), was formerly the International Communication Agency.

(b) The United States International Communication Agency was established as an independent Agency of the Executive Branch of the Government by Reorganization Plan No. 2 of 1977. The Director of the Agency is responsible for reporting to the President and the Secretary of State, as well as advising the National Security Council, on international, informational, educational, and cultural matters. The scope of the Director's advice includes assessments of the impact of actual and proposed U.S. foreign policy decisions on public opinion abroad.

(c) Reorganization Plan No. 2 transferred to the new Agency overseas information functions previously lodged in the U.S. Information Agency and the educational and cultural affairs functions of the Department of State. The Reorganization Plan abolished the U.S. Advisory Commission on Information and the U.S. Advisory Commission on International Educational and Cultural Affairs and established the U.S. Advisory Commission on International Communication, Cultural, and Educational Affairs whose name was subsequently changed to the United States Advisory Commission on Public Diplomacy by Section 604 of the Department of State Authorization Act, Fiscal Years 1980–1981 (93 Stat. 390, August 15, 1979).

(d) The United States Information Agency has responsibility for the conduct of international information, education, and cultural activities, including exchange programs to build bridges of mutual understanding between Americans and the other peoples of the world. The United States Information Agency engages in a wide variety of communication activities—from academic and cultural exchanges to press, radio, and television programs—to accomplish its goals of strengthening foreign understanding of American society and support United States policies. The United States Information Agency operates field posts in 126 foreign countries.

(e) Agency operations are organized along both functional and geographical lines and directed by the Executive Policy group composed of the Director, Deputy Director, four Bureau Associate Directors, the General Counsel, Director of the Office of Public Liaison, Director of the Television and Film Service, the five Area Office Directors, and the Comptroller of the Agency.

(1) The four Bureaus are: Broadcasting (B), Programs (P), Educational and Cultural Affairs (E), and Management (M).

(i) The Bureau for Broadcasting is the global radio network of the United States Information Agency which seeks to promote understanding abroad of the United States, its people, culture, and policies. The Bureau of Broadcasting operates the Voice of America (VOA). VOA conducts its operations in accordance with the VOA Charter, which states:

(A) VOA will serve as a consistently reliable and authoritative source of news. VOA news will be accurate, objective, and comprehensive.

(B) VOA will represent America, not any single segment of American society, and will therefore present a balanced and comprehensive projection of significant American thought and institutions.

(C) VOA will present the policies of the United States clearly and effectively, and will also present responsible discussion and opinion of these policies.

VOA produces and broadcasts radio programs in English and 41 foreign languages, and operates broadcasting and relay facilities to transmit these programs. The Voice of America's Radio Marti Program, established by PL 98–111, seeks to provide news commentary and other information about events in Cuba and elsewhere to promote the cause of freedom in Cuba.

(ii) The Bureau of Programs is comprised of two small specialized staffs, three foreign press centers, and four major offices and services, all reporting directly to the Associate Director. The Policy and Guidance Staff provides both fast daily and in-depth background guidance for operating elements of the Agency on those U.S. foreign policy issues which are susceptible to public diplomacy and on those domestic concerns which are relevant to the conduct of it. This staff also reviews program proposals of the Agency's overseas posts and Washington elements to assure that they are consistent with agreed-upon policy and that resources are allocated in accordance with priorities, and represents USIA in interagency meetings on public affairs issues, evaluates the extent to which media products reflect the Agency's subject priorities, and develops options and policy

recommendations. The International Communication Policy Staff develops options and policy recommendations over the entire range of international communciation policy issues for the Director of USIA and for the consideration of the U.S. Government as a whole. Foreign Press Centers in Washington, New York, and Los Angeles provide facilitative services to foreign journalists working in those cities. The Office of Program Coordination and Development coordinates the design and implementation of all Agency support for major communcation projects proposed by the Agency's overseas posts or undertaken by it in response to worldwide and regional priorities set by the Director, recruits American participants for those projects, and develops a systematic aggregation of essential resource materials to guide the acquisition and production of media support for them. This Office also is responsible for the development and coordination of the Agency's arts initiative undertaken through an agreement with the National Endowments, including recruitment and scheduling of all fine arts exhibitions and performing artists and groups for overseas programming. The Office of Research combines the functions of research on foreign public opinion and communication environment, analysis of foreign media reaction, and the Agency library. The two media services—Exhibits, and Press and Publications—are responsible for the acquisition and production of a variety of media products for use or adaptation by USIA's overseas posts. These include exhibits in various formats, a daily wireless bulletin to all posts, magazines, pamphlets, reprints, photographs, and picture stories. The media services also operate printing plants at two overseas locations.

(iii) Four major offices constitute the Bureau of Educational and Cultural Affairs. The Office of Cultural Centers and Resources provides policy direction, program support, and professional guidance and materials to USIA libraries, American and Binational Centers overseas; promotes the distribution of American books in English and in translation; operates a donated books program; and supports English teaching programs abroad. The Office of Private Sector Programs is responsible for developing cooperative projects with private sector institutions to support, complement and enhance the goals and objectives of the United States Information Agency. These projects are designed to promote a better understanding of the United States abroad by means of educational and cultural exchange between Americans and citizens of other nations. The Office of Private Sector Programs may provide selective assistance, encouragement, and grant support to nonprofit activities of U.S. organizations and institutions that satisfy this purpose, with special emphasis on international educational and cultural exchanges. The Office of International Visitors is responsible for planning, implementing, monitoring, and evaluating all International Visitor (both grantee and voluntary) programs; for managing the Agency's four reception centers; for serving as the Agency's liaison with public and private organizations involved in the International Visitor Program; and for arranging programs in the U.S. for UN Fellows and foreign government trainees. The Office of Academic Programs is responsible for organizing and assisting academic exchanges between the United States and other countries; facilitating the establishment and maintenance of close ties between the American academic community and those abroad; encouraging and supporting learning; and providing staff support to the Board of Foreign Scholarships. The Office maintains liaison with a wide range of non-government institutions to encourage and support private exchange programs and foster institutional linkages across national boundaries; and coordinates international information, educational, cultural, and exchange programs conducted by other departments and agencies of the U.S. Government.

(iv) The Bureau of Management is comprised of a management analysis staff and six major offices reporting to the Associate Director. These offices are responsible for planning, organizing, directing and controlling the Agency's administrative and management operations. These offices provide support services in the areas of administration, personnel and training, budget and fiscal operations, systems technology, security, equal employment opportunity, and contracts.

(v) The Office of Public Liaison (PL), directs and carries out activities designed to discharge the Agency's obligation to provide information about USIA policies, mission and programs to the American people and the communications media. It publishes news releases, fact sheets and pamphlets; provides Agency speakers in response to invitations from organizations and institutions in the U.S.; and holds seminars and workshops with academic, business, professional and public interest institutions and groups. It is responsible for the publication of the Agency's internal newsletter. The Office is responsible for conducting tours of the Agency exhibit at the VOA headquarters.

(vi) The Office of the General Counsel and Congressional Liaison (GC). The General Counsel and legal staff advise all elements of the Agency on the interpretation of all laws, regulations, and Executive Orders that authorize the Agency's program or relate to the Agency's activities. The Office assists in the drafting of proposed legislation, Executive Orders, regulations, contracts, leases, and other legal documents, and participates in the negotiation of international agreements. The Office represents the Agency in hearings arising from disputes on contracts, equal employment opportunity, grievances, labor disputes, and licensing. The Office provides support to trial counsel in cases tried before domestic and foreign courts. The Office secures the necessary rights clearances for the Agency's activities, exercises in full authority vested in the Director by law relating to Exchange Visitor Program designation, visa waiver review, and authorized periods of duration of stays, and advises on matters relating to ethical conduct and conflict of interest of Agency employees. On congressional matters it maintains contact with Members and their staffs and serves as Agency coordinator of hearings on substantive legislation and of Agency programming of Members and staff.

(vii) The Office of Inspector General provides policy direction for and conducts, supervises, and coordinates audits and investigations relating to Agency programs and operations; evaluates whether the Agency has standards adequate to measure program results; evaluates whether programs are effective and are managed with economy and efficiency; and recommends policies and procedures to promote economy and efficiency in such programs and operations. The Office receives, reviews, and coordinates investigations of evidence, allegations, and complaints from employees and applicants concerning waste of resources, fraud, abuse of authority, mismanagement, violations of laws or regulations, or a substantial and specific danger to public health and safety; and reports regularly the results to the Director.

(viii) The Office of Inspections reviews and assesses the effectiveness of Agency programs overseas in support of Agency objectives and the

effectiveness of domestic operations in support of overseas programs.

(ix) The Television and Film Service is responsible for planning, organizing and directing the Agency's television and film activities. The areas of responsibility encompass planning, acquiring, or facilitating production of films for direct projection or telecast by video tape and satellite to audiences overseas; facilitative assistance to visiting foreign television and film producers; assistance to foreign broadcasters in the production and foreign telecast of cooperative television programs; and coordination with other U.S. and foreign government agencies on the dissemination of information overseas through motion pictures and television.

(x) The heads of the five geographic areas are the Agency's principal advisers on all programs within countries in their respective areas. They help to formulate Agency policies and represent the Director in interagency working groups. The Area Directors (Africa; Europe; East Asia and Pacific; American Republics; and North Africa, Near East, and South Asia) are responsible for the coordination and management of public diplomacy programs for the countries in their geographic areas. They supply a knowledge of the field programs and requirements to the Agency's policy and planning processes. They arranged with media services to provide media products to their areas. They consult with appropriate area and country officers in the Department of State and other foreign affairs agencies on operational matters of mutual concern.

(xi) The agency maintains 205 posts abroad in 126 countries. These posts are under the supervision of the U.S. Chiefs of Mission, and with the guidance of the Director and the appropriate Area Office Director, conduct information, educational exchange and cultural programs on behalf of the U.S. Government. Each overseas office is headed by a Public Affairs Officer who is a member of the "Country Team" under the Chief of the U.S. Diplomatic Mission. A list of overseas offices is maintained by the Management Plans and Analysis Staff, Washington, D.C. 20547.

Appendix I—United States Information Agency Office Locations in Washington, D.C. Area

(1) Agency elements located at 301 4th Street SW., Washington, D.C. 20547—

Office of the Director
Office of Public Liaison
Office of the General Counsel and Congressional Liaison
Office of Inspector General
Office of Inspections
Bureau of Programs—
  Policy Guidance Staff
  International Communications Staff
  Office of Program Coordination and Development
  Office of Research
  Exhibits Service
  Press and Publications Service
Bureau of Educational and Cultural Affairs
  Office of Cultural Centers and Resources
  Office of Private Sector Programs
  Office of International Visitors
  Office of Academic Programs
Bureau of Management
  Management Plans and Analysis Staff
  Office of Administration and Technology
  Office of the Comptroller
  Office of Equal Employment Opportunity
  Office of Personnel
  Office of Security
Office of African Affairs
Office of American Republics Affairs
Office of East Asian and Pacific Affairs
Office of European Affairs
Office of North African, Near Eastern, and South Asian Affairs

(2) Other Agency Elements and addresses:

(a) United States Information Agency, Health and Human Services Building, 330 Independence Avenue SW., Washington, D.C. 20547; Bureau of Broadcasting
(b) United States Information Agency, 400 6th Street, SW., Washington, D.C. 20547, Bureau of Broadcasting—Radio Marti Program
(c) United States Information Agency, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20547, Television and Film Service
(d) United States Information Agency, Bureau of Programs—Foreign Press Center, National Press Building, 529 14th Street NW., Washington, D.C. 20547
(e) United States Information Agency, 1717 H Street NW., Washington, D.C. 20547, Bureau of Management—Office of Contracts

Appendix II—United States Information Agency Office Locations Outside the Washington, D.C. Area

Television and Film Service—

(a) New York Office, Room 30–100, 26 Federal Plaza, New York, N.Y. 10278
(b) Los Angeles Office, 1100 Wilshire Boulevard, Los Angeles, Calif. 90024

United States Information Agency, Bureau of Broadcasting—

(a) Relay Stations—
(1) Bethany Relay Station, P.O. Box 227, Mason, Ohio 45040
(2) Delano Relay Station, Route 1, Box 1350, Delano, Calif. 93215
(3) Dixon Relay Station, Route 2, Box 739, Dixon, Calif. 95620
(4) Marathon Relay Station, P.O. Box 726, Marathon, Fla. 33050
(5) Edward R. Murrow Transmitting Station, P.O. Box 1826, Greenville, N.C. 27834
(b) News Bureaus—
(1) Midwest News Bureau, Room 3876, Federal Building, 230 South Dearborn Street, Chicago, Ill. 60604
(2) Southeast News Bureau, Room 1518, Federal Office Building, 51 S.W. First Avenue, Miami, Fla. 33130
(3) West Coast News Bureau, Room 8107, Federal Building, 11000 Wilshire Boulevard, Los Angeles, Calif. 90020
(4) New York News Bureau, Room 30–100, Fisk Building, 26 Federal Plaza, New York, N.Y. 10278

Bureau of Programs—

(a) Foreign Press Centers
(1) Federal Building, 1100 Wilshire Blvd., Suite C–200, Los Angeles, Calif. 90024
(2) 18 E. 50th Street, 11th Floor, New York, N.Y. 10022
(b) Senior Advisor for Public Affairs, U.S. Mission to the United Nations, 799 United Nations Plaza, New York, N.Y. 10017

Bureau of Management—

Administrative Services Division, New York Services Branch, 830 Third Avenue, Brooklyn, N.Y. 11232

Bureau of Educational and Cultural Affairs—Reception Centers

(a) Honlulu—P.O. Box 50186, Honolulu, Hawaii 96850
(b) Miami—Room 1304, Federal Office Building, 51 S.W. First Avenue, Miami, Fla. 33130
(c) New Orleans—Suit 1130, International Trade Mart, 2 Canal Street, New Orleans, La. 70130
(d) New York—Third Floor, 1414 Avenue of the Americas, New York, N.Y. 10019.

[FR Doc. 84–8368 Filed 3–28–84; 8:45 am]
BILLING CODE 8230–01–M

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22 CFR Part 515

Payments to and on Behalf of Participants in the International Educational and Cultural Exchange Program

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: Part 515 is amended by removing paragraph § 515.3(h), Designated City Supplement (Interim Rule), which is no longer used. This paragraph has been superseded by increased uniform per diem rates for U.S. cities.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Gaudian, Deputy Executive Officer, Bureau of Educational and Cultural Affairs, U.S. Information Agency, Washington, D.C. 20547, (202) 485–2949.

SUPPLEMENTARY INFORMATION:

List of Subjects in 22 CFR Part 515

Cultural exchange programs.

E.O. 12291 Federal Regulations

USIA has determined that this is not a major rule for the purposes of E.O.

12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Authority: Sec. 4, 63 Stat. 111, as amended, 75 Stat. 527–538; 22 U.S.C. 2658, 2451 note; Reorg. Plan No. 2 of 1977; E.O. 12048 of Mar. 27, 1978.

§ 515.3 [Amended]

Part 515 is amended by removing paragraph (h) from section 515.3.

Dated: March 22, 1984.

Charles Z. Wick,

Director, U.S. Information Agency.

[FR Doc. 84-8369 Filed 3-28-84; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 51

[Docket No. R-84-709; FR-935]

Environmental Criteria and Standards; Siting of HUD-Assisted Projects Near Hazardous Operations Handling Petroleum Products or Chemicals of an Explosive or Flammable Nature; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; correction and technical amendment.

SUMMARY: The purpose of this document is to indicate the correct placement of Appendices to a final rule published on February 10, 1984 (49 FR 5100), as corrected on March 20, 1984 (49 FR 10253), that provided standards for the safe siting of HUD-assisted projects near hazardous operations that handle petroleum products or chemicals of an explosive or flammable nature.

EFFECTIVE DATE: The effective date for the technical amendment appearing in item 2 of this document is March 29, 1984.

FOR FURTHER INFORMATION CONTACT: James L. Christopulos, Office of Environmental and Energy, Telephone number, (202) 755–7225. (This is not a toll-free number).

Accordingly, the following corrections are being made to 24 CFR Part 51:

1. In the March 20, 1984 issue of the **Federal Register**, in FR Doc. 84–7325, on page 10253, column two, item three corrected a February 10, 1984 final rule of the Department. The correction reinstated an Appendix which had been erroneously removed. The correction should have stated also that it was revising the title of the Appendix to read as follows:

Appendix I to Subpart B—Definition of Acoustical Quantities

2. In 24 CFR 51.103 (a) and (b), the term "Appendix" is changed to read "Appendix I to this Subpart" wherever it appears.

3. In the February 10, 1984 issue of the **Federal Register**, in FR Doc. 84–3516, on page 5105, column two, item three, (1) correct the amendatory language to read as follows: "3. Appendix I to Subpart C and Appendix II to Subpart C are added to read as follows:"; and (2) correct the titles of the two Appendices to read as follows:

Appendix I to Subpart C—Specific Hazardous Substances

Appendix II to Subpart C—Development of Standards; Calculation Methods

4. In the February 10, 1984 issue of the **Federal Register**, in FR Doc. 84–3516, page 5103, column three, correct the table of contents entry for § 51.207 to read as follows:

51.207 Amendments to Appendix I to this subpart.

5. In the February 10, 1984 issue of the **Federal Register**, in FR Doc. 84–3516, page 5105, column one, in § 51.207, (1) correct the section heading to read: § 51.207 *Amendments to Appendix I to this Subpart;* and (2) correct the term "Appendix I" wherever it appears to read "Appendix I to this Subpart."

Authority: Sec. 2, Housing Act of 1949 (42 U.S.C. 1441); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Sec. 2, Housing and Urban Development Act of 1969 (42 U.S.C. 1441(a)).

Dated: March 23, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84-8419 Filed 3-28-84; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 205, 207, 213, 221, 232, and 244

[Docket No. R-84-1065; FR-1559]

Mortgage and Loan Insurance Programs Under the National Housing Act—Creation of Inferior Liens To Secure Governmental Loans

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The Secretary is adopting as final an interim rule that amended certain of HUD's multifamily and related mortgage insurance regulations to facilitate the use of grants or loans by Federal, State, and local governmental agencies or instrumentalities in connection with the development of projects with FHA mortgage insurance. The rule permits liens inferior to the insured mortgage where needed to secure the Federal, State, or local loan. The rule also provides that, where the proceeds of such a loan or grant are to be used as "front money" to assure completion of the project and the payment of expenses incident to its construction, "front money" deposit requirements for these purposes may be satisfied by a letter of credit or an agreement among the relevant parties rather than by cash, and insured mortgage proceeds may be advanced to cover these expenses before full disbursement of the loan or grant proceeds.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Linda Cheatham, Director, Multifamily Technical Support Division, Office of Multifamily Housing Development, Room 6138, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Telephone number (202) 426–7113. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 4, 1983 the Department published an interim rule in the **Federal Register** (48 FR 35389), amending the then—existing regulations at 24 CFR Chapter II, Subchapter B, governing certain multifamily and nonresidential mortgage insurance programs under the National Housing Act.

As explained more fully in the interim rule, and briefly summarized here, the amendments are designed to facilitate the use of grants and loans by Federal,

State, and local governmental agencies or instrumentalities in connection with the development of projects whose mortgages are insured under those authorities. The rule also permits liens inferior to the lien of the insured mortgage if they are given in favor of the Federal, State, or local governmental agency under circumstances approved by HUD. Additionally, the rule relaxed the "front money" regulatory requirements in those cases where the money is provided by a grant or loan from a government instrumentality. Finally, the rule specified that the mortgagee of record could not be the issuer of a letter of credit used in connection with the insurance of advances for the programs covered by the rule without the prior written consent of the Commissioner.

The interim rule became effective on October 10, 1983, and provided for public comments to be received by October 3, 1983. The Department received only one comment, and this was from a HUD Field Office.

The comment recommended that the rule be withdrawn (and the old policy reinstated) or modified because of its potentially adverse effects on all parties if the proceeds of secondary financing are withheld to the end of a job. The comment argued that the requirement to post a letter of credit for ten percent of the secondary financing amount could be financially burdensome to the borrower; and, in some cases, may represent an insignificant amount in relation to the total cost of a project. The comment further questioned the fairness of having the borrower incur this additional cost because of the borrower's having little influence over the actions of the secondary lender. Finally, the comment contends that, written agreements aside, delays and cost overruns could result if the government agency fails to honor its obligation to provide the loan or grant funds.

The Department disagrees with the comment. The Field Office misapprehends the funding procedure contemplated by this rule. As the rule (along with the instructions to HUD's Field Offices) makes clear, the secondary financing will be advanced either before the disbursement of mortgage proceeds or concomitantly on a pro rata basis with the expenditure of mortgage funds. Mortgage proceeds will not be substantially drawn down before the disbursement of grant or loan funds. The provision for a letter of credit ensures that the general contractor is paid in a timely manner; it does not, in the Department's view, create an undue financial burden on the mortgagor.

HUD recognizes that in the normal course of events, there exists the possibility of funding delays—a contingency the agreement was designed to ameliorate by its provision for a letter of credit or escrowed funds. Finally, the Department believes that the rule's cost effectiveness (interest expense is minimized by deferring the time that loan or grant funds—proceeds of government borrowing—are disbursed) outweighs the potential adverse effects cited in the comment.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. The rule does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule is a cost-saving measure with little, if any, adverse impact on small entities.

This rule was listed as RIN 2502–AA30 (H–45–81; FR–1559), in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47435) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program Numbers are 14.112, 14.116, 14.125, 14.126, 14.127, 14.129, 14.134, 14.135, 14.137, 14.138, and 14.139.

List of Subjects

24 CFR Part 205

Community facilities, Land development.

24 CFR Part 207

Mortgage insurance, Manufactured homes.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Projects, Cooperatives.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs-Health, Loan programs-Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

24 CFR Part 244

Health facilities, Mortgage insurance.

Accordingly, the interim amendments to 24 CFR Parts 205, 207, 213, 221, 232, and 244, published on August 4, 1983 (48 FR 35389) are hereby adopted as final without change.

Authority: Section 211 of the National Housing Act (12 U.S.C. 1715b); Section 7(d) of the Department of HUD Act, 42 U.S.C. 3535(d).

Dated: March 21, 1984.

Shirley M. Wiseman,

General Deputy Assistant Secretary for Housing.

[FR Doc. 84–8490 Filed 3–28–84; 8:45 am]

BILLING CODE 4210–27–M

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24 CFR Part 882

[Docket No. R–84–955; FR–1539]

Section 8 Housing Assistance Payments Program; Existing Housing

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Final rule.

SUMMARY: This rule amends the regulation for the Section 8 Existing Housing (finders-keepers) Program concerning: (1) Lease term and termination of tenancy; (2) selection of applicants for program participation; (3) determination of the number of bedrooms appropriate for a family; (4) review of certain PHA decisions affecting an applicant or participant; and (5) related regulatory changes. The purpose of this rule is to delineate certain notice and hearing requirements

and waiver requirements associated with the Section 8 Existing Housing program and to make final previously published rules on termination of tenancy.

This rule will provide more explicit guidance to PHAs and families participating in the program.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Existing Housing Division, Office of Elderly and Assisted Housing, (202)–755–5353, Department of Housing and Urban Development, Washington, D.C. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Consolidation of Rulemaking

This rulemaking consolidates two prior rulemaking proceedings in a single final rule:

A. On July 26, 1982 (47 FR 32169), HUD published a proposed rule implementing Federal Court orders (in *Nichols v. Landrieu*, Civil Action No. 79–3094, United States District Court, District of Columbia, September 12, 1980):

1. Certifying a class action on behalf of persons whose section 8 existing housing subsidy may be terminated or reduced, by a PHA "because of family size and composition requirements without notice of the reasons for termination, the availability of a waiver of family size requirements, and an opportunity to be heard to contest the propriety of termination or claim entitlement to the waiver";

2. Directing HUD to publish as a rulemaking for notice and public comment portions of the administrative handbook for the Section 8 Existing Housing Program "delineating notice and hearing requirements pursuant to subsidy reduction"; and

3. Directing that the PHA notify the participant family of its "right to a waiver [of the PHA's family size requirements] and the grounds upon which a waiver may be granted."

In addition to provisions related to the *Nichols* plaintiff class and required under the court order, the rulemaking also proposed other amendments regarding selection of applicants for Certificates and informal hearing requirements for applicants and program participants.

The Department has received 29 public comments on the proposed rule.

For convenience, this rulemaking is referred to below as the "selection and hearing" rule.

B. On August 3, 1982 (47 FR 33497), HUD published an interim rule implementing 1981 legislation (Pub. L. 97–35, Section 326(e)(1)) which requires a minimum one year lease term in section 8 existing housing, eliminates a prior requirement for PHA participation in a termination of tenancy, and requires good cause for termination of tenancy.

The Department has received 58 public comments on the interim rule.

For convenience, this rulemaking is referred to below as the "termination of tenancy" rule.

II. Statement of Family Responsibilities

Before issuance of this rule, the regulation (§ 882.118) provided that: "A Family receiving housing assistance under this program shall be responsible for fulfilling all its obligations *under the Certificate of Family Participation* issued to it by the PHA and *under the Lease with the Owner*."

Family "obligations under the Certificate" were not otherwise defined in the regulation. The form of Certificate signed by the Family (Form HUD 52578, 10–78) states that the Family agrees "to perform all its obligations under the Existing Housing Program." The Certificate also requires the Family to:

—Provide family income information and records required in administration of the program,

—Permit inspection of its dwelling unit at reasonable times after reasonable notice,

—Give at least 30 days notice to the PHA if the family intends to vacate the unit, and

—Cooperate with the PHA in finding a new unit if the unit is too large because of a change in family size.

The Certificate provides that the "conditions" (i.e., the statement of family obligations on the Certificate)" * * * continue to apply after the Family begins to receive assistance under this program."

The proposed selection and hearing rule (proposed § 882.209(a)(2)(i)) stated that the PHA may deny issuance of a Certificate to an applicant who, as a past participant in the Section 8 Existing Housing Program, failed to comply with "family obligations under the section 8 Existing Housing Program."

A legal aid office objects that the authority to deny a Certificate for failure to comply with family obligations under the program is vague, and does not distinguish between a serious violation of program standards, and minor technical or unintentional infractions for which deprivation of assistance would be unfair. The comment also claims that grounds for denial of a Certificate are already sufficiently clear under the regulation and handbook.

The Department agrees that violation of unstated family program "obligations" is not a sufficiently definite regulatory statement of grounds for denial of assistance, but does not agree that grounds are already adequately stated in the regulation. The responsibilities of the family in the Section 8 Existing Housing Program should be comprehensively listed in the regulation.

As revised by this rule, § 882.118 lists the obligations of a family under the Section 8 Existing Housing Program, both positive (requirements) and negative (prohibitions). The PHA may deny or terminate assistance to a current program participant, or to a prior participant seeking readmission to the program, for violation of any of the stated family obligations (see new § 882.210, discussed in section III of this preamble).

A. Obligation To Furnish Required Information and Certification

The regulation [§ 882.118(a)(1)] requires the family to supply such certification, release, information or documentation as the PHA or HUD determine to be necessary in the administration of the program, including use by the PHA for a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements. The requirement to supply program-related information and records, and to certify family income and composition, is not new.

B. Obligation To Allow PHA Inspection of Unit

The regulation (§ 882.118(a)(2)) requires the family to allow the PHA to inspect the unit at reasonable times and after reasonable notice. The requirement to allow PHA inspection of the unit supports the PHA obligation (see § 882.211) to determine by inspection whether the unit is decent, safe and sanitary, and otherwise in accordance with the lease and assistance contract. This obligation is not a new requirement, and is currently stated in the Certificate.

C. Obligations Related To Use and Occupancy of Unit

The family must use the dwelling unit solely for residence by the Family, and as the family's principal place of residence, and may not assign the lease or transfer the unit (§ 882.118(a)(4)).

The requirement for use solely for residence by the family serves to enforce the statutory purpose of section 8 assistance, to provide assistance for occupancy by a lower income family (see U.S. Housing Act of 1937, sec. 8(c)(4); 42 U.S.C. 1437f(c)(4)).

The requirement for use of the dwelling unit as the family's principal place of residence is intended to prevent the use of scarce subsidy resources for a secondary or seasonal place of residence, or for a unit not actually occupied by an eligible family.

The regulation (§ 882.118(b)(3)) also prohibits the family from receiving assistance under the Section 8 Existing Housing Program "while occupying, or receiving assistance for occupancy of, any other unit assisted under any federal housing assistance program (including any section 8 program)." This provision is intended to prevent double subsidy for a family, or the payment of section 8 subsidy for a unit not occupied by an eligible family.

As under the current form of Certificate of Family Participation, the new regulation (§ 882.118(a)(3)) requires the family to notify the PHA before vacating the dwelling unit. The PHA needs to know when the family is going to leave the unit, so that the PHA will not continue assistance payments, other than authorized vacancy payments (§ 882.105(b)), for a unit no longer occupied by the family.

D. Ownership of Unit

The regulation prohibits the family from owning or having any interest in the dwelling unit (§ 882.118(b)(1)). Currently this is one of the owner's certifications on receipt of payment under the assistance contract. The prohibition is based on the statutory character of the section 8 program, as a rental subsidy for a unit under lease from an owner. Section 8 is not a subsidy for owner occupied housing.

In accordance with the two statutory exceptions to the broad restriction on section 8 subsidy for owner occupied housing, section 8 subsidy may be paid on behalf of a cooperative member (see U.S. Housing Act of 1937, sec. 8(f)(2), 42 U.S.C. 1437f(f)(2)), or to subsidize pad rental by the owner of a manufactured home unit (pursuant to sec. 8(j) of the United States Housing Act of 1937, 42 U.S.C. 1437f(j), as amended by the Housing and Community Development Amendments of 1981, Pub. L. 97-35, sec. 329 H).

E. Fraud

The rule provides (§ 882.118(b)(2)) that the family may not commit any fraud in connection with the Section 8 Existing Housing Program. See also § 882.210 (b)(3) and (d)(1), discussed in section III B below, concerning the denial or termination of assistance because of applicant or participant fraud in connection with *any* federal housing assistance program.

F. Tenant Violation of Assisted Lease

In one major respect, the final rule significantly narrows the regulatory definition of family responsibilities under the program. Since the beginning of the Section 8 Existing Housing Program, the program regulations have provided that the family is responsible for "fulfilling all its obligations * * * under the Lease with the Owner" (§ 882.118 of prior rule). This provision is deleted in the final rule.

Enforcement of the family's obligations to the owner under an assisted lease is properly the concern of the owner, not the PHA. The PHA has, in general, no firsthand knowledge of tenant behavior in the unit. If the family has violated the lease, the owner may take action to terminate the tenancy and, if necessary, to evict the family, without involvement of the PHA.

The PHA is prohibited (under prior program policy and the provisions of this final rule, § 882.209(a)(5)) from establishing selection criteria based on an applicant's expected behavior as a tenant. (The prohibition on screening in selection of tenants will be further discussed in section IV D of this preamble). The termination of assistance because of a family's behavior as tenant of an assisted unit is not an appropriate role for the PHA. For this reason, the tenant's responsibility to comply with the lease is not included in the regulatory listing of family program obligations.

III. Bases for Denial or Termination of Assistance

Under the proposed rule on selection and hearing (§ 882.209(a)(2)), the PHA would have been permitted to refuse a Certificate to an applicant who owes money to a PHA or who (as a past participant in the Section 8 Existing Housing Program) vacated a unit in violation of the lease, or failed to pay amounts owed to a section 8 owner. The PHA could also deny a Certificate to a family which failed to comply with family obligations under the Section 8 Existing Housing Program, or which committed fraud or misrepresentation in connection with a federal housing assistance program.

The proposed rule would not have modified regulatory provisions concerning the grounds for denying a new Certificate to a current program participant (former § 882.209(e)(1), now redesignated §882.209(m)), and would not have contained any new provisions concerning the grounds for termination of assistance to a program participant. On reconsideration, the Department believes this approach is too narrow, and that the regulations should set out a comprehensive statement of the grounds not only for denial of initial selection for participation, but for termination or denial of further assistance to a current program participant because of an action or inaction by the family. The final rule includes therefore a new and complete statement, in a separate regulatory section (§ 882.210), of the bases for denial or termination of assistance because of the family's behavior. (The former provisions of § 882.210 ("Request for lease approval") have been moved to § 882.209, as paragraphs (e) to (l).)

A. Failure To Make Payment to PHA

Under the final rule (§§ 882.210(b) (1) and (2)), the PHA may deny participation in the program, may deny issuance of another Certificate to a participant who wants to move to another dwelling unit, may decline to enter an assistance contract or to approve a lease, if the applicant or participant:

—Currently owes rent or other amounts to the PHA or another PHA, and the debt was incurred in connection with public housing or section 8 asisstance under the United States Housing Act of 1937, or

—Has not reimbursed claims paid on its behalf by the PHA to a section 8 owner, either for rent or for other damages under an assisted lease, or for section 8 vacancy payments.

The PHA may properly conclude that families which have not paid the PHA are less deserving of further assistance from limited funding than other families which meet their financial responsibilities. Payment by the Family of amounts owed to a PHA or of section 8 owner claims paid by a PHA will promote the fiscal welfare of the PHA. Reimbursement of section 8 owner claims paid by a PHA on behalf of the family replenishes funds for operation of the PHA's section 8 program, and for assistance payments for families. The requirement for reimbursement tends to discourage tenant behavior which can result in owner claims, such as claims for tenant damage to the unit.

1. *Treatment of Past Rent or Other Debt to a PHA.* Legal aid comments on the proposed rule assert that the denial of assistance because of rent owed to the PHA, including denial because of rent owed under the public housing program, is an "unauthorized collection practice," and that a PHA may not withhold benefits under the PHA's Section 8 Existing Housing Program because of debt incurred in another "completely unrelated" program.

Section 8 and public housing are different forms of housing assistance under the U.S. Housing Act of 1937, but implement the same statutory purpose—to provide decent, safe and sanitary dwellings for lower income families (U.S. Housing Act of 1937, sec. 2 and sec. 3, 42 U.S.C. 1437 and 1437a). Funding for section 8 housing assistance payments and for development of public housing, is drawn from the same statutory source (the amount of contract authority authorized by the Congress under sec. 5(c) of the Act, 42 U.S.C. 1437c(c)), and the statutory criterion for family eligibility is applicable to both section 8 and public housing assistance under the Act (U.S. Housing Act of 1937, sec. 3(a) and sec. 3(b)(2), 42 U.S.C. 1437a(a) and 1437a(b)(2)). The claim that the two programs are unrelatred is an artificial distinction between two forms of lower income housing assistance under the Act.

A comment from a legal aid office states that the denial of assistance to a family which owes rent or other charges is "harsh and unjustified," since this policy penalizes people who have trouble paying for their rents, the class for which the Section 8 Existing Housing Program is designed.

By statutory definition the section 8 and public housing programs serve people who do not have an adequate income. Family dollars paid for rent cannot be used to meet other family costs. However, this is true for all families assisted under these programs, and is not a justification for failure by a family to pay the statutory rental contribution.

Lower income families are required to pay a part of the full economic rent of their housing, in accordance with a statutory formula. The rental contribution from a family provides resources needed for operation of the programs. The requirement for a rental contribution also encourages the sense of family responsibility for its own welfare. Although the payment of rent is difficult for a poor family, the requirement for payment of the statutory rent contribution could collapse unless enforced by the possibility of effective sanctions.

Under the proposed rule, the PHA would have been permitted to deny assistance because of *ony debt* owed by a family to the PHA or to another PHA (proposed § 882.209(a)(2)). The final rule only allows a denial of assistance because of debt incurred to a PHA *in connection with section 8 or public housing assistance under the United States Housing Act of 1937 (§ 882.210(b)(1)).*

Comments from legal aid offices state that a denial of program participation because of debt to the PHA may not be automatic and that the regulation should include standards for mitigation of prior debt. They state that the PHA must be required to afford an opportunity for a family to justify the failure to pay rent, to shown that the amounts claimed are not owed (e.g., where the debt is barred by the statute of limitations), to show that rent was lawfully withheld under local law, or to show a change in financial circumstances, and that the PHA must be required to afford a hearing to consider these factors. Several comments claim that the *Vandermark (Vandermark v. Housing Authority of the City of York,* 633 F.2d 436 (3d Cir. 1981)) and *Baker (Baker v. Cincinnati Metropolitan Housing Authority,* 675 F.2d 836 (6th Cir. 1982)) decisions mandate a hearing which gives the applicant an opportunity to explain a failure to pay rent to the PHA.

Under the new regulation, an applicant family has the opportunity to explain the alleged debt. The PHA is required to give an applicant the opportunity for informal review of a decision to deny assistance for this reason (§ 822.216(a); see section VII B of preamble).

The proposed rule is amended to clarify that the PHA may only deny assistance because of debt due a PHA if an applicant or participant "currently owes" money to a PHA (§ 882.210(b)(1)). Past debt to a PHA is not grounds for denial of assistance. The PHA may not deny assistance if the debt has been paid, or is not valid for any reason (e.g., a rent claim extinguished by the statute of limitations). Thus the final regulation automatically takes into account a change in conditions which results in a satisfaction of the prior debt.

A comment from a legal aid service organization objects to allowing a PHA to deny assistance because of debt to other PHAs. The comment notes that only the PHA to which the debt is owed has access to information on the debt. The Department has decided to retain the regulatory authority for a PHA to deny assistance because of rent or debt owed to another PHA. A family which has incurred an obligation to a PHA should not be assured that if the family moves to the assistance program of a new PHA, the new PHA will be compelled to ignore the delinquency. PHAs may give mutual support for the efforts of other PHAs to collect program-related debts owed by assisted families.

2. *Reimbursement of Owner Claims Paid By a PHA.* The proposed rule (§ 882.209(a)(2)(i)) would have allowed the PHA to deny issuance of a Certificate to an applicant who (as a past program participant) vacated a section 8 existing unit in violation of the lease, or failed to satisfy a liability to a section 8 owner for rents or other amounts owed under the lease.

Under the final rule, the PHA may only deny assistance if the PHA has been forced to pay an owner claim. The final rule (§ 882.210(b)(2)) permits a PHA to deny assistance if an applicant or participant has not reimbursed a PHA for any amounts paid by the PHA to a section 8 owner: (1) For rent or other amounts owed by the family to the owner under the lease, or (2) for vacancy payments.

3. *Opportunity for Future Payment; Agreement to Pay.* Under the proposed rule (proposed § 882.209(a)(2)), the PHA may condition issuance of a Certificate on an applicant's "willingness" to enter into an agreement to repay rent or other amounts owed a PHA. Under the final rule (§ 882.210(c)) the PHA may at its discretion offer an applicant or participant the opportunity to enter an agreement to pay amounts owed to a PHA in connection with public housing or section 8, or claims paid by a PHA to a section 8 existing owner. If the PHA chooses to make such an offer, the terms of the agreement are prescribed by the PHA. If the participant breaches the agreement, the PHA may deny or terminate assistance at any time (§ 882.210(b)(5), § 882.210(c) and § 882.210(d)(3)).

A PHA comment states that the issuance of a Certificate should be conditioned on the applicant's agreement to repay amounts owed to the PHA, not just the "willingness" of the applicant to enter an agreement to repay under the language of the proposed rule. The final rule has been revised to clarify, in accordance with the original intention, that the PHA may at its discretion choose whether or not to offer the family the opportunity to enter an agreement for deferred payment of the amounts owed. If the PHA decides not to offer an agreement, or if the family refuses to execute the agreement, the PHA may deny assistance to the family until the family has paid up.

A comment from a legal aid service organization recommends that the family should have the regulatory *right* to enter into a repayment agreement. Another legal aid comment asserts that there should be standards specifying when the PHA *must excuse* prior debt. These recommendations have not been adopted. The decision to accept or not to accept a family promise of future payment properly rests in the discretion

of the PHA, as applied to particular cases, not in the creation of a federal regulatory right to defer the payment of present debt, or in the prescription of a federal standard defining cases in which present debt must be forgiven or in which the present debt may not serve as ground for a denial of assistance. The family can at any time remove the impediment to assistance, by payment of the debt to a PHA, or reimbursement of PHA payments to a section 8 owner.

Some comments claim that a family has a constitutional right to defer payment of amounts owed to a PHA (citing the decisions in *Vandermark* and *Baker*). We do not agree. The *Vandermark* and *Baker* decisions hold that PHAs may withhold entrance to the Section 8 Existing Housing Program because of a family's past failure to pay public housing rent. Procedural and substantive due process do not create any constitutional right to issuance of a Certificate without payment of current debt. The substantive validity of a requirement for prior repayment to a PHA is governed by a simple constitutional test under equal protection—whether the requirement rationally furthers a legitimate State purpose. This preamble has stated some of the main reasons for allowing a PHA to deny section 8 existing assistance to a family until repayment to the PHA.

B. Denial or Termination of Assistance Because of Fraud or Violation of Family Program Obligations

Under the proposed rule (§ 882.209(a)(2)) the PHA would have been authorized to deny issuance of a Certificate to an applicant who failed to comply with "family obligations" under the section 8 program, or who has committed any fraud or misrepresentation in connection with any federal housing assistance program.

The final rule contains a full regulatory definition of the obligations of a program participant (§ 882.118 of the final rule, described in section II of this preamble). The final rule also explicitly confirms that a PHA has the option of denying or terminating assistance for violation of the stated family obligations (§ 882.210(b)(4) and § 882.210(d)(2)).

The PHA may also deny or terminate assistance if the applicant or participant has committed any fraud "in connection with any federal housing assistance program" (§ 882.210(b)(3) and § 882.210(d)(1)); see also provisions on family obligation not to commit any fraud in connection with the Section 8 Existing Housing Program (§ 882.118(b)(2), discussed above in section II E of this preamble).

C. Participant—Denial or Termination of Assistance

Prior to this rule, the program regulation did not contain any unified statement of the bases for denial or termination of assistance to a participant family because of the family's action or inaction. The proposed rule (selection and hearings) only dealt with the grounds for initial denial of participation. Although the proposed rule stated a uniform set of informal hearing requirements for termination or reduction of assistance (proposed § 882.216), the proposed rule did not state the grounds for termination or denial of assistance to a participant family. The final rule defines the bases a PHA may use for denial or termination of assistance to a current program participant. This definition will clarify the substantive rules to be applied in the participant hearing process under the regulation (§ 882.216(b)).

1. *Denial of New Certificate to Participant.* Under the previous rule (§ 882.209(e)(1)), the PHA was required to issue a new Certificate to an assisted family at any time the family wanted to move to another unit in the area (if the PHA had sufficient funds to issue a new Certificate, and the family was meeting its program responsibilities under § 882.118) unless the PHA determined that the family owed payment to the owner "on account of nonpayment of rent or other amount owed under the lease." Under the final rule (§ 882.210(b) and § 882.209(m)(1)), the grounds for denial of a new Certificate to a current program participant are the same as the grounds for denial of assistance to an applicant: failure to pay rent or other debt to a PHA in connection with section 8 or public housing, failure to reimburse claims paid by the PHA to a section 8 owner, fraud or breach of program obligation, breach of agreement to pay or reimburse the PHA.

The final rule (§ 882.209(m)(1)) also specifies that a participant who wants to move must request a new Certificate "during or at the end of the term of the Lease." This is intended to clarify that the right to issuance of a new Certificate applies only to a current program participant. A past participant who applies for a Certificate is treated as an applicant for participation in the PHA's program.

2. *Termination of Assistance Payments Under an Outstanding Assistance Contract.* Under the final rule (§ 882.210(d)), the PHA may terminate housing assistance payments under an outstanding HAP Contract for fraud in connection with any federal housing assistance program, or for violation of family obligations under the section 8 program.

The PHA may not terminate housing assistance payments under an outstanding HAP Contract for nonpayment by the family of amounts owed to a PHA or of section 8 owner claims unless the family breaches an agreement for payment of these amounts (§ 882.210(c) and § 882.210(d)(3)). (Nonpayment is, however, grounds for refusing to issue a new Certificate to the family. See section III A of this preamble.)

The regulation also states (§ 882.210(d)) that the listing of bases for termination of a family's housing assistance payments (because of the action of failure to act by the family) does not affect or limit the right of the PHA to exercise any Contract remedy against the Owner, including the termination of housing assistance payments to the owner. Termination of payments to the owner could become necessary, for example, because of the owner's failure to maintain the unit in compliance with the housing quality standards.

IV. Selection of Participants

Selection of applicants for participation in a PHA's section 8 program begins with determination of statutory eligibility. The applicant must qualify as a "family," and must be income eligible (see U.S. Housing Act of 1937, sec. 3; 42 U.S.C. 1437 a (a) and (b); and see § 882.209(a)(2) and Parts 812 and 813). However, there are many more eligible families than the number that can be assisted with the section 8 funds committee by HUD to a local PHA. To distribute the limited assistance among eligible families, the PHA must have some way to choose which families will be assisted, and in what order. The regulations require a PHA to set up procedures to allocate fairly the available Certificates in accordance with definite selection standards which have been approved in advance by HUD (see § 882.204 (b)(1)(i)(C) and (b)(3)(ii) and § 882.209(a)). The PHA selects applicants for participation from the program waiting list in accordance with the HUD-approved policies and procedures stated in the PHA's administrative plan and equal opportunity housing plan (§ 882.209(a)(7)).

The proposed rule (§ 882.209 (a)(2) and (a)(4)) provided that a PHA may establish "requirements or preferences" for selecting applicants, including use of a nondurational residency requirement or preference; and may refuse to issue a Certificate because of fraud, or because

of certain types of conduct of a former section 8 or public housing program participant. However, the PHA would not be allowed to establish selection criteria based on an applicant's "expected behavior as a tenant" (proposed § 882.209(a)(3)).

Under the final rule (§ 882.209 (a)(3) and (a)(4)) a PHA may establish PHA determined "preferences" in selection of applicants (if incorporated in the HUD-approved administrative plan or equal opportunity housing plan). The PHA may not, however, impose PHA designated "requirements" for selection in addition to the basic program eligibility requirements under the statute (see section IV C on elimination of authority of the PHA to establish a residency "requirement").

Provisions on denial of assistance for fraud or for past conduct as a section 8 or public housing program participant are moved from the regulatory discussion of tenant selection (in proposed § 882.209) to the new unified statement of bases for denial of assistance because of action or inaction by the family (in the new § 882.210 of the final rule, discussed above in section III of this preamble).

In addition to prohibiting selection based on an applicant's expected behavior as a tenant, the final rule prohibits the PHA from considering an applicant's "suitability as a tenant" (§ 882.209(a)(5)).

A. PHA Discretion in Establishing Selection Procedures

Comments from legal aid offices object to the degree of PHA discretion in selection of applicants. The comments state that PHAs should be required to use uniform selection procedures, should not be allowed to set local selection preferences and should not have authority to establish selection criteria not required by statute.

The statutory scheme presumes a bias in favor of PHA autonomy and local discretion. The statute is intended to take advantage of the flexibility allowed by administration of the program through State chartered entities sensitive to local concerns and priorities, and able to respond to local conditions (see U.S. Housing Act of 1937, secs. 2, 3(b)(6), and 8(b)(1); 42 U.S.C. 1437, 1437a(b)(6), 1437f(b)(1)). Section 2 of the Act states that "it is the policy of the United States * * * to vest in local public housing agencies *the maximum amount of responsibility in their administration of their housing programs*" (U.S. Housing Act of 1937, sec. 2, 42 U.S.C. 1437).

It is the judgment of the Department that the selection procedures in this rule strike a reasonable balance between the necessary minimum of federal regulatory controls, and the capacity of each PHA to administer the program in accordance with local objectives and circumstances. Removing PHA discretion and authority in selection of program participants in the manner requested by the legal aid comments would forfeit the advantage of program administration by local public bodies.

The statute does not, as suggested by some comments, bar use by PHAs of non-statutory criteria for admission to the program, nor does the statute deny to HUD the authority to regulate the use of such non-statutory criteria by PHAs. The caselaw has very clearly and soundly concluded that PHAs may establish additional non-statutory criteria for program admission which are reasonably related to program objectives (*Baker v. Cincinnati Metropolitan Housing Authority*, 675 F.2d 836, 839–40 (6th Cir. 1982); *Vandermark v. Housing Authority of the City of York*, 663 F.2d 436, 439–40 (3d Cir. 1981)). Preferences function also as an explicit mode of allocation of a finite subsidy resource where there is no reason to favor a federal formula over a local choice.

B. Denial of Participation to Particular Group or Category

A legal aid organization recommends adoption in the Section 8 Existing Housing Program of the current public housing regulatory provision that PHA admission procedures may "not automatically deny admission to a particular group or category of otherwise eligible applicants (e.g., unwed mothers or families with children born out of wedlock)" (§ 860.204(c)(1)).

There is no present need to expand the reach of this regulatory requirement to the Section 8 Existing Housing Program. The section 8 existing annual contributions contract currently prohibits automatic exclusion of participation in the program *"because of membership in a class such as unmarried mothers, recipients of public assistance, handicapped persons, etc."* (ACC, Part II, § 2.5(c), HUD 52520 C (Supp) (10/79), p. 3.) In addition, PHA selection procedures must be approved in advance by HUD. HUD can require elimination of unreasonable selection procedures proposed by a PHA.

C. Residency

The proposed rule did not revise the prior regulatory provisions which allow a PHA to utilize a requirement or preference for persons living in the jurisdiction, but which prohibit a requirement or preference based upon the length of time the applicant has resided in the jurisdiction (proposed rule § 882.209(a)(4); old rule § 882.209(a)(3)). The residency provisions were included in the proposed rule because of an editorial reorganization to accomodate other substantive changes in the rule. However, a comment from a legal aid organization claims that any requirement for local residency before issuance of a section 8 Certificate discourages travel, and therefore violates the constitutional right to travel. The comment states that any residence requirement, even a non-durational requirement, denies assistance to persons too poor to move to a PHA jurisdiction. The comment also argues that it is unnecessary to impose a local residency requirement in order to make the Section 8 Existing Housing Program "politically palatable" in most communities.

The claims that the residency provisions are unconstitutional ignores the established constitutional distinction between a bona fide residence requirement, and a requirement based on length of residence (e.g., *Dunn* v. *Blumstein*, 405 U.S. 330 (1972); *Shapiro* v. *Thompson*, 394 U.S. 618 (1969)). The Constitution does not prohibit a requirement or preference for bona fide residence in the locality as a condition for State benefits, such as subsidized housing.

Local residency preferences serve purposes other than making a section 8 program politically palatable. A community may wish to provide assistance first to families already living in the community before offering assistance to families not yet residing in the community. The residency preference is a device for allocation of a limited pot of assistance.

The final rule (§ 882.209(a)(4) continues to allow PHAs to establish nondurational residency "preferences," and prohibits durational preferences. The PHA may not, however, impose a residency "requirement," which would prohibit selection of non-residents.

D. Owner Responsibility for Selection of Tenants

Legal aid comments assert that allowing PHAs to establish selection requirements and preferences violates the statutory directive that selection of tenants "shall be the function of the owner" (U.S. Housing Act of 1937, sec. 8(d)(1)(A), 42 U.S.C. 1437f(d)(1)(A)).

Under the final rule (§ 882.209(a)(5)), the PHA may not:

establish selection criteria based on the applicant's suitability as a tenant or expected behavior as a tenant. The Owner will select

the tenant. The PHA's selection of an applicant for participation is not a representation by the PHA to the Owner concerning expected behavior of the Family in tenancy of a unit, or concerning the Family's suitability for tenancy.

The provisions of the rule amply comply with the statutory allocation of responsibility for tenant selection.

The statute allocates selection functions between the PHA and the owner, and indicates also that the precise division of functions is subject to HUD requirements. The provision that selection of tenants for existing units is the function of the owner is *"subject to the provisions of the annual contributions contract between the Secretary and the [Public Housing] Agency"* (U.S. Housing Act of 1937, sec. 8(d)(1)(A), 42 U.S.C. 1437f(d)(1)(A)). Under the annual contributions contract, the PHA administering a Section 8 Existing Housing Program agrees to comply with HUD regulations and requirements for the program.

In describing the respective roles of the PHA and the owner, the Congress has referred to "the basic responsibility over tenant selection which, under current law, rests solely with the *PHA and owner*" (Conference Report, Housing and Community Development Amendments of 1979, H.R. Rep. No. 96-706, 96th Cong., 1st Sess. 55 (1979)) (emphasis supplied). The PHA selects a family to be assisted under the program, if and when the family rents a suitable unit. The owner selects tenants for occupancy of the owner's units. Indeed, under the structure of the Section 8 Existing Housing Program, the PHA has no way of forcing an owner to select and rent to a family holding a Certificate. On the other hand, the owner has no involvement with the separate process by which a PHA selects families for participation in the program.

Legal aid comments claim that allowing PHAs to reject an applicant because of the applicant's past conduct as a section 8 or public housing tenant violates the requirement that the selection of tenants is the function of the owner. However, the regulatory grounds for denial of admission (§ 882.210, see discussion at section III of this preamble) do not permit the PHA to deny assistance because of a family's suitability or expected behavior as a tenant. The responsibility for tenant selection is left to the owner. The owner decides whether a family holding a Certificate from the PHA will be selected to reside as a tenant in the owner's unit. The grounds for denial of admission because of past conduct of the applicant (§ 882.210(b)) all deal with actions by the applicant related to past participation in a federal housing assistance program (fraud or violation of section 8 program obligations, failure to pay amounts owed to a PHA or to reimburse section 8 owner claims paid by a PHA). The PHA is responsible for determining who may receive a subsidy under the program. This is not the function of the owner. The PHA's decision to deny assistance because of the family's past conduct in Federal housing programs does not in any way compromise the owner's choice to rent or not to rent a unit to a family holding a Certificate.

Unlike the comments from legal aid offices, individual and PHA comments favor allowing the PHA to deny assistance to a past section 8 program participant who violated the lease, failed to pay rent or vacated the unit in violation of the lease. A PHA comment states that the PHA should be able to deny a Certificate for verified undesirable behavior as a section 8 or public housing tenant. Another comment recommends that PHAs should be able to screen applicants, for their past tenancy and credit record. The comments suggest that the admission of tenants with a history of lease violation reduces the credibility of the program among owners, and will affect owner participation.

The Department is sensitive to the importance of the concerns reflected in the comments. The ability of the Section 8 Existing Housing Program to provide a broad choice of housing opportunities to program families depends completely on the voluntary choice of private owners to rent their units under the program. The ability of a PHA to induce owners to rent units to Certificate holders may be affected by the characteristics of families selected by the PHA to participate in the program.

However, a family unacceptable to one owner may be acceptable to another. Leaving screening of prospective tenants to the owner offers the family the maximum opportunity to find a unit in the local housing market. In selecting tenants, the private landlord may use whatever credit checks or screening process best suits the landlord's interest (subject of course to applicable fair housing limitations). The landlord may apply this process to any prospective tenant, including a section 8 Certificate holder. In deciding whether to rent to a family, the owner's judgment should dictate the level and type of tenant screening.

There is also considerable administrative advantage to PHAs in avoiding screening for expected behavior or suitability as a tenant. Because screening is not the responsibility of the PHA, the PHA does not need to decide whether the PHA has enough information to justify withholding assistance. The PHA can, however, emphasize to the owner, before execution of an assistance contract for a unit, that the PHA has not pre-screened the family for suitability or behavior and that, as with any other private market tenant, this is the job of the owner.

E. Waiting List

Prior to this rule, requirements for administration of a PHA waiting list were handled separately (old § 882.207 (b) and (c)) from the procedures for selection and issuance of Certificates (old § 882.209). The final rule merges the regulatory treatment of waiting list procedures into the treatment of PHA selection procedures (in § 882.209(a) (7) and (8), for a clearer presentation of the sequence of procedures leading to family participation in the PHA program.

The regulation continues the requirement for the PHA to maintain a waiting list of income eligible families which have applied for participation in the program (§ 882.209(a)(7)). However, under the old regulation (§ 882.207(c)), the PHA could suspend taking of applications only if there "is no reasonable prospect" that additional Certificates can be issued in the next year, and must make public announcement of the suspension. The new regulation provides that if there is insufficient funding to admit all eligible applicants for participation, the PHA may *at any time* suspend the acceptance or processing of new applications, or the addition of new listings to the waiting list (§ 882.209(a) (8)).

This revision will allow PHAs more flexibility in administration of the waiting list. The change will also tend to minimize PHA expenses in processing of applications, and in maintenance of the waiting list. The PHA is able to judge whether additional applications are necessary to enlarge the pool of eligible applicants to whom Certificates may be issued. The regulation continues the requirement for public announcement of a suspension.

F. Implementation of Statutory Selection Preference

A 1979 statutory amendment requires a preference for selection of families which occupy substandard housing or are involuntarily displaced at the time they are seeking assistance (amendment of sec. 8(d)(1)(A) of the U.S. Housing Act of 1937, Housing and Community Development Amendments of 1979, sec.

206(b)(1), Pub. L. 96–153, 42 U.S.C. 1437f(d)(1)(A)). A comment from a legal aid organization urges that implementation of the 1979 preference should be included in the rule. The 1979 preference provision was amended by the Congress in 1983 to expand the preference requirement to cover families who "are paying more than 50 per centum of family income for rent" (amendment of section 8(d)(1)(A) of the U.S. Housing Act of 1937, by Housing and Urban-Rural Recovery Act of 1983, Title II, sec. 203(b)(1), Pub. L. 98–181).

The 1979 preference, as amended in 1983, will be implemented in a separate rulemaking, which will cover parallel statutory requirements for preference in selecting families for various types of assisted housing, including section 8 existing. This is desirable in order to assure a uniform implementation of the statutory preference requirements applicable in the different programs.

G. Statement of Selection Procedures: Equal Opportunity Housing Plan and Administrative Plan

Under the proposed selection and hearing rule, PHA selection procedures, including any preferences or requirements for selection, must be stated in a single, HUD-approved "equal opportunity housing plan" (§ 882.204(b)(1)). The preamble stated (47 FR 32170) that "PHA discretion in determining selection criteria and preferences should be limited only by statutory eligibility limitations and the distinctive set of policy concerns which are evoked by equal housing opportunity review." The proposed change in selection procedures is not adopted in the final rule.

A comment from a legal aid service organization recommends that a statement of selection criteria and preferences should be retained in the PHA's administrative plan, and should be reviewed by HUD personnel with responsibility for programmatic issues.

A PHA urges that certain types of preference factors (such as excess rent burden, displacement, occupancy of substandard housing, handicap or disaster) should be in the administrative plan rather than the equal opportunity housing plan.

On reconsideration, the Department has decided to preserve the separate roles, under prior practice, of the administrative plan and the equal opportunity housing plan in establishing the PHA's selection procedures. Administration of selection requirements involves factors not characteristically considered in the province of an equal opportunity review. The equal opportunity housing plan is best used to express the particular equal opportunity concerns in selection of tenants.

The final rule provides that the PHA must select applicants for participation in accordance with policies and procedures, including any preferences, stated in the administrative plan *or* equal opportunity housing plan (§ 882.209(a)(7) and § 882.209(a)(3)). The regulation now indicates the special role of the equal opportunity housing plan. The final rule (§ 882.204(b)(1)(i)(C)) states that the *equal opportunity housing plan* must describe the PHA's policies and procedures for "selecting Families for participation without discrimination because of age, race, color, religion, sex, handicap or national origin." On the other hand, the regulation (§ 882.204(b)(3)(ii)) states that the PHA's *administrative plan* must state the PHA's policies and procedures for "handling applications and determining Family eligibility"and "selecting Families for participation in the PHA's Section 8 program (including any selection preferences)."

A PHA comment expresses concern that the PHA should not be restricted to stating its selection criteria in the equal opportunity housing plan. Neither the proposed nor the final rule limits the ability of the PHA to publicize the nature of its selection requirements in any desired form.

V. Unit Size

The proposed rule on applicant selection and informal hearings deals with two aspects of a PHA's standards for determining the unit size which is entered on a family's Certificate. First, the proposed rule (§ 882.209(b)(i)) gives the PHA flexibility in establishing standards for determining the appropriate unit size ("number of bedrooms or other sleeping rooms") for different types of families. Second, the proposed rule (proposed § 882.209(b)(ii)) allows the PHA to establish criteria for granting exceptions from the unit size standards. Both aspects were the subject of public comment.

Under the proposed rule, a PHA's unit size standards must provide for efficient use of program resources while avoiding overcrowding, and must be consistent with the housing quality standards (which establish minimum requirements for approval of a unit selected by a family). A comment from a former PHA employee recommends that HUD prescribe a nationally developed occupancy standard. A comment from a legal aid service organization asserts that because of the PHA discretion allowed under the rule some PHAs may establish unit size standards that will cause hardship to program families. The comment also objects to deletion of the prior regulatory requirement that the bedroom size assigned (on the Certificate) may not require persons of opposite sex, other than husband and wife or very young children, to occupy the same room.

The Department has considered the comments, but has decided to allow considerable discretion to PHAs in establishment of unit size standards, rather than dictate for all PHAs national standards governing the number of bedrooms for a family. The final rule requires (§ 882.209(b)(2)) that:

> The PHA shall enter on the Certificate the smallest number of bedrooms consistent with standards established by the PHA for determining the number of bedrooms for Families of different sizes and compositions. The PHA's standards shall provide for the minimum commitment of housing assistance payments while avoiding overcrowding and shall be consistent with the applicable housing quality standards * * *.

The regulation as adopted sufficiently controls the discretion of PHAs in determining unit size standards, while allowing PHAs to adjust unit size standards to local circumstances. The Department addresses this issue in the spirit of the statutory objective to leave maximum discretion to PHAs in the administration of their section 8 programs, and of the broad national objective of deregulation across the spectrum of federal programs.

To understand the regulatory provisions it is necessary to distinguish the function of the Certificate unit size standards (under amended § 882.209(b)(2)), as contrasted with the function of the housing quality standards ("HQS") (especially the HQS space and security standards in § 882.109(c)). The Certificate unit size standards are used to determine the maximum fair market rent (expressed in number of bedrooms) for a unit rented by a family (cf. definition of "unit" in § 882.102 and cf. § 882.106 and § 888.102(b) (as revised 48 FR 43582)). The HQS are used to evaluate the characteristics of the individual unit selected by a family, so that units subsidized under the program are decent, safe and sanitary as determined under minimum program standards. The Certificate unit size standards limit the rent that can be paid for a unit, while the HQS determine whether the unit can be subsidized under the program at any rent.

Under the final rule (§ 882.209(b)(2)), the PHA is required to establish occupancy standards to govern the number of bedrooms entered on the

Certificate issued to a family. The PHA occupancy standards must provide for the smallest subsidy level which will avoid overcrowding of a family, and will permit the family to rent a unit conforming with HQS. When issuing a Certificate, the PHA must enter the number of bedrooms for which the family is eligible under the PHA standards.

The proposed and the final rule do not relax the HQS standards in any way. The HQS (§ 882.109(c)) provide, first, that the unit must afford the family "adequate space and security" (minimum requirement), and, second, that there must be "at least one *bedroom or living/sleeping room* of appropriate size for each two persons". This standard may be modified with approval of the local HUD office (as in the case of all HQS acceptability criteria). Previously the HQS required at least one *"sleeping* or living/sleeping room" for each two people (§ 882.109(c)(2) of prior rule). This technical amendment clarifies the purpose of the original HQS standard.

Another amendment (§ 882.209(i)(2)) specifies that the PHA may not prohibit a family from renting a unit with fewer bedrooms than the number stated on the Certificate. The smaller unit must, however, satisfy the regular HQS requirements. Thus, where the PHA unit size standards as applied to a family exceed the HQS minimum, the family has the choice of renting a unit up to the maximum FMR (by bedroom size) allowed under the Certificate, or down to the HQS minimum.

Comments from a legal aid office and a PHA object to deletion of the minimum bedroom requirement in the unit size standard. The legal aid comment states that families will be pressured by PHAs and owners into accepting units which are unsafe and unsanitary. The PHA objects to counting a living room as a sleeping room under HQS. The regulation change does not lower HQS minimums. The regulation permits the family to shop for a unit which satisifies the HQS space and other requirements, and which can be rented within the applicable FMR. At the same time, the PHA is required (§ 882.209(b)(2)) to establish Certificate unit size standards higher than the HQS minimum where necessary to avoid overcrowding.

A. Occupancy Standards—Family Members of Opposite Sex

The Department agrees with comments advising that the regulation should continue to prescribe minimum unit size standards for persons of different sex who are members of an assisted family. In the final rule, this concern is addressed in the determination of unit acceptability under HQS rather than in the Certificate unit size standards, as under the prior regulation (old § 882.209(a)(2)(ii)). The following provision has been added to the HQS "acceptability criteria" for unit space and security:

> Persons of opposite sex, other than husband and wife or very young children, shall not be required to occupy the same bedroom or living/sleeping room.
> (§ 882.109(c)(2))

The number of bedrooms entered on the Certificate issued to a family must be consistent with the amended HQS acceptability requirement on occupancy by persons of opposite sex.

It should be noted that whereas the old Certificate unit size standards established a minimum number of *bedrooms* ("bedroom size") for persons of opposite sex, the new HQS criterion is a limitation on occupancy of the same "bedroom *or living/sleeping room"* by persons of opposite sex.

B. Granting of Exceptions to Unit Size Standards

Under the judgment of the United States District Court in the *Nichols* case, a PHA which terminates or reduces section 8 subsidy to a recipient family because of a change in family size and composition must notify the recipient of any right to waiver of family size requirements, and of the grounds on which a waiver may be granted by the PHA.

The proposed rule (selection and hearing) (§ 882.209(b)(ii)) would have permitted a PHA to: "grant exceptions from the PHA unit size standards * * * to allow the assignment of a larger unit size than that established under the standards if warranted by the relationship, age, sex, health or handicap of the Family members." Comments from legal aid offices state that the proposed provisions do not satisfy the *Nichols* order, since the provisions do not use the word "waiver" and do not establish a "right" to a waiver, that the right to a waiver should be mandatory, not discretionary, and should be built into the unit size standards, or that families should have a "mandatory right to a waiver" if they can show "unique reasonable circumstances" that demonstrate "good cause" for deviation from the standards.

With respect to terminology, HUD believes that the authority for an "exception," as provided in the regulation, is the same as a "waiver," i.e., authority for the PHA to treat special cases in a special manner. The term "exception" will be more readily understood by PHAs and families. The Department prefers to reserve the term "waiver" for a provision relieving obligations under an outstanding Department regulation (see Part 899, Subpart A).

The final rule (§ 882.209(b)(2)) provides that:

> The PHA shall grant exceptions from the standards if the PHA determines the exceptions are justified by the relationship, age, sex, health or handicap of Family members, *or other individual circumstances.* (emphasis added)

The provision allowing exceptions justified by "individual circumstances" is new, and is intended to afford the PHA additional latitude to respond to special needs in individual cases. In each case, the determination to grant an exception from the standard rests in the PHA's administrative discretion.

HUD does not believe, as suggested by the comments, that the order in *Nichols* requires that the regulations specify the grounds for waiver of unit size standards by each PHA participating in the program. The order requires that a PHA notify the participant of the grounds for which a waiver may be considered by the PHA (see discussion in section V C below). Different PHAs have different unit size standards which reflect local circumstances and the administrative judgment of the individual PHAs. Similarly, there should be local discretion to define the types of circumstances in which the PHA may consider a waiver of the local standards to meet the unique problems of individual families.

HUD also does not agree that granting a waiver by a PHA must be mandatory under the court order, or that circumstances in which a waiver must be given must be predefined in the PHA standards. The order requires notice of the grounds upon which a waiver *"may* be granted" by a PHA. As stated in a PHA comment, exceptions from unit size standards should be based on the circumstances of individual cases. The purpose of providing for a "waiver" is to allow the PHA flexibility to respond to special cases and problems not adequately treated in the generally applicable PHA unit size standards.

C. Notice of Grounds for Exception

The proposed rule stated that the PHA criteria for granting exceptions from the unit size standards, and the procedures for granting exceptions shall be made available to applicants and participating families (proposed § 882.209(b)(1)(2)). The comment from counsel for the *Nichols* plaintiff states that the

proposed requirement that exception criteria must be "made available" does not satisfy the *Nichols* obligation to give notice of the right to a waiver. A comment from a PHA, however, objects to the requirements to make the grounds for exception available to applicants and participants since it is difficult to foresee all possible reasons for exception.

The decree in *Nichols* applies to a participant ("recipient") whose assistance is reduced or terminated pursuant to § 882.213 because of a decrease in family size. To clarify the Department's action to comply with the notice requirement of the *Nichols* decree, the provision for notice to a recipient "of his right to a waiver and the grounds upon which a waiver may be granted" is now incorporated in § 882.213, and provides in terms that the PHA must "notify" the family that exceptions to the unit-size standards may be granted and of the circumstances in which the grant of an exception will be considered by the PHA.

VI. Status of Applicant and Participant

The United States Housing Act of 1937 sets the minimum conditions of eligibility for assistance under the Section 8 Existing Housing Program, but does not create an entitlement of any individual to section 8 assistance. The rule has now been amended to make clear that nothing in the rule is intended to create or imply any right to participation in the program. The rule acknowledges, however, that an applicant may have a right, independent of the rule, to bring a judicial action challenging a PHA's violation of a constitutional or statutory requirement (e.g., equal opportunity requirements under Title VI or Title VIII), and states that the rule is not intended to affect such a right of action:

> Nothing in this Part is intended to confer on an applicant for participation any right to be listed on the PHA waiting list, to any particular position on the waiting list, to receive a Certificate, or to participate in the PHA's program. The foregoing sentence shall not be deemed to affect or prejudice any judicially-recognized cause of action. (§ 882.209(a)(9))

The status of an applicant is different from that of a participant. It is important to define the point at which a family moves from the status of "applicant" to the status of "participant":

> A Family becomes a participant in the PHA's Secton 8 Existing Housing Program ("participant") *when the PHA executes a Contract with an Owner for housing assistance payments on behalf of the Family.* (§ 882.209(a)(1)) (emphasis supplied)

The program regulation has been revised at various points to reflect the distinction between an applicant and a participant, and to define regulatory requirements applicable to each stage of program participation (see especially, § 882.216). The revisions will remove confusion under the prior rule as to the status and rights of a family at the preliminary stages which may lead to participation in the program.

VII. PHA Review of Decisions Affecting an Applicant or Participant

Before promulgation of this rule, a single set of minimum hearing procedures applied to both applicants to the program and current participants in the program (Handbook 7420.7, section 10–8, revised November 1979). In the same way, the proposed rule (selection and hearing) provided for a single hearing procedure without distinguishing between applicants and current program participants (although the *Nichols* decision only mandated a rulemaking proceeding for the certified class of participants whose assistance is terminated or reduced because of change in family size or composition). The proposed procedures were essentially the same as in the handbook.

In the preamble to the proposed rule, the Department invited comment on "alternative regulatory patterns" which would grant PHAs greater discretion to fashion locally developed informal hearing procedures after giving "due consideration" to the elements of a fair hearing.

After careful examination of public comments on the proposed rule, the Department has determined:

PHA review procedures will be separately defined for applicants and for current participants in the program.

The regulation will state mimimum procedures for PHA review of determinations concerning an applicant of participant.

For an applicant, the minimum procedures will require prompt written notice of a PHA determination, and use of a simple and informal procedure for PHA review of the determination. The applicant will have the opportunity to present written or oral objections to the determination.

For a participant, the PHA will be required to provide an opportunity for an informal hearing to review certain PHA determinations relating to the individual circumstances of the participant. The purpose of the hearing is to consider whether a PHA decision is in accordance with PHA rules and HUD regulations.

A. PHA Discretion in Development of Review Procedure

Legal aid comments generally advocate imposing strong, uniform and specific hearing requirements on PHAs. The comments state that PHAs lack the resources and expertise to develop hearing systems on their own, that there are no geographic distinctions justifying local determination of proper hearing procedures, that PHA staff prefer the security of HUD prescribed hearing guidelines, that PHAs will exercise poor discretion if given a choice, that failure to mandate specific hearing procedures will result in litigation, and that specific HUD hearing requirements are necessary for the protection of tenants. Legal aid comments object also that the alternative procedures would only require the PHA to give "due consideration" to basic elements of a due process hearing.

Comments from several PHAs and from a legal aid office state that PHAs should have flexibility in devising hearing procedures for different situations. A PHA comment notes the demand on PHA administrative time if a PHA tries to offer the same level of protection to everyone.

On reconsideration, HUD believes that there are compelling reasons for the Department to specify minimum procedures for appeal of PHA determinations for each of the two major phases of a family's involvement in the program: first as an applicant, and then as a participant. The Section 8 Existing Housing Program is administered by PHAs which differ greatly in program size and administrative resources. Many PHAs do not presently have the expertise and capacity to devise procedures for review of PHA decisions, or may welcome the assurance of HUD-determined minimum procedures. The Section 8 Existing Housing Program functions in much the same way in different places, in accordance with a simple national program design.

The Department has not adopted the alternative hearing approach discussed in the preamble to the proposed rule. The final rule prescribes minimum review procedures for use by all PHAs. The desirability of recognizing differences in the character and importance of the private interests affected by PHA determinations is built into the review and hearing procedures provided in the regulation, by providing separate procedures for applicants and for current program participants (see § 882.216).

B. Review Procedure for Applicants

1. *Public Comments.* Several PHA comments recommend the use of a simple review procedure for applicants. A PHA suggests that an applicant should simply be given an opportunity to meet with a PHA representative. Another PHA states that where an applicant is determined ineligible, the PHA should give written notice of ineligibility, and an opportunity for an interview and review by an impartial official of the PHA. A PHA comment claims that since the determination of applicant ineligibility is generally based on HUD requirements, the hearing for an applicant is useless.

2. *Factors Considered.* Where an applicant seeks admission to the Section 8 Existing Housing Program, neither the statute nor the regulation create any property right to assistance under the Act, or to PHA action which may lead to participation in the program (see section VI of this preamble; see § 882.209(a)(1) and § 882.209(a)(9)). Since the applicant has no property right, a PHA is not constitutionally required to provide any administrative due process hearing on PHA determinations to grant or deny participation to an applicant. The Department has decided, however, to require that PHAs provide an applicant the opportunity for informal review of a decision denying assistance to an applicant, in order to minimize mistakes by the PHA in application of the PHA's selection procedures.

In determining procedures for PHA review of PHA decisions on applications for participation, the Department has balanced possible benefits for the applicant against the programmatic, fiscal and administrative costs of procedural safeguards, and has considered the following factors:

There is a very large pool of program eligibles in relation to the number of places available. Admission to the program does not follow from mere proof of eligibility.

A determination that a family is eligible, and to list the family on the PHA waiting list, means only that the family can stand in line for assistance. There is no guarantee that a determination of eligibility or listing on the waiting list will ever actually result in issuance of a Certificate, or that, if a Certificate is issued, the family will find a landlord who will accept the family as a suitable tenant.

Because of the great number of potential applicants, the administration of procedures for reconsideration of decisions on applicants may be a substantial burden on the administrative capacities and fiscal resources of a PHA.

There is only one source of funding for housing assistance payments to families and for PHA expenses in administration of the Section 8 Existing Housing Program (U.S. Housing Act of 1937, sec. 5(c) and sec. 8, 42 U.S.C. 1437c(c) and 1437f). If PHA administrative fees are increased to cover increased PHA costs in administering procedures for review of PHA determinations, less money remains for assistance payments to families.

The Section 8 Existing Housing Program has definite and limited resources. The admission of one family means that admission must be denied to some other eligible family.

The chances of admission to the program are determined by the assistance resources available to the PHA, and the operation of the waiting list, rather than by the isolated consideration of facts relating to a particular family. The operation of this selection procedure can best be monitored by HUD review of the PHA management practices, rather than by determinations in PHA hearings for individual applicants.

A PHA hearing process is at best an imperfect device for the determination of controverted fact. PHAs do not have the power to subpoena evidence or witnesses. Even within the limits of the PHA's capacities to conduct hearings, there is an inescapable dilemma: the more elaborate the procedure for PHA review of decisions affecting an applicant, the more burdensome and expensive to the PHA; the less elaborate the procedure, the less effective in determining matters of disputed fact.

3. *Procedures Required.* Having weighed all the above considerations, the Department has decided to require PHAs to establish a simple but effective procedure for informal review of PHA determinations on an application for admission to the program. Under the final rule (§ 882.216(a)(1)) the PHA must give an opportunity for an informal review of a decision denying an applicant:

Listing on the PHA waiting list.

Issuance of a Certificate of family participation.

Participation in the program (i.e., execution of an assistance contract on behalf of the family).

The PHA review procedure must include the following elements (§ 882.216(a)):

Prompt written notice of a PHA decision denying assistance to the applicant. The notice must give a *brief statement of the reasons for the decision.* The notice must also state that the applicant may request an informal review of the decision, and describe how to obtain the review.

(§ 882.216(a)(1))

An *opportunity for informal review* of the PHA decision, in accordance with *review procedures established by the PHA.*

Review by *any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of such person.*

Opportunity for applicant to present written or oral objections to the PHA decision.

Prompt written *notice of the final PHA decision, including a brief statement of the reasons for the decision.*

(§ 882.209(a)(2))

4. *Subjects Covered by Applicant Review Process.* Comment from a legal aid organization contends that a hearing should be required for any PHA action affecting the interest of an applicant or participant. Comments from PHAs on the other hand, suggest limitations on the requirement for a hearing. PHA comments state that a hearing is unnecessary if a tenant fails to supply required information, or fails to keep appointments. PHAs recommend elimination of a hearing requirement for a PHA determination that a family is not eligible for assistance, for a PHA determination of the appropriate unit size for a family (number of bedrooms on Certificate), for a PHA determination that the unit selected by a family is not in accordance with HQS, or for a PHA determination not to extend a Certificate.

Under the final rule, the PHA is required to offer the applicant the opportunity to present objections to a PHA decision denying assistance to the applicant. However, the regulation (§ 882.216(a)(3)) provides that the informal review requirements for applicants do not apply to the following types of determinations, which are properly left to the administrative discretion of the PHA, or which are controlled by applicable program requirements:

To review discretionary administrative determinations by the PHA, or to consider general policy issues or class grievances.

To review the PHA's determination of the number of bedrooms entered on the Certificate under the PHA's unit size standards.

To review the PHA's determination that a unit located by a Certificate

holder does not comply with the HQS, or the PHA's determination not to approve the lease for the unit.

To review the PHA's decision not to approve a request by a Certificate holder for an extension of the term of the Certificate.

C. PHA Hearing Procedure for Participants

The proposed selection and hearing rule (proposed § 882.216(a)(2)) would have required the PHA to provide the opportunity for an informal hearing whenever assistance to a Certificate-holder is *terminated or reduced.* Under the final rule, the PHA is required to provide the opportunity for an informal hearing on key PHA decisions which affect the interests of a participant (§ 882.216(b)(1)). The regulation defines, with more precision than in the proposed rule, the purpose and subjects of the hearing for program participants.

1. *Purpose of Hearing for Participant.* The hearing process under the final rule is designed to assure that decisions by the PHA with respect to a participant family comply with applicable rules. The hearing process does not displace the regular PHA administrative process for matters committed to PHA discretion and management judgment.

The PHA must provide the opportunity for a hearing to consider if a PHA decision is *"in accordance with law, HUD regulations and PHA rules"* (§ 882.216(b)(1)). Thus, the participant may not claim a hearing on a PHA decision merely because the family objects to a law rule. The right to a hearing applies only when the family is claiming that the law or rule has been incorrectly applied by the PHA. For example, if the percentage of income the family must contribute for rent increases because of a change in statutory rental requirements, the family has no right to a hearing unless the family claims that the PHA has made a mistake in computing the family's contribution under the statute and implement HUD rules.

The participant hearing requirements applies only to PHA decisions "relating to the individual circumstances of the Family" (§ 882.216(b)(1)). Correspondingly, the PHA is not required to provide an opportunity for an informal hearing "to review discretionary administrative determinations by the PHA, or to consider general policy issues or class grievances" (§ 882.216(b)(2)(i)).

2. *Subject of Hearing for Participant.* At a family's request, PHA must provide the opportunity for an informal hearing to consider if the following types of decisions are in accordance with law, HUD regulations and PHA rules (§ 882.216(b)(1)):

A determination of the amount of the family contribution to rent (Total Tenant Payment or Tenant Rent) (§ 882.216(b)(1)(i)).

The rule specifies that the administrative hearing requirement does not apply to the determination of the PHA's schedule of Utility Allowances for families in the PHA's section 8 program.

A decision to deny or terminate assistance on behalf of the participant (§ 882.216(b)(1)(ii)).

A determination that a participant is residing in a unit with a larger number of bedrooms than allowed under the PHA unit size standards, or to deny the participant's request for an exception from the standards (§ 882.216(b)(1)(iii)).

A determination of the number of bedrooms to be entered on the Certificate of a participant family which wants to move to another unit (§ 882.216(b)(1)(iv)).

a. *Determination of Family Rent.* The section 8 subsidy is the difference between the family contribution, as determined by a statutory formula, and the full rent for a unit. The regulation requires the PHA to provide the opportunity for an informal hearing on a PHA determination of the amount of the family contribution (total tenant payment and tenant rent (as determined under 24 CFR Part 813) (§ 882.216(b)(1)(i)).

b. *Termination or Denial of Assistance.* The requirement to provide the opportunity for an informal hearing applies to a PHA decision to terminate or deny assistance for a participant (§ 882.216(b)(1)(ii)). Thus the PHA must give a hearing when the PHA terminates assistance payments under an outstanding assistance contract, and when the PHA denies issuance of a new Certificate to a participant who wants to move.

c. *Unit Size Determination.* A PHA comment objects to the requirement for an informal hearing on a PHA determination of the appropriate unit size entered on the Certificate issued to a family. Under the final rule, the requirement to provide the opportunity for an informal hearing will apply: (1) To a determination that a participant family is residing in a unit with a larger number of bedrooms than appropriate under the PHA unit size standards (the *Nichols* situation) and to the denial of the family's request for an exception from the standards (§ 882.209(b)(2), § 882.213 and § 882.216(b)(1)(iii)), and (2) in the case of an assisted family which wants to move to another unit, a determination of the number of bedrooms to be entered on the Certificate issued to the family under the PHA standards (§ 882.209(m)(1) and § 882.216(b)(1)(iv)).

3. *When Hearing Is Not Required.*—a. *Sanctions Against Owner.* Under the proposed rule (selection and hearings), the PHA is not required to provide the opportunity for a hearing to a participant when the PHA exercises any sanction against an owner under the assistance contract, including the termination of housing assistance payments to the owner (proposed § 882.216(a)). Several legal aid comments object to this provision.

The final rule retains (§ 882.216(b)(2)(iii) the exception. The Department considers of paramount importance the need to encourage vigorous enforcement by PHAs of owner obligations under the housing assistance payments contract. It is the reponsibility of the PHA to monitor owner compliance with the assistance contract, and to decide whether and when to take action against the owner under the assistance contract because of the owner's breach of contractual obligations to the PHA under the assistance contract.

The determination of the appropriate contractual remedy against the owner involves the exercise of PHA discretion and judgment. For this reason, the decision to impose sanctions against an owner is not an appropriate subject for the participant hearing process. The judgment of the PHA is based on the overall interests of the local assistance program and the enforcement of national program requirements, such as the owner's obligation to maintain the unit in accordance with HQS.

When assistance payments to the owner are terminated because of owner violations of the contract, the participant may obtain a new Certificate, move to a new unit, and continue to receive subsidy under the program. The participant may prefer not to move, and may, for example, be willing to put up with substandard conditions in the unit, to avoid the inconvenience and expense of a move. However, for the benefit of the program, and to assure the proper application of section 8 subsidy funds in accordance with the statutory purpose (i.e., to assist tenants of decent, safe and sanitary housing), the exercise of contractual sanctions against the owner should not be delayed pending an administrative hearing process on behalf of the tenant.

Although the assistance contract is between the owner and the PHA is for the benefit of the family, the family has no direct right under the contract, either as a contractual party or third party

beneficiary. The assistance contract for the Section 8 Existing Housing Program provides explicitly that the family does not have any right to enforce the assistance contract, or to assert any third party claim under the contract section 23 of assistance contract, HUD 52535, 10/82).[1]

b. *PHA Determination on Unit Compliance With HQS.* PHA comments object to a requirement for informal hearing on a PHA determination that a unit is not up to HQS. For participants, the final regulation states (§ 882.216(b)(2)(ii)) that the PHA is not required to provide the opportunity for an informal hearing to review the PHA's determination that a unit does not comply with HQS, that the owner has failed to maintain or operate the unit to provide decent, safe and sanitary housing in accordance with the HQS (including all services, maintenance and utilities required under the lease), or that the unit is not decent, safe and sanitary because of increase in family size or change in family composition.

The HQS implement the statutory purpose to provide subsidy for a family living in decent, safe and sanitary housing. The PHA must enforce the HQS requirements even if the family is willing to live in housing which does not meet the program standards. As with the decision to enforce contractual sanctions against the owner, the determination that a unit does or does not satisfy HQS is a responsibility entrusted under the regulation to the administrative judgment of the PHA. The participant has no right to participate in this determination, and the PHA is not required to afford the opportunity for informal hearing on the determination.

c. *Extension of Certificate.* Under the proposed rule, the right to an informal hearing applies to a Certificate holder whose assistance is terminated "by refusal to renew a Certificate or otherwise" (proposed § 882.216(a)(3)). PHA comments object to a requirement for informal hearing to challenge a PHA decision on extension of a Certificate.

After a Certificate is issued (to an applicant or a participant), the family has sixty days to find a unit (§ 882.209(c)(1)). The family may ask for extensions of the period to find a unit, for a maximum total Certificate life of 120 days (§ 882.209(d)(2)). The regulation gives the PHA discretion to decide whether or not to grant an extension of the Certificate beyond the initial sixty days (within the maximum allowable period); the regulation does not give the family any right to an extension of the original sixty day Certificate period.

The Department agrees with the comment by a PHA that the decision whether to extend a Certificate is not an appropriate subject of the hearing process. The final rule (§ 882.216(b)(2)(iv)) states that the PHA is not required to afford the opportunity for an informal hearing to review the PHA's decision not to approve a participant family's request for extension of the Certificate.

Extension beyond 120 days is prohibited by the regulation, and consequently is not a proper subject of the hearing process. Extension for up to sixty days after the initial search period is a matter that by regulation is left to the PHA's administrative discretion. In exercising this discretion, the PHA may consider the likelihood of the participant family finding a unit in the period provided; the overall administrative demands on the PHA; and the desirability of releasing funds for use by other families. While the participant may ask for an extension of the Certificate, the participant has no right to an extension.

4. *Furnishing Description of Hearing Procedures to a Participant.* Under the rule, the PHA is required to adopt written procedures for conducting informal hearings for particpants (§ 882.216(b)(6)).

Information on the hearing procedures is included in the packet of information given to a family when the Certificate is issued (§ 882.209(b)(4)(vii)). The information contains a general description of the hearing procedures, including a description of the circumstances in which the PHA is required to provide the opportunity for an informal hearing, and of the procedures for requesting a hearing.

5. *Notice of Determination and Right to a Hearing.* The proposed rule (selection and hearings) required the PHA to notify the "Certificate holder" of any PHA decision to "deny, defer, terminate or reduce" housing assistance, and that the Certificate holder may request an informal hearing (proposed § 882.216(b)).

The final rule (§ 882.216(b)(3)(i)) requires the PHA to give prompt written notice of a determination (1) to deny or terminate housing assistance to the participant, or (2) that the unit in which a family is living is too large under the PHA unit size standards, or to deny the family's request for an exemption from the standards. The notice to the participant must contain a brief statement of the reasons for the decision. The notice must also state that the participant may request an informal hearing on the decision, and the time by which the request for an informal hearing must be made by the participant.

The final rule (§ 882.216(b)(3)(ii)) provides that when the PHA determines: (1) The amount of the family contribution to rent, or (2) the number of bedrooms entered on the Certificate of an assisted family which wants to move to another unit, the PHA must notify the participant that the participant may ask for an explanation of the basis for the PHA determination and that the participant may request an informal hearing on the determination.

By statute, family income is reexamined at least annually, and the family share of the rent is recomputed in accordance with a statutory formula. This reexamination and redetermination is carried out every year for all participant families. For almost all families, the rental determination is a technical application of the HUD-prescribed rent computation procedures to the income information furnished by the family. The need for an informal hearing on a rental determination applies only in that small minority of cases in which the family desires to challenge the legal correctness of the PHA's rental computation (including the factual basis for the computation). The family can request an explanation of the rental computation. The PHA may, for example, furnish the family a copy of the PHA worksheets showing the rental computation.

The decision on the Certificate unit size determination is also part of the PHA's routine administrative process. The unit size is stated on the Certificate issued to the family. There is no need to require separate notice of the unit size determination. The participant may ask for an explanation of how the unit size was determined under the PHA unit size standards.

Legal aid comments recommend that the regulations state that the PHA notice to a participant must give the factual basis for a proposed decision. The Department believes that the regulatory requirements for notice of the reason for decision (termination of assistance, family in oversized unit), or of the opportunity for explanation (rent, unit size on Certificate) are sufficient to

[1] In *Holbrook v. Pitt*, 643 F.2d 1261 (1981), reh. den. July 7, 1981, the Seventh Circuit held that tenants in another section 8 program were third party beneficiaries of the assistance contract between HUD and the project owner. The assistance contract at issue in that case did not include a contractual disclaimer of intent to create third party rights under the contract. The existence of a third-party beneficiary claim depends on the intention of the original parties, as expressed in the contract, to create a direct right of enforcement in the third party beneficiary.

inform the family of the basis for a decision, and to enable the family to present objections effectively at an informal hearing.

6. *Time of Hearing.* The proposed rule (§ 882.216) states the cases in which an informal hearing is required, but does not specify when the hearing must be held. Comment from a legal aid office says that there should be a right to a hearing before the PHA terminates subsidy for a family. A PHA says that a hearing should not be required prior to "reduction" of subsidy (i.e., determination of the family contribution). A PHA comment contends that a PHA should not be required to take positive action for continuance of assistance pending the hearing.

Under the final rule (§ 882.216(b)(4)), the participant must be given opportunity for an informal hearing before an action or determination by the PHA if the PHA decides to terminate the ongoing flow of assistance payments under an outstanding assistance contract. Conversely, however, there is no regulatory requirement for an informal hearing before a determination of family rent, a determination to deny assistance on behalf of the family (refusal to issue a new Certificate when the family wants to move, to enter a Contract or to approve a lease), or a determination of the unit size on the Certificate issued to a participant who wants to move.

This distinction is based on an analysis of the structure and practical realities of the Section 8 Existing Housing Program in the light of the constitutional principles enunciated by the Supreme Court in *Matthews v. Eldridge*, 424 U.S. 319 (1976).

a. *When Prior Hearing is Required: Termination of Payments by the PHA Under an Assistance Contract.* If the PHA proposes to terminate the flow of assistance payments on behalf of a participant during the term of an outstanding assistance contract (and is required to provide an opportunity for informal hearing on the determination; see § 882.216(b) (1) and (2)), the PHA must provide the opportunity for informal hearing *before* the termination (§ 882.216(b)(4)). The PHA may stop assistance payments because of owner's breach of the contract without giving any administrative hearing for the participant (§ 882.216(b)(2)(iii)). However, if the PHA wants, for example, to terminate assistance payments for participant fraud, or for violation of family obligations (§ 882.210(d)), or because the family is residing in an oversized unit (§ 882.213), the PHA must give the family the opportunity for an informal hearing on the PHA decision before the termination of assistance payments.

The interest of the participant family is greatest when the PHA is cutting off an ongoing stream of assistance payments under an outstanding assistance contract. The potential harm to the family is greater than where the PHA declines to enter into a new assistance commitment for the family, or when the PHA is merely adjusting the family contribution. Termination of the assistance payments may lead to eviction of the family from the unit if the family is unable to pay the unassisted rent.

b. *When Prior Hearing is Not Required.*—(1). *Time of Hearing on Rental Determination.* The regulation does not require a hearing before a change in the tenant share of rent. The PHA's determination of the family contribution is not an action to limit the section 8 subsidy paid, but is the means of ascertaining the amount of the subsidy under the statutory formula, i.e., the difference between the tenant share of rent (tenant rent) and the rent payment to the owner (contract rent). In almost all cases, the rent determination is made as part of the routine reexamination and redetermination for all families in the PHA's program, rather than as a special action solely affecting the individual participant family.

The regulation preserves the opportunity of the family for informal hearing to determine if the PHA has correctly applied the rules for calculation of the family share of rent. If there are mistakes, the mistakes can be identified and corrected. If the family contribution is reduced as a result of a hearing, any overpayment must be refunded to the family. In *Matthews v. Eldridge*, the Supreme Court states that "a claim to a predeprivation hearing as a matter of constitutional right rests on the proposition that full relief cannot be obtained at a postdeprivation hearing" (424 U.S. at 331). In section 8, an overpayment by the family can be compensated by a refund to the family.

A family should not be permitted to delay the implementation of the statutory rent computation by asserting a claim for an advance hearing. The establishment of a regulatory right to an advance PHA hearing (before the section 8 subsidy payment is adjusted to reflect the family contribution determined by the PHA) would encourage the abuse of the hearing mechanism to delay the payment by a family of amounts properly computed by the PHA, rather than as a vehicle for discovering and reversing PHA mistakes in applying the rules. Families may deliberately seek to postpone the completion of a hearing in order to postpone the need to pay the proper share of the rent.

(2). *New Assistance Commitment for a Participant.* The final rule does not require the PHA to provide an opportunity for a hearing *before* the PHA denies a new Certificate and new assistance commitment for a participant family. The PHA should not be required to execute the administrative tasks needed for a new assistance commitment (e.g., inspection of new unit, examination of proposed lease), or required to enter an assistance contract with a new section 8 owner, until the PHA has had the opportunity to hold a hearing on the denial of assistance to the family.

(3). *Participant Moving to New Unit: Time of Hearing on Unit Size Stated on Certificate.* When a participant wants to move to another unit, the participant may request a hearing on the number of bedrooms entered on the Certificate (§ 882.216(b)(1)(iv)). The rule does not require a hearing on the unit size determination prior to issuance of the Certificate. A requirement for an advance determination, notice and hearing would unnecessarily complicate the routine process for extension of assistance to program families. It would also delay issuance of Certificates and the opportunity for the families to search for new units.

c. *Promptness of Hearing.* The PHA is not required to provide the opportunity for advance hearing in the cases noted in section VII C 6 b above. However, in all cases where a hearing is required, the PHA must proceed with a hearing in a reasonably expeditious manner upon the request of the participant (§ 882.216(b)(5)).

7. *Elements of Hearing.* The informal hearing procedures in the proposed rule (selection and hearings) were substantially the same as the hearing procedures prescribed in the HUD program handbook (paragraph 10—8 of the PHA Administrative Practices Handbook, Handbook 7420.7). Some comments recommend the adoption of a more elaborate hearing process, or of a process with all the elements of a *Goldberg* administrative hearing (*Goldberg v. Kelly*, 397 U.S. 254 (1970)). Other comments suggest that PHAs should have freedom to devise workable local varations in the hearing mechanism.

The final rule prescribes the minimum elements of a PHA hearing on a PHA decision which affects a participant (§ 882.216(b)(6)). In determining the minimum elements, HUD has balanced the interests of the participant, and the

interests of the PHA and program. The regulation procedures recognize that the interest of a current program participant in the assurance of continued subsidy is greater than the interest of an applicant seeking admission to the program.

The participant hearing procedures in the final rule give the participant the opportunity for a hearing to test whether a PHA decision is in compliance with applicable laws or rules, and the opportunity to present evidence bearing on the decision. At the same time, the procedures are designed to avoid burdening the PHA with elaborate and inflexible requirements which may be more appropriate to a judicial or other formal hearing process. The participant hearing requirements under this rule will give a full and fair administrative review. The imposition of a more elaborate procedure is unlikely to result in a substantial benefit in a significant number of cases and would be an unjustified administrative burden on the PHA.

The final rule provides that the PHA must adopt written procedures for the conduct of informal hearings for participants (§ 882.216(b)(5)), and must give each participant a general description of the procedures (§ 882.209(b)(4)(vii)). The hearing procedures used by the PHA must comply with the following (§ 882.216(b)(6)):

—The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of such person (§ 882.216(b)(6)(i)).
—The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures (§ 882.216(b)(6)(iii)).
—At its own expense, the participant may be represented by a lawyer or other representative (§ 882.216(b)(6)(ii)).
—The PHA and the participant shall be given the opportunity to present evidence and question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings (§ 882.216(b)(6)(iv)).
—The person who conducts the hearing shall issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the participant shall be based on the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the participant (§ 882.216(b)(6)(v)).

a. *Person Conducting Hearing.* A number of legal aid comments contend that the proposed rule does not guarantee use of an impartial hearing officer. The proposed rule (§ 882.216(c)(1)) would have allowed appointment of a PHA officer or employee "who did not participate in the PHA decision," or of an outside person designated by the PHA. Several of the comments object to the modification of the prior HUD handbook requirement for appointment of a PHA employee or other public official "who is not directly involved in the day-to-day administration of the program" (HUD handbook 7420.7, section 10—8b). Comment by a PHA supports modification of this requirement.

The final rule (§ 882.216(b)(6)(i)) provides that:

> The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of such person.

This provision retains in substance the restriction against using a person who participated in the original decision as the hearing officer. The provision is simplified by eliminating the unnecessary references to appointment of an officer or employee of the PHA or of an outside person. Under the final rule the PHA may designate "any person or persons," including a PHA employee or officer, or an outside person. The final rule also adds a provision that the person conducting the hearing may not be a subordinate of the person who made the original decision. By specifically prohibiting use of a subordinate of the original decision-maker, HUD seeks to relieve the concern that a person engaged in day to day administration will not possess the requisite impartiality. This new requirement is intended to assure that the hearing officer is not subject to the pressures of a superior, and therefore to enhance the independence and objectivity of the review procedure. The regulation also clarifies that a person who "approved" the original decision may not be used to conduct the informal hearing.

The standards in the rule are a sufficient guarantee of the impartiality of the PHA review in the context of the administrative review process for the Section 8 Existing Housing Program. The purpose of the informal hearing is to give the participant a chance for a review of a PHA decision, to see if the PHA has violated an applicable law or rule. In the administrative review, the participant gets the benefit of a second look at the challenged decision, by someone other than a person who made or approved the original decision. Since the reviewer did not make or approve the original decision, the review is not prejudiced by the mind-set of the original decision maker. Through this review, prior error can be uncovered and rectified.

The reviewer may be a person with knowledge of the program, and of technical program requirements and procedures (for example, procedures for determination of the tenant share of rent in accordance with the U.S. Housing Act of 1937). This familiarity can assist in a more rapid, more economical and more accurate determination on the points at issue. The PHA hearing process should be able to benefit from the experience of the hearing officer, especially knowledge concerning programs requirements and procedures.

Comment by *Nichols* counsel claims that the proposed regulation violates the court order with respect to designation of a hearing officer. We do not agree. HUD believes that the court's concern in *Nichols* was with the lack of any enforceable regulations guaranteeing notice and hearing to persons whose section 8 subsidy is terminated or reduced due to changes in family size and composition. To correct this situation, the court directed HUD to publish the "the pertinent sections, from its Administrative Practices Handbook" (Handbook 7420.7, section 10–8), because such provisions, if incorporated into a formal regulation, would provide constitutionally adequate due process protections.

The court did not, however, express an intent to freeze the hearing requirements (for participants whose subsidy is reduced or terminated due to changes in family size) in the exact form of the old handbook requirements. Such an approach is inconsistent with accepted principles of regulatory publication for notice and public comment, and is not required in order to afford full due process protection to the participant. A hearing officer is sufficiently impartial for constitutional purposes so long as the hearing officer is not the person who rendered the challenged decision. The constitution does not prohibit use of a hearing officer involved in the day-to-day administration of the program (as the handbook provided), and such a prohibition could be detrimental to the section 8 participants, for example by depriving the hearing process of persons knowledgeable of technical requirements of the housing subsidy program, and by diverting scarce

program resources to hire outside persons as hearing officers.

Nothing in the *Nichols* order identifies the handbook hearing procedure as the only constitutionally acceptable procedure. The handbook procedure was merely the hearing process in effect at the time of the *Nichols* decision. By directing the agency to issue formal rules establishing notice and hearing procedures, the court required the initiation of a process which, by definition, contemplates review and revision of proposed regulatory language in the light of public comment (see 24 CFR 10.16). Thus the Department sees no impediment to modification of notice and hearing procedures in response to needs of the program, and HUD's analysis of the handbook procedure.

Comment from a PHA states that the regulation should permit the use of a hearing panel, instead of a single hearing officer. The language of the final rule (§ 882.216(b)(6)(i)) clarifies that the hearing may be by a "person *or persons*" designated by the PHA. Use of a hearing panel is permitted at the discretion of the PHA.

b. *Conduct of Hearing and Presentation of Evidence.* A number of legal aid comments object to the provision in the proposed rule (§ 882.216(c)(3)) that the right of the Certificate holder (or applicant) to offer and examine evidence and question any witnesses is "subject to the direction of the hearing officer." The comments appear to suggest that the right to offer and examine evidence should be absolute, and not subject to regulation by the hearing officer.

To establish a practical and orderly hearing machinery, the hearing officer must have authority to regulate the conduct of the hearing, including determinations on the relevance of proof that may be offered, and of the manner in which evidence is presented. The authority of a hearing officer or judge to regulate the conduct of the proceeding is a normal and necessary element of any hearing process. The proposed provision did not deny the participant a fair opportunity to present relevant proof in the informal hearing.

The final rule confirms that the hearing officer has authority to regulate conduct of the hearing in accordance with the PHA hearing procedures (§ 882.216(b)(6)(iii)) (in regard to the offer and examination of evidence, and in other respects), and separately states the right of the participant and the PHA to present evidence and question witnesses (§ 882.216(b)(6)(iv)).

Use of the formal rules of evidence applicable in a judicial proceeding is not suitable for the informal hearings required under this regulation. A provision has been added in the final rule (§ 882.216(b)(6)(iv)) to clarify that evidence may be considered without regard to admissibility under the rules of evidence applicable in judicial proceedings.

Under the proposed rule (§ 882.216(c)(4)), the decision on "any issue of fact" must be exclusively based on evidence presented at the hearing. The final rule (§ 882.216(b)(6)(v)) provides that factual determinations "relating to the individual circumstances of the participant" must be based on evidence presented at the hearing.

c. *Hearing Decision.*—(1). *Form of Decision.* The proposed rule (§ 882.216(c)(4)) requires the hearing officer to issue a written decision "stating briefly the factual and other basis for the decision." Comment from a legal aid office asserts that the decision must declare both the legal and evidentiary grounds of the decision. Upon reexamination of this question, the Department believes that the requirements in the proposed rule are more elaborate than necessary. The final rule simply requires that the person conducting the hearing shall "issue a written decision, starting briefly the reasons for the decision" (§ 882.216(b)(6)(v)). A copy of the decision must be promptly furnished to the participant.

The statement of the decision required by the regulation tells the participant what was decided, and the reasons for the decision. A requirement for a legalistic statement of evidentiary and legal grounds for the decision would add little of benefit to the participant. The character of the decision is not more informative or comforting to the participant when stated as an enumeration of "evidentiary" and "legal" grounds.

The statement of decision required by the regulation must be truly informative as to the reasons for the decision. This would include a short statement of the elements of fact or law on which the decision is actually based. A bare and conclusory statement of the hearing decision, that does not let the participant know the basic reasons for the decision, will not satisfy the regulatory requirement. There is no reason to believe that a more formal statement of the decision will result in better decisions, or decisions satisfactory to more participants.

(2) *Effect of Decision.* Comments from a PHA and a legal aid office state that the decision in a PHA hearing should be binding on the PHA, or should be final subject only to HUD review.

The final rule specifies certain cases in which the PHA is not bound by a decision of the hearing officer (§ 882.216(b)(7)(i)):

—The PHA is not bound if the decision concerns a subject outside the scope of the required hearing process, or beyond the authority of the person conducting the hearing under the PHA hearing procedures (§ 882.216(b)(7)(i)(A)).

—The PHA is not bound by a hearing decision contrary to HUD regulations or requirements, or otherwise contrary to Federal, State or local law (§ 882.216(b)(7)(i)(B)).

The purpose of the hearing process is to give the participant the opportunity for a fair hearing, to ascertain whether a PHA decision is in accordance with law, HUD regulations and PHA rules. The PHA has the final responsibility to act in accordance with controlling Federal, State or local legal requirements, and this obligation may not be altered by any decision of the hearing officer.

If the PHA determines that is is not bound by a decision of the hearing officer, the PHA must promptly notify the participant of the determination, and of the reason for the determination (§ 882.216(b)(7)(ii)).

The final rule does not adopt the recommendation for HUD review of PHA hearing decisions. This recommendation is inconsistent with the basic responsibility of the PHA for day to day administration of the program.

d. *Record of Hearing.* Several legal aid comments claim that procedural due process requires that there must be a stenographic record of the informal hearing. The Department believes that in the context of the participant determinations covered by the section 8 existing housing informal hearing process, and given the nature of the public and private interests at stake, procedural due process does not require that the PHA incur the very substantial expense of a stenographic record (cf., e.g., *Neddo v. Housing Authority of the City of Milwaukee,* 335 F. Supp. 1397 (U.S. District Court, E.D. Wisconsin 1971)). A transcript of the administrative hearing is not necessary in order to provide a fair hearing. The notice of decision required by the regulation will be adequate to inform the participant of the reasons for the decision.

C. Administrative Fee

Comment from a PHA notes the administrative burden and cost for PHA hearings, and recommends that HUD reimburse PHAs for hearing costs outside the normal administrative fee

structure. The Department shares the PHA's concern with the expense of the administrative hearing process. By distinguishing between the review processes for applicants and participants, and by a specification of certain limitations on the hearing process for participants, the final regulation seeks to balance the benefits of adequate procedural safeguards against the drain on program resources.

The Department will not, however, provide separate reimbursement for PHA costs in implementing the hearing procedures. In general, PHA fees are paid as a formula reimbursement for all PHA costs of administration. The Department believes that this system tends to result in a more efficient administration of the program with less Federal interference in PHA management. The use of a separate compensation structure for PHA hearing costs would undercut the benefits of the flat-fee reimbursement, and would lead to demands for special reimbursement in other areas.

VIII. Tenancy

A. Form of Assisted Tenancy

The interim rule on termination of tenancy redefined major aspects of the subsidized tenancy. The interim rule removed the provision for termination of tenancy on 30 days notice by the owner or the tenant, and for automatic extension of assistance if a family continues in occupancy "on the same terms and conditions." Under the interim rule (§ 882.107(b)), the section 8 assisted tenancy is for a fixed term of one to three years. At the end of a term, the owner may not refuse to enter a new assisted lease except for cause. However, the interim rule (§ 882.215(b)) provided that the owner need not have good cause for termination of tenancy if the owner "decides not to enter a new Contract with respect to the unit" at the end of the lease term. The interim rule was issued to implement 1981 amendments to the program statute (sec. 8(d)(1)(B) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(d)(1)(B), as amended by sec. 326(e)(1) of the Housing and Community Development Amendments of 1981, Pub. L. 97-35).

Public Comments

Comments from PHAs and from the National Association of Housing and Redevelopment Officials emphasize that operation of the Section 8 Existing Housing Program depends on the voluntary participation of private landlords. The comments state that owner willingness to rent units to Certificate holders will be hurt by the elimination of provision for termination by the owner on 30 days notice without cause, and by creation of a "perpetual tenancy" terminable only for cause.

PHA comments say that many owners will not sign assistance contracts which do not allow termination on 30 days notice, that allowing termination on notice is closer to local landlord tenant practice, and that owners want to preserve the ability to sell the unit or to terminate the tenancy for other reasons.

PHA comments claim that provision for termination by either party on notice benefits both the tenant and the PHA. The tenant can move after giving notice to the owner without breaking the lease. PHA comments say that this may be helpful if the tenant wants to move to another unit or to other employment. Termination on 30 days notice by the tenant avoids owner hostility, and also reduces the need for PHA payment of owner vacancy claims.

Two State agency PHAs support elimination of the provision for termination by either party on 30 days notice. One of the PHAs recommends clarification that there can be termination by mutual consent of the owner and tenant.

PHAs also criticize the requirement under the interim rule that an owner must have good cause for non-renewal of the lease at the end of the fixed term (unless the owner withdraws the unit). The comments say that the good cause requirement interferes with normal relationships between a landlord and tenant. The requirement may be appropriate for project-based assistance, but not for the finders-keepers program, where the family can move and receive assistance in a new unit. The good cause requirement is one-sided, since the tenant is not bound to enter a new lease. The requirements impose a permanent limitation on rent, and may complicate the owner's sale of the property. The regulations should reflect the requirements of the private rental market, and should recognize the right of the owner to terminate the tenancy without cause at the end of the lease. To avoid discouraging owner participation, the owner should be as free as the tenant not to renew the lease.

In addition, most comments by PHAs and legal aid offices object to the new regulatory requirement for execution of a new assistance contract and lease in order to extend the subsidized tenancy at the end of the term. Subsidy payments for the assisted family will be interrupted if the PHA, owner, and family do not complete the necessary steps for renewal of assistance before the end of the lease term. Where the family wishes to move, it may not be able to find a new unit by the end of the term. The old regulatory system of automatic extensions gives a valuable flexibility, and provides a safety net where the PHA has not completed the renewal process. A break in the flow of assistance payments may damage owner confidence in the program, and the family may be evicted. A legal aid comment objects to termination of assistance where the landlord refuses to renew the lease without proper legal basis. Comments recommend that HUD provide for automatic extension of the assistance term, either until the tenancy is renewed or terminated, or during a grace period for special circumstances.

A few PHA comments support the regulation change requiring execution of a new lease and assistance contract for continuation of assistance. A PHA says that the regulatory change will have little impact on its operations, since the PHA already requires execution of a new assistance contract and lease at the time of tenant income recertification.

A number of PHAs recommend the use of a simple procedure for extension of the assisted tenancy, such as by execution of a simple renewal form.

A number of legal aid comments suggest the use of a procedure requiring advance notice by the PHA or owner of the upcoming end of the lease term, or of the owner's intention not to renew the assisted lease.

1. *Good Cause Requirement—Effect on Tenancy.* Public comments on the interim rule present in general a cogent critique of problems which result from the changes in the form of the assisted tenancy under the 1981 amendments and the interim rule. The Department shares the concern that a number of the changes could reduce the desire of private landlords to offer units for rental under the program, and could thus narrow the housing choices of assisted families. However, the program options open to the Department must accord with the 1981 statutory prohibition of a termination of tenancy in section 8 existing housing other than for statutory good cause grounds (U.S. Housing Act of 1937, sec. 8(d)(1)(B)(ii), 42 U.S.C. 1437f(d)(1)(B)(ii)).

The Department may not restore a provision for termination by the owner without cause, either on 30 days notice during the lease term, or at the end of the term. The present statutory good cause requirements for termination of tenancy apply both during the term of an assisted lease and at the end of the lease term. (For discussion of the new regulatory statement of certain cases that fall within the term "good cause,"

see section VIII B 2 below; for a discussion of good cause and owner withdrawal from the program, see section VIII B 3 below).

2. *Assisted Lease and Contract.*

a. *New Regulation Provisions—Description.* In response to the consensus of public comments, the final regulation provides for automatic extension of the assisted tenancy. The regulation does not require the execution of a new lease or contract to accomplish an extension. The final regulation provides:

> The term of the Lease shall begin on a date stated in the Lease, and shall continue until: (1) A termination of the Lease, by the Owner * * *, (ii) a termination of the Lease by the Family in accordance with the Lease or by mutual agreement during the term of the Lease, or (iii) a termination of the Contract by the PHA. (§ 882.215(a)(1))

As under the interim rule (and the prior rule), the term of the assisted lease between the owner and the tenant is the same as the term of the assistance contract between the owner and the PHA which subsidizes occupancy under the lease:

> The term of the Contract shall begin on the first day of the term of the Lease and shall end on the last day of the term of the Lease. (§ 882.215(b)(2))

Thus, as the lease extends automatically, unless terminated for one of the stated reasons, the term of the assistance contract will automatically track the term of the lease. The technical implementation of the requirement that the lease and the contract run for concurrent terms reverses the interim rule provision that the lease term follows the term of the assistance contract. Substantively the result is identical.

Under the interim rule, the length of the term of the assistance contract was fixed in advance, and could not extend beyond the remaining term of the Annual Contribution Contract ("ACC") between HUD and the PHA. Under the final rule (§ 882.215(a)(2)), the term of the lease must begin at least one year prior to the end of the remaining term of the ACC, and the term of the assistance contract and lease end if the ACC terminates. Although the final rule now provides for an automatic and indefinite extension of the initial one year lease and subsidy term, in practice the PHA can continue to make payments under the assistance contract only so long as the PHA receives the funds from HUD under the ACC.

To clarify the relationship between the assistance contract and the assisted lease, a new provision states that the term of the lease ends if the assistance contract is terminated by the PHA (§ 882.215(a)(1)(iii)). A substantively provision was previously contained in the regulatory statement of required lease provisions (previously Part 882, Appendix I, section (g)(2), now deleted from the regulation, see section VIII G of this preamble), but was not previously stated in the body of the rule.

A new provision (§ 882.215(a)(5) states:

> The Lease shall permit a termination of the Lease by the Family without cause, at any time after the first year of the Lease term, on not more than sixty days written notice by the Family to the Owner (with copy to the PHA).

Another new provision (§ 882.215(a)(3)) has been added to state the relationship between the new provisions defining the term of the lease and assistance contract to the regulatory provisions on annual and special adjustments, and on determination of the family contribution:

> During the term of the Lease, the Contract Rent shall be subject to adjustment in accordance with (§ 882.108 [rent adjustments], and the Tenant Rent shall be subject to change in accordance with HUD regulations and requirements.

b. *New Regulation Provisions—Purpose and Operation.* The new provision for automatic extension of the lease will resolve the problems, described in the public comments, stemming from the requirement in the interim rule for execution of a new assistance contract and lease to continue the flow of assistance. Under the final rule, the ongoing stream of assistance to the family is not interrupted because of inability to complete the administrative steps for continuation of assistance. The PHA is relieved of the administrative burden of processing a new assistance contract or lease, or even of the need to distribute and secure execution of simplified renewal documentation, as suggested by some PHAs.

The regulation will also avoid the possible problem, identified in the comments, of an interruption in assistance because of a wrongful refusal by the owner to execute a new lease and a new assistance contract (absent good cause for nonrenewal). Since there is no break in payments, the owner will not be able to rely on a hiatus in assistance payments as good cause grounds for termination of tenancy.

The new regulatory provision for automatic extension has been designed to avoid the legal uncertainties produced by the old regulatory provision (§ 882.107(b), before amendment by the interim rule) that the term of the assistance contract continues in effect for the duration of the tenancy "if a Family continues in occupancy * * * on the same terms and conditions as the original Lease." To determine if the assistance contract remained in effect during a holdover after the original lease term, if was necessary to examine the legal incidents of the holdover tenancy under State and local law to ascertain if the holdover tenancy was on the same terms and conditions. However, this inquiry often yielded no clear answer as to the legal characteristics of a holdover tenancy, and consequently no clear answer on the continued existence of a subsidized tenancy. Many PHAs have apparently dealt with the need for extension under the old regulatory provision by routinely requiring execution of some form of extension documentation by the family and the owner. The old regulation provision was variously understood and implemented by different PHAs.

The existence or nonexistence of a subsidized tenancy should be legally well defined, and should be as clear as possible to the owner, tenant, and PHA. The mechanism for extension of the tenancy should involve the minimum administrative task for the PHA. The provision for automatic extension under the regulatory formula in the final rule gives greater clarity in definition of the assisted tenancy, and requires no administrative action by the PHA.

Since the term of the assisted tenancy is now indefinite, the family should not be permanently bound by the lease. HUD agrees with the public comments, as described above, observing that a provision for termination on notice can benefit the tenant, and that termination by the tenant can reduce the need for vacancy payments by the PHA. Under the regulation (§ 882.215)(a)(5)), the lease must allow the family to terminate the lease without cause, on notice to the owner, at any time after the first year of the term. The tenant may not be required to give more than sixty days written notice of termination. A copy of the termination notice must be sent to the PHA.

Nothing in the rule prohibits inclusion of a unilateral lease provision allowing termination of the tenancy *by the tenant* (with or without cause) during the first year of the term, or on less than sixty days notice. The statutory good cause requirements for termination of tenancy apply only to a termination of tenancy by the owner. The Department recognizes that some owners may be unwilling to agree to a one-sided provision for termination on notice by the tenant alone, during or after the first

year of the term. Some owners may also be unwilling to rent to program families without the right to terminate the tenancy on short notice and without cause.

The regulation (§ 882.215(a)(1)(ii)) clarifies that the owner and the tenant may mutually agree, at any time during the term of the lease, to a premature termination of the lease-term.

As the comments suggest, PHAs may have to pay vacancy claims (if a tenant vacates a unit in violation of the lease). However, as described in section III A of this preamble, the PHA may deny a new Certificate if the family fails to reimburse the PHA for section 8 owner claims paid by the PHA (§ 882.210(b)(2)). This provision should produce some incentive for families to try to minimize owner claims (e.g., by getting owner to agree to a release from the lease), or to pay the PHA back.

c. *Offer of a New Lease by the Owner.* Since the assisted lease as defined in this rule continues for an indefinite term, there is need for a procedure allowing modification of the lease terms from time to time. The Department believes that many owners will not wish to enter into a leasehold where the terms are frozen so long as the tenant remains in the unit. The final rule (§ 882.215(a)(4)) therefore provides that the owner may offer the family a new lease for execution by the family after approval by the PHA in accordance with program requirements, for a term beginning at any time after the first year of the lease term. The owner must give the tenant written notice of the offer, with a copy to the PHA, at least sixty days before the proposed beginning date of the new lease. The offer may specify a reasonable time limit for acceptance by the family. Failure by the family to accept the owner's offer of a new lease which has been approved by the PHA is good cause for termination of tenancy (§882.215(c)(2)).

d. *Termination of Subsidy.* Section 8 assistance payments to the owner stop when the statutory family share (Tenant Rent) covers the full contract rent (§ 882.212). The assistance contract terminates if a year has passed since the last PHA payment on behalf of the family (in order to free up the subsidy commitment for another family). A PHA asks for clarification that termination of the assistance contract because the tenant is paying the rent is not ground for termination of the lease. This recommendation has not been adopted. The lease term ends when the assistance contract is terminated by the PHA for any reason (§ 882.215(a)(1)(iii)). The landlord should not continue to be bound by lease provisions intended to regulate the subsidized tenancy, including the requirement for a continuing tenancy terminable only for statutory cause. Landlord and tenant should have the opportunity to redefine their legal relationships free from the requirements and constraints of the Federal subsidy program. The interests of the assisted family are already sufficiently protected, since the family's rights under the lease are not affected for a full year after the cessation of the assistance payments (§ 882.212).

B. Grounds for Termination of Tenancy

Section 8(d)(1)(B)(ii) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(1)(B)(ii), as amended by sec. 326(e)(1) of the Housing and Community Development Amendments of 1981, Pub. L. 97–35) provides that in section 8 existing housing:

> The owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause.

The interim rule stated the grounds for termination in the language of the statute without any regulatory elaboration.

The final rule contains two new provisions which provide regulatory guidance in application of the statutory provisions for termination of tenancy for violation of Federal, State, or local law, or for "other good cause."

1. *Termination for Violation of Applicable Law.* The statutory authority to terminate the tenancy because of a violation of applicable law by the tenant is restricted in the final rules (§ 882.215)(c)(1)(ii)) to a:

> Violation of Federal, State, or local law *which imposes obligations on the tenant in connection with the occupancy or use of the dwelling unit and surrounding premises* * * *.

The Department believes that termination on this ground should be restricted to violations related to occupancy of the unit.

2. *Termination for "Other Good Cause".* By design, the interim rule did not contain any definition of "other good cause" for termination of tenancy. The preamble to the interim rule stated:

> Application of the statutory standards to particular cases should be determined by the courts, normally in the course of the eviction proceeding brought by the owner. (47 FR 33479, 33499)

Several PHA and legal aid comments recommend that the regulation define good cause for termination of tenancy. A PHA and a legal aid office urge that the regulations follow the approach used in the HUD regulations governing tenant eviction procedures (24 CFR Part 450, Subpart A) in project based housing subsidy programs. These regulations provide that conduct of a tenant cannot be "good cause" for termination of tenancy unless the landlord has served the tenant with prior written notice that such conduct shall "henceforth" constitute a basis for termination of occupancy (§ 450.3(b)).

It remains the view of the Department that a comperhensive regulatory definition of good cause in the Section 8 Existing Housing Program is neither possible nor desirable. The good cause category should remain open to case by case determination by the courts. It is a prime virtue of this statutory category that it permits termination by an owner in types of cases which cannot be readily foreseen.

The Department does not believe that the approach to good cause in the project subsidy programs is suitable for the finders-keepers program, where individual tenants are subsidized on a unit by unit basis, and where the subsidy commitment to the owner ends if the family moves from the unit. Many finders-keepers landlords participate in the program only for a single unit or for a few units. Tenancy requirements should be as simple as possible, with minimal demands on the owner beyond the normal requirements of an unsubsidized tenancy. As applied in the context of the finders-keepers program, a requirement to give advance notices of conduct that will in future be good cause for termination places an excessive demand on the foresight of the owner in anticipating the kinds of tenant conduct for which the owner might wish to terminate a tenancy. Even the most extensive advance enumeration of good cause cases will inevitably omit circumstances that later occur, and which should be legitimately regarded as good cause for termination of tenancy.

The good cause concept should be flexible and open to application in concrete cases, but there is a critical need to provide explicit regulatory assurance to prospective section 8 owners that legitimate owner concerns will be recognized as grounds for termination of tenancy. With the provision for automatic and indefinite extension of the tenancy, without any predefined limit, this assurance may be essential to promote broad participation by owners.

The final rule (§ 882.215(c)(2)) provides:

> The following are some examples of "other good cause" for termination of tenancy by the Owner: failure by the Family to accept the

offer of a new Lease * * *; a Family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or property; criminal activity by Family members involving crimes of physical violence to persons or property; Owner's desire to utilize the unit for personal or family use or for a purpose other than use as a HUD assisted residential rental unit; or a business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental). This list of examples is intended as a non-exclusive statement of some situations included in "other good cause," but shall in no way be construed as a limitation on the application of "other good cause" to situations not included in the list.

The explicit regulatory statement that a business or economic reason is good cause for termination of tenancy should help PHAs in responding to owner concern, as described in the public comment, with the good cause requirement for termination of tenancy, and in particular with the elimination of the provision for termination on 30 day notice. It is likely that in most cases where an owner wants to terminate the section 8 existing tenancy there are either good cause grounds relating to behavior of the individual tenant, or good cause business reasons relating to use of the property. Several Federal court decisions have concluded that statutory "good cause" would include a business or economic reason for termination of the tenancy (e.g., *Mitchell v. U.S.*, 569 F. Supp. 701 (N.D. Cal, Aug. 1983)).

A legal aid office says that the failure to define good cause will cause a "vast" increase in administrative costs because of varying interpretation and administration of the good cause requirement. We do not agree. The degree of regulatory definition of good cause is unlikely to have any systematic or substantial effect on PHA costs, since good cause is determined in local landlord tenant courts, and there is no longer a statutory or regulatory requirement for PHA involvement in the process for termination of tenancy (for leases entered after promulgation of the interim rule on September 21, 1982).

3. *Withdrawal by the Owner from the Program—Exemption from.*

Good Cause Requirement

The Conference Report on the 1981 amendments states that: It is not the intention of the Conferees that these statutory provisions [on termination of tenancy] govern the relationship between a landlord and a tenant after a landlord has, *in good faith, terminated his participation in the sec. 8 existing program.* (H.R. Rep. No. 97-208, 97th Cong., 1st Sess. 695 (1981), *reprinted in* 1981 U.S. Code Cong. and Ad. News, 1010, 1053-54)

The interim rule (§ 882.215(b)(ii)) provided that an owner is not subject to the statutory good cause requirement for termination of tenancy if the owner elects not to enter into a new assistance contract "with respect to the unit."

a. *Public Comments.* PHA comments express a strong concern with the PHA's administrative burdens because of owner withdrawal from the program (withdrawal of the individual unit, under the terms of the interim rule). The comments observe that PHAs will have to maintain a list of units withdrawn from the program, and ask how long the PHA is barred from renting the unit to another finders-keepers tenant. PHA comments stress that it will be difficult or impossible for PHAs to monitor a bar on the use of units withdrawn from the program, and note that such a bar will hamper the search for housing by Certificate holders.

A number of comments by legal aid offices criticize the lack of a statement in the regulation that the owner's withdrawal must be "in good faith." Several comments suggest that exemption from good cause means that the owner must have a "good cause reason" for termination of tenancy, or that a legitimate *business* reason is the only basis for the exemption from good cause. Public comments state that the Conference Report does not allow the owner to avoid the need to show good cause for termination of tenancy by withdrawing a single unit from participation.

b. *Final Rule.* Since publication of the interim rule, a Federal district court decision (*Mitchell v. U.S.*, 569 F. Supp. 701 (N.D. Cal, Aug. 1983)) has stated that the HUD regulatory exemption from good cause where the individual unit is not to be leased to an assisted tenant is not consistent with the legislative intent. The court indicated its preliminary view that an owner's statutory obligation to comply witth good cause for termination of tenancy ends only when the owner is terminating participation "in the *entire assisted housing program.*" The Department believes that other courts are likely to follow this analysis.

The reasoning of the court in *Mitchell* affords the Department only two choices: (1) To allow an exemption from good cause if an owner is withdrawing all units from participation in the program; (2) to require that in all cases the owner must have good cause for termination of tenancy, without authorizing any exemption. After full consideration of the public comment on the interim rule, the Department has decided that the final rule will not provide or permit any exemption of the owner from the good cause requirement for termination of tenancy (with respect to contracts or leases entered after the rule is effective).

An exemption from good cause where the owner is withdrawing totally from participation in the program would leave the owner an all or nothing choice: the owner must either terminate participation for all tenants, or show good cause for termination of tenancy of any particular tenant. The election by section 8 owners to withdraw could result in the eviction of many section 8 tenants. Owner withdrawal from the program for all units will also reduce the supply of units which may be rented by Certificate holders. Thus, a provision for owner withdrawal could simultaneously increase the number of families looking for housing, as it reduces the number of units available to be rented. As noted in the comments, the exemption from good cause also would create serious problems for PHAs in administering a bar on owner participation in the program after an owner's withdrawal. The administrative difficulties remarked in the comments would be compounded by a requirement for application of the bar to all of an owner's units.

Finally, it appears that in most cases the good cause exemption is not necessary. An owner who is withdrawing all units in good faith from participation in the program for a business or economic reason has "other good cause" for termination of tenancy. Indeed the owner could withdraw even a single unit from the program for a good cause business or economic reason.

C. PHA Role in Termination of Tenancy; Requirement for Notice by the Owner to the PHA or Family

Before the interim rule, the HUD program regulation (§ 882.215) required an owner to obtain PHA authorization for eviction of a section 8 existing tenant. Before the 1981 amendments which added the statutory grounds for termination of tenancy, the PHA possessed by law the sole right to issue a notice to vacate to the tenant (U.S. Housing Act of 1937, sec. 8(d)(1)(B), 42 U.S.C. 1437f(d)(1)(B)). The 1981 amendments removed any statutory requirement for PHA participation in a termination of tenancy.

A number of legal aid offices recommend restoration of a requirement for PHA approval of an eviction, or for the PHA to issue an eviction notice. The comments assert that judicial review of a termination of tenancy does not give enough protection for the tenant; PHA

review would reduce the number of evictions, and is an opportunity for PHA mediation and resolution of disputes between the landlord and tenant; and elimination of PHA involvement will increase PHA administrative costs because of tenant moves.

A PHA urges that HUD state in the regulation *text* (as indicated in the preamble to the interim rule (47 FR 33499)) that there is no requirement for PHA involvement in a termination of tenancy, or in the decision whether a landlord can terminate the tenancy. However, a number of PHAs recommend that the owner should have to give notice of the termination proceeding to the PHA at the same time as the tenant. This notice could be given by furnishing the PHA a copy of the notice to vacate served on the tenant. The PHAs state that the notice by the owner to the PHA will allow the PHA to take steps to assist the family in finding another unit, that the PHA needs to know if there has been an interruption of assistance payments by the PHA because of PHA clerical or computer error, that notice avoids payments to the owner after the tenant has vacated the unit. A PHA comment suggests that PHAs need to know the grounds for termination, since family failure to perform obligations under the lease is grounds for termination of participation in the program (but see section II F of this preamble).

The final rule does not adopt the recommendation to require PHA approval of an eviction or termination of tenancy, or require that the PHA issue the eviction notice. The questions involved in a termination of tenancy are best resolved in the State judicial proceedings for eviction of a tenant. To assure the availability of the State judicial forum in a termination of tenancy, the final rule adds a provision (§ 882.215(c)(3)) that the section 8 owner may evict the tenant from the dwelling unit only by instituting a court action. This requirement furthers the policy embedded in the list of prohibited lease provisions (now at Part 882, Appendix I, see section VIII G of preamble) which prohibits the use of lease provisions which could foreclose the tenant's opportunity for a fair hearing in a State court eviction proceeding.

The substantive Federal good cause requirements under the statute and the HUD regulation are binding in the State judicial proceeding, and the State proceedings are subject to the due process requirement for a fair hearing under the Fourteenth amendment. To encourage participation by private owners, it is important to minimize the procedural burdens on the owners. The approach in this rule is consonant with the 1981 amendments, which remove the old statutory requirement for PHA participation in eviction (by PHA issuance of the notice to vacate), but which require good cause for termination of the assisted tenancy.

A conforming amendment (removing § 882.116(p)) eliminates authorization of evictions from the listing of PHA responsibilities.

Although the final rule does not require any PHA approval of, or other involvement in, the termination of tenancy, the rule accepts the recommendation that the owner should be required to notify the PHA. The rule (§ 882.215(c)(3)) provides that the owner must notify the PHA in writing of the commencement of procedures for termination of tenancy. Notice to the PHA must be given at the same time that the owner gives notice to the tenant pursuant to State or local law (such as a notice to vacate or notice to quit). Notice to the PHA may be given by furnishing the PHA a copy of the notice to tenant.

When the PHA receives the notice from the owner, the PHA may try to resolve the dispute between the owner and tenant, thus avoiding the eviction. The PHA is not, however, required to play this role, and the owner is not required to seek the mediation of the PHA.

Several legal aid comments recommend a regulatory requirement for the owner to give notice of termination of tenancy to the tenant, and specifying the character of the owner notice. The final rule does not contain any requirement for a form of notice by the owner to the tenant. In the finders-keepers program, the owner is and should be subject only to the same tenant notice requirements which apply to an unassisted tenant.

D. Leases Entered Into Before October 1, 1981

Section 8 existing program leases entered before October 1, 1981 (effective date of the 1981 statutory amendments on termination of tenancy) remain subject to the old statutory requirement that the PHA has the sole right to issue a notice to vacate to the tenant (U.S. Housing Act of 1937, sec. 8(d)(1)(B), 42 U.S.C. 1437f(d)(1)(B), as in effect prior to enactment of sec. 326(e) of the Housing and Community Development Amendments of 1981, Pub. L. 97-35). The provisions of the final rule governing such tenancies (see interim rule § 882.215(a), final rule § 882.215(d)) track the statutory requirement verbatim, and eliminate as unnecessary the interim rule provision that the PHA must give the notice to vacate unless the grounds for eviction as stated in the owner's representation are not sufficient under the lease.

One PHA objects that the requirement for PHA issuance of the notice to vacate makes the PHA an agent of the owner. Another PHA objects to the different treatment of the section 8 tenancies under leases entered before and after October 1, 1981. We note only that the regulation follows a statutory distinction in treatment of program tenancies.

Legal aid comments recommend that the regulation specify that termination of tenancy under the old leases must be for cause, that the good cause grounds are the same as required for leases under the new statutory requirements, that sufficiency under the lease is not good cause, that the regulations should specify the procedure for PHA issuance of a notice to vacate, and that the tenant should have the right to a hearing before the PHA. One PHA asks that the regulations clarify the meaning of notice to vacate in relation to State law.

Issues concerning program leases entered before October 1, 1981, or concerning the construction of the special statutory requirements applicable to such leases, are of dwindling practical significance. The old statutory requirements would only be applicable if the terms and conditions of a pre-October 1, 1981 lease have continued in effect without any positive contractual act by the owner and the tenant to extend or amend the lease after that date.

Courts held that the prior HUD regulation (§ 882.215 before promulgation of the interim rule) did not comply with the statutory requirement for PHA issuance of a notice to vacate (e.g., *Brown v. Harris*, 491 F. Supp. 845 (N.D. Cal. 1980)). The final regulatory provisions are designed solely to correct this deficiency, not to rewrite program contracts after the fact. Little point would be served by attempting to further regulate tenancies under the old statutory requirements. The provision on the grounds for PHA refusal to issue a notice to vacate are not necessary, since the grounds are covered by the outstanding assistance contract between the PHA and owner (assuming there still exist program tenancies covered by the old statutory requirements).

E. Applicability and Implementation

By statute, the good cause grounds for termination of tenancy apply to section 8 existing leases entered after September 30, 1981 (Housing and Community Development Amendments of 1981, sec. 326(e)(2)). The interim rule

became effective September 21, 1982 (47 FR 41735). Comment by a legal aid office objects to application of the good cause grounds to leases entered between the effective date of the statute and the effective date of the regulation. Comment by another legal aid office states that for leases entered during this period, tenants have a contractual right to PHA issuance of the notice to vacate, and that the regulation should so state.

Applicability of the statutory grounds for termination of tenancy enacted in 1981 is determined by the statute. The regulation follows the statutory requirement.

Leases entered after September 30, 1981, but before promulgation of the interim rule, require PHA authorization for an eviction. Therefore PHA authorization (but not PHA issuance of a notice to vacate) is a contractual right of the tenant under such leases. Nothing in the interim or the final rule affects this right. The right arises from the lease between the tenant and the owner, and there is no need to address this subject in the regulation.

A number of PHAs and the National Association of Housing and Redevelopment Officials object to retroactive application of new regulatory tenancy requirements to previously executed leases and assistance contracts. Several of the comments express a particular concern with the invalidation of 30-day termination clauses in leases entered before the interim rule. A PHA asks for clarification on the applicability of new eviction requirements for tenancies originally commenced before October 1, 1981.

Nothing in the interim or the final rule modifies the conditions of a program tenancy under an executed assistance contract and assisted lease except as necessary to conform to a statutory requirement in existence when the lease was entered. Under the interim rule (interim § 882.215(b)), the 1981 statutory grounds for termination of tenancy were made applicable to leases entered after October 1, 1981, as required by the legislation. However, the interim provisions on term of the assistance contract and lease (interim § 882.107 (b) and (c)) were not made retroactively applicable to tenancies under an assistance contract and lease entered before the effective date of the rule. These regulatory provisions applied prospectively only, to a lease and assistance contract entered between the owner and the tenant after the effective date. A provision for termination by owner without cause on 30 days notice (in a lease entered after September 30, 1981) is invalid because of the statutory good cause requirement, not because of any retroactive application of the regulatory provisions governing the term of the assistance contract and lease.

The final rule specifies applicability of new regulatory provisions defining the assisted tenancy. Under the rule (§ 882.215(g)), the new provisions defining the term of the assisted lease and assistance contract (§ 882.215 (a) and (b)), stating certain cases included in "other good cause," and requiring the owner to notify the PHA of the commencement of proceedings for termination of tenancy (§ 882.215(c) (2) and (3)) are applicable in any case where the lease or assistance contract is entered after the effective date of the rule. These new regulatory provisions do not affect contract rights if the assistance contract and lease were entered before that date.

A PHA urges distribution of new assistance contracts before the effective date of the final rule. The Department expects to distribute a new form of assistance contract prior to the effective date.

F. Non Applicability of Regulation on Termination of Tenancy in Multi-family Subsidy Programs

Part 247, Subpart A (formerly in Part 450) establishes substantive and procedural requirements for termination of tenancy in projects assisted under certain FHA subsidy programs. A new provision in this rule (§ 882.215(f)) states that Part 247 is not applicable to a tenancy assisted under the Section 8 Existing Housing Program. This provision removes the overlap of requirements for termination of tenancy for finders-keepers tenant residing in a project otherwise covered under Part 247, Subpart A. Such a finders-keepers tenancy will be subject only to the termination of tenancy requirements in the section 8 finders-keepers program.

G. Lease Addendum

A legal aid comment recommends that the lease should specify that the landlord has the burden of proving good cause. This recommendation has not been adopted. While the substantive good cause requirement is controlled by Federal law, the procedural incidents of the possessory action should be left to determination under State and local law.

A PHA states that the required lease addendum should continue to be used to override provisions of owner leases not consistent with HUD requirements. As in the past, the required lease provisions will contain language stating that the minimum HUD required provisions will override conflicting provisions in the lease.

The final rule deletes from Part 882 the text of the required lease provisions in the program (previously Part 882, Appendix I). This is in accordance with practice in the other section 8 programs. Key regulatory requirements relating to the lease (e.g., grounds for termination of tenancy) are covered in the text of the HUD rules and need not be duplicated by inclusion of the form of lease addendum in the codified rule. The revised rule (§ 882.209(j)(1)) states:

> The Lease between the Owner and the Family shall be in accordance with § 882.215 [assisted tenancy], and any other applicable HUD regulations and requirements. The Lease must include all provisions required by HUD, and shall not contain any of the prohibited provisions in Appendix I.

H. Concurrent Notices

The regulation (§ 882.215(e)) specifies that required notices relating to the assisted tenancy (pursuant to § 882.215) may be combined with and run concurrently with any notices required under State or local law.

IX. Removal of Obsolete Provisions

Several obsolete provisions are removed from the regulation: (1) Alternative computation of annual adjustments for assistance contracts entered before January 29, 1979 (§ 882.108(a)(i)); (2) provisions on rent credit (in § 882.102, § 882.115, § 882.116(f)); and (3) transition provisions on applicability of regulations published in 1978 (§ 882.122). Since these provisions have no present applicability or effect on the public, notice and public procedure are unnecessary.

Other Matters

A Finding of No Significant Impact with respect to the environment is unnecessary since the Section 8 Existing Housing Program is categorically excluded from the National Environmental Policy Act procedures under 24 CFR 50.21(a)(4).

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment,

productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirements contained in this rule have been or will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. No person may be subjected to a penalty for failure to comply with these information requirements until they have been approved and assigned an OMB control number. The OMB control number, when it is assigned, will be announced by separate notice in the **Federal Register.**

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

The rule was listed as items H–75–82 and H–23–80 in the Department's Semiannual Agenda of Regulations published on October 17, 1983 at 48 FR 47445 and 47452, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.156 and title is Lower-Income Housing Assistance Program (Section 8).

List of Subjects in 24 CFR Part 882

Grant programs: Housing and community development, Housing, Rent subsidies.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

Accordingly, 24 CFR Part 882 is amended as follows:

1. In § 882.101, paragraph (a) is made an undesignated paragraph and the heading "General." is removed, paragraphs (a)(1) and (a)(2) are redesignated paragraphs (a) and (b) respectively, and new paragraph (b) is revised to read as follows:

§ 882.101 Applicability and scope.

* * * * *

(b) For the purposes of this Part "Section 8 Existing Housing Program" means the program under this Part (except Subparts D and E of this Part). "Existing Housing" means housing that in Decent, Safe, and Sanitary condition except that it does not include: (1) A unit which is covered by an Agreement to Enter into Housing Assistance Payments Contract or by a Housing Assistance Payments Contract under any section 8 program other than the Section 8 Existing Housing Program, (2) a unit which is owned by the PHA administering the ACC under this Part, or (3) housing assisted under the Act other than under section 8 or section 17.

§ 882.102 [Amended]

2. Section 882.102 is amended by removing the term "*Rent Credit.* See § 882.115.", and by revising the definitions of "Existing Housing" and "Service Agreement" to read as follows:

§ 882.102 Definitions.

* * * * *

Existing Housing. See § 882.101(b).

* * * * *

Service Agreement. A written agreement approved by the State between the Owner (including an entity with the right to sublease) of an Independent Group Residence and the Service Agency and/or other entities providing the supportive services to the occupants of Independent Group Residences. The agreement shall specify the type and frequency of the supportive services to be furnished. (See §§ 882.109(n)(6) and 882.209(j)(2)).

* * * * *

3. In § 882.106, paragraphs (a)(1) and (c)(2)(ii) are revised to read as follows:

§ 882.106 Contract rents.

(a) * * *

(1) The Gross Rent for any existing housing unit approved pursuant to § 882.209(f) shall not exceed the Fair Market Rent applicable to such unit on the date of Lease approval, except as provided in this paragraph (a).

* * * * *

(c) * * *

(2) * * *

(ii) The PHA shall issue a Certificate of Family Participation to each eligible Family which will reside in an Independent Group Residence. A separate Lease and Contract shall be executed for each such Family. A Resident Assistant who lives in the unit may be counted as a Family member in determining the appropriate number of bedrooms. However, the Resident Assistant's income shall be disregarded in determining the Total Tenant Payment, the Tenant Rent or the Family's income eligibility.

* * * * *

4. Section 882.107 is revised to read as follows:

§ 882.107 Term of ACC.

The initial term of the ACC shall be for five years. The term may be extended.

5. In § 882.108, paragraph (a)(1)(i) is revised to read as follows:

§ 882.108 Rent adjustments.

(a) * * *

(1) *Annual Adjustments.* (i) Annual adjustments as of any anniversary date shall be determined by using the applicable Section 8 Annual Adjustment Factor (24 CFR Part 888) most recently published by HUD in the **Federal Register.**

* * * * *

§ 882.109 [Amended]

6. In § 882.109, paragraph (c) (2) is revised to read as follows:

§882.109 Housing quality standards.

* * * * *

(c) * * *

(2) *Acceptability Criteria.* The dwelling unit shall contain a living room, kitchen area, and bathroom. The dwelling unit shall contain at least one bedroom or living/sleeping room of appropriate size for each two persons. Persons of opposite sex, other than husband and wife or very young children, shall not be required to occupy the same bedroom or living/sleeping room. Exterior doors and windows accessible from outside the unit shall be lockable.

* * * * *

§ 882.109 [Amended]

7. In § 882.109, paragraphs (n) (3), (n) (6) (iii) and (n) (7) are revised to read as follows:

§882.109 Housing quality standards.

* * * * *

(n) *Independent Group Residence—Performance Requirement.*

* * * * *

(3) The dwelling unit shall afford the Family adequate space and security. A living room, kitchen, dining area, bathroom, and other appropriate social, recreational or community space shall be within the unit, and the unit shall contain at least one bedroom of appropriate size for each two persons. Exterior doors and windows accessible from outside each unit shall be capable of being locked. An emergency exit plan shall be developed and occupants shall be apprised of the details of the plan. All emergency and safety features and

procedures shall meet applicable State and local standards.

* * * * *

(6) *Supportive Services.*

* * * * *

(iii) A written Service Agreement, approved by the State and in effect between the Owner and the Service Agency and/or the entities which provide the necessary supportive service, shall be submitted to the PHA with the request for Lease approval. The Lease between the eligible individual and the Owner shall set forth the Owner's obligation for and means of providing these services. If the lessor provides the supportive services, a Service Agreement is not required and the provision of these services shall be incorporated into the Lease and shall be approved by the State. (See § 882.209(j)(2).)

(7) *State Approval.* Independent Group Residences shall be licensed, certified or otherwise approved in writing by the State (e.g., Departments of Human Resources, Mental Health, Retardation, Social Services, etc.) prior to the execution of the initial Contract. This approval shall be reexamined periodically based on a schedule established by the State. To assure that facilities and the supportive services are appropriate to the needs of the occupants, the State shall also approve the written Service Agreement (or Leases, if the provider of services is the lessor) for each Independent Group Residence. (See § 882.209(j)(2).)

* * * * *

§ 882.115 [Reserved]

8. Section 882.115 is deleted and reserved.

9. § 882.116, paragraph (p) is removed, paragraphs (q) and (r) are redesignated paragraphs (p) and (q) respectively, and paragraphs (f), (g) and (n) are revised to read as follows:

§ 882.116 Responsibilities of the PHA.

* * * * *

(f) Provision to each Certificate holder of basic information on applicable housing quality standards and inspection procedures, search for and selection of housing, owner and tenant responsibilities, and basicrules.

(g) Determination of the amount of the Total Tenant Payment and Tenant Rent.

* * * * *

(n) Adjustment of the amount of the Tenant Rent, Utility Reimbursement and housing assistance payment as a result of an adjustment by the PHA of any applicable Utility Allowance.

* * * * *

10. Section 882.118 is revised to read as follows:

§ 882.118 Obligations of the Family.

(a) The Family shall:

(1) Supply such certification, release, information or documentation as the PHA or HUD determine to be necessary in the administration of the program, including use by the PHA for a regularly scheduled reexamination or interim reexamination of Family income and composition in accordance with HUD requirements.

(2) Allow the PHA to inspect the dwelling unit at reasonable times and after reasonable notice.

(3) Notify the PHA before vacating the dwelling unit.

(4) Use the dwelling unit solely for residence by the Family, and as the Family's principal place of residence; and shall not assign the Lease or transfer the unit.

(b) The Family shall not:

(1) Own or have any interest in the dwelling unit (other than in a manufactured home assisted under Subpart F of this Part). If the Owner is a cooperative, the Family may be a member of the cooperative.

(2) Commit any fraud in connection with the Section 8 Existing Housing Program.

(3) Receive assistance under the Section 8 Existing Housing Program while occupying, or receiving assistance for occupancy of, any other unit assisted under any Federal housing assistance program (including any section 8 program).

§ 882.122 [Reserved]

11. Section 882.122 is deleted and reserved.

12. In § 882.204, paragraphs (a)(2), (b)(1)(i) and (ii), (b)(3)(ii), and (b)(4) are revised to read as follows:

§ 882.204 Submission of PHA applications.

* * * * *

(a) * * *

(2) State by number of bedrooms the total number of units requested by the PHA (i.e., one bedroom units, two bedroom units), and the approximate number of units for elderly, handicapped, or disabled Families.

* * * * *

(b) * * *

(1) * * *

(i) The plan shall describe the PHA's policies and procedures for:

(A) Outreach to eligible Families, and satisfying the requirements of § 882.207;

(B) Achieving participation by Owners of units of suitable price and quality located outside areas of low income or minority concentration (and outside the local jurisdiction in any area where the PHA is not legally barred from entering into Contracts) and satisfying the requirements of § 882.208;

(C) Selecting Families for participation without discrimination because of age, race, color, religion, sex, handicap or national origin;

(D) Assisting Certificate holders who allege that illegal discrimination is preventing them from leasing suitable units.

(ii) The PHA should consider the possibility of subcontracting with a community-based organization, such as a fair housing organization that has had experience in assisting families which traditionally have encountered discrimination or other difficulties in finding housing in the locality.

* * * * *

(3) * * *

(ii) The administrative plan shall state the PHA's policies and procedures for: performing outreach to eligible Families; contacting Owners; handling applications and determining Family eligibility; selecting Families for participation in the PHA's Section 8 program (including any selection preferences); computing the Total Tenant Payment and the Tenant Rent; briefing Families and issuing Certificates (including determination of the number of bedrooms entered on the Certificate); inspecting units for conformity to housing quality standards; approving Leases and executing Contracts; making payments to Owners; certifying and recertifying incomes; providing housing information and services to applicants and to Families participating in the program; reviewing and adjusting, as necessary, Utility Allowances; reinspecting units under Contract; adjusting Contract Rent payable to Owners; establishing informal review procedures for applicants for participation in the PHA program and informal hearing procedures for participants in the PHA program; monitoring program performance.

(4) A proposed schedule of Utility Allowances with a justification of the amounts proposed.

13. In § 882.206, paragraphs (a) and (b) are revised to read as follows:

§ 882.206 Annual Contributions Contract; schedule of leasing.

(a) *Transmittal of ACC.* After the HUD field office has prepared the ACC, the ACC shall be transmitted to the PHA

for execution by the PHA. The ACC shall be returned to HUD together with the PHA's estimates of its financial requirements on the prescribed forms, equal opportunity housing plan, administrative plan and proposed schedule of Utility Allowances, if these have not been previously submitted.

(b) *Execution of ACC by HUD.* After receipt of the PHA-executed ACC and HUD approval of the equal opportunity housing plan, administrative plan, financial estimates and the schedule of Utility Allowances, HUD shall execute the ACC. HUD shall then transmit to the PHA a fully executed copy of the ACC together with a leasing schedule in accordance with paragraph (c) of this section.

* * * * *

14. In § 882.207, the phrase "; waiting list" in the section heading is removed, paragraph (a) is made an undesignated paragraph and the paragraph (a) heading "Public Notice to Lower-Income Families." is removed, paragraphs (b) and (c) are removed, and paragraphs (a)(1) and (a)(2) are redesignated paragraphs (a) and (b) respectively, and new paragraph (a) is revised to read as follows:

§ 882.207 Public notice to lower-income families

* * * * *

(a) The notice shall state that occupants of housing assisted under the Act, and applicant on a waiting list for any such housing, must apply specifically for participation in the PHA's Section 8 Existing Housing Program if they wish to be considered for such participation. The notice shall also state that applicants for participation in the program will not lose their places on the public housing waiting list.

* * * * *

15. In § 882.209, the section heading is revised, paragraph (f) is removed, paragraphs (a), (b) and (c)(7) are revised, paragraph (e) is redesignated as paragraph (m) and new paragraph (m) is revised, and new paragraphs (e) to (l) are added, to read as follows:

§ 882.209 Selection and participation.

(a) *Selection for Participation in PHA's Section 8 Existing Housing Program.* (1) A Family becomes a participant in the PHA's Section 8 Existing Housing Program ("participant") when the PHA executes a Contract with an Owner for housing assistance payments on behalf of the Family.

(2) The PHA shall determine whether an applicant for participation qualifies as a Family, and is income eligible.

(3) The PHA's administrative plan or equal opportunity housing plan may provide for preferences in selection of applicants.

(4) The PHA may establish selection preferences for applicants living in the PHA jurisdiction. However, preferences may not be based on the identity or location of the housing which is occupied or proposed to be occupied by the applicant, nor upon the length of time the applicant has resided in the jurisdiction. Applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction.

(5) The PHA shall not establish selection criteria based on the applicant's suitability as a tenant or expected behavior as a tenant. The Owner will select the tenant. The PHA's selection of an applicant for participation is not a representation by the PHA to the Owner concerning expected behavior of the Family in tenancy of a unit, or concerning the Family's suitability for tenancy.

(6) If the PHA has selected an eligible Family residing in an Independent Group Residence to participate in the PHA's Section 8 program, the PHA may establish a preference for selecting eligible applicants who have indicated the desire to reside in an Independent Group Residence when a Section 8 Family in an Independent Group Residence moves. A Family given this preference shall select the unit of its choice and does not have to reside in the Independent Group Residence in which a vacancy has occurred.

(7) The PHA shall maintain a waiting list of income eligible Families which have applied for participation in the PHA's Section 8 program. The PHA shall select applicants for participation from the waiting list in accordance with policies and procedures (including any preferences) stated in the administrative plan or equal opportunity housing plan.

(8) If there is insufficient funding to admit all eligible applicants to participation in the PHA's Section 8 program, the PHA may at any time suspend the acceptance or processing of new applications, or the addition of new listings to the waiting list. Any such suspension shall be publicly announced by the PHA through publication in a newspaper of general circulation as well as through minority media and other suitable means.

(9) Nothing in this Part is intended to confer on an applicant for participation any right to be listed on the PHA waiting list, to any particular position on the waiting list, to receive a Certificate, or to participate in the PHA's Section 8 program. The foregoing sentence shall not be deemed to affect or prejudice any judicially-recognized cause of action.

(10) The PHA shall maintain records of applicants and participants which provide HUD with racial, gender and ethnic data.

(11) The PHA shall retain for three years a copy of the application, notices to the applicant, and the applicant's responses.

(b) *Issuance of Certificate of Family Participation and Certificate Holder's Packet. (1) When the PHA determines there is sufficient funding, the PHA shall issue a Certificate to an applicant on the waiting list.*

(2) The PHA shall enter on the Certificate the smallest number of bedrooms consistent with standards established by the PHA for determining the number of bedrooms for Families of different sizes and compositions. The PHA's standards shall provide for the minimum commitment of housing assistance payments while avoiding overcrowding and shall be consistent with the applicable housing quality standards (see § 882.109(c)). The PHA shall grant exceptions from the standards if the PHA determines the exceptions are justified by the relationship, age, sex, health or handicap of Family members, or other individual circumstances. For a Family renting a unit with a larger or smaller number of bedrooms than stated on the Certificate, see § 882.209(i).

(3) The PHA shall maintain a system to assure that the PHA will be able to honor all outstanding Certificates within the funding provided under the ACC, and that it will comply to the maximum extent feasible with the unit distribution specified in the ACC.

(4) When issuing a Certificate, the PHA shall give the Family a Certificate Holder's Packet, which includes:

(i) Request for Lease approval;

(ii) Required Lease provisions and prohibited Lease provisions (see § 882.209(j)(1));

(iii) Information regarding lead-based paint poisoning hazards, symptoms and precautions;

(iv) Fair housing information and housing discrimination complaint forms, as required by HUD;

(v) Information on the Total Tenant Payment and the Tenant Rent;

(vi) The PHA's schedule of Utility Allowances;

(vii) Information on the PHA's procedures for conducting informal hearings for participants. This information shall contain a general description of the procedures for conducting informal hearings for

participants in the PHA program; including a description of the circumstances in which the PHA is required to provide the opportunity for an informal hearing (pursuant to § 882.216 (b)(1) and (b)(2)), and of the procedures for requesting a hearing;

(viii) Such other items as the PHA may determine.

(c) * * *

(7) Function of Fair Market Rent, determination of Tenant Payment, Total Tenant Rent and of the housing assistance payment; and

* * * * *

(e) *Information to Owners and Requests to PHA for Lease Approval.* (1) The PHA will respond to inquiries from Owners who have been approached by Certificate holders by explaining major program procedures including Lease provisions, Lease approval procedures, housing quality inspections, Contract provisions and payment procedures and by furnishing copies of the pertinent forms.

(2) When a Family has found a unit it wants and the Owner is willing to lease, the Family shall submit to the PHA a Request for Lease Approval signed by the Owner of the unit and the Family. At the same time, the Family shall submit a copy of the proposed Lease (which shall be in accordance with § 882.209(j)). The proposed Lease shall be complete except for execution and entry of the amount of rent payable by the Family to the Owner (Tenant Rent).

(f) *Amount of Contract Rent to Owner.* (1) The PHA shall determine whether the requested Contract Rent is approvable in accordance with § 882.106. If the Family is to pay directly for any of the utilities or services, the PHA shall determine the amount of the Utility Allowance on account thereof. Inasmuch as the Fair Market Rents are established for a geographic area within which the rents for modest Decent, Safe, and Sanitary housing may vary substantially, the PHA shall make an analysis to determine the reasonable rent for the particular unit. If the requested Contract Rent plus any applicable Utility Allowance is at or below the reasonable rent and at or below the Fair Market Rent, it may be approved.

(2) If the otherwise approvable Contract Rent to Owner plus the applicable Utility Allowance, if any, is higher than the applicable Fair Market Rent, and if the PHA determines that such higher rent is justified, it shall take the action required by § 882.106 to have a higher rent approved.

(g) *Amount of Rent Payable by Family to Owner.* The amount of rent payable by the Family to the Owner shall be the Tenant Rent. Where applicable, the Utility Reimbursement will be paid by the PHA directly to the Family, or, if the Family and the utility company consent, may be paid jointly to the Family and the utility company or directly to the utility company.

(h) *Decent, Safe, and Sanitary Condition of Unit.* (1) Before approving a Lease, the PHA shall inspect the unit for compliance with the PHA's housing quality standards as established in accordance with § 882.109, or cause it to be so inspected on the date on which the Owner indicates that the unit will be ready for inspection, or as promptly as possible thereafter.

(2) If there are defects or deficiencies which must be corrected in order for the unit to be Decent, Safe, and Sanitary, the Owner shall be advised by the PHA of the work required to be done. Before a Contract is executed, the unit must be reinspected to ascertain that the necessary work has been performed and that the unit is Decent, Safe, and Sanitary. Occupancy of housing which requires repairs in orders to be made Decent, Safe and Sanitary may be assisted under this Part only after such repairs have been made.

(3) A report of every inspection and reinspection under this paragraph (h) shall be prepared and maintained in the files of the PHA. Each such report shall specify: (i) Any defects or deficiencies which must be corrected in order for the unit to be Decent, Safe, and Sanitary, and (ii) any other defects or deficiencies, a record of which shall be maintained for use in the event of a subsequent claim by the Owner that they were caused during the period of occupancy by the Family.

(i) *Size of Units.* (1) Regardless of the number of bedrooms stated on the Certificate, no otherwise acceptable unit shall be disapproved on the ground that it is too large for the Family, if the rent to Owner plus any Utility Allowance applicable to the actual larger size unit does not exceed the Fair Market Rent, or such higher rent as may previously have been approved by HUD under § 882.106(a) (3) or (4), for a unit with the number of bedrooms stated on the Certificate.

(2) The PHA may not prohibit a Family from renting a unit with fewer bedrooms than the number stated on the Certificate. However, the unit must meet the space requirement of § 882.109(c), or such variation as may have been approved by HUD, and the rent to Owner plus any applicable Utility Allowance must not exceed the Fair Market Rent, or such higher rent as approved by HUD pursuant to § 882.106(a) (3) or (4), for the actual smaller size unit.

(j) *Lease Requirements.* (1) *Required and Prohibited Provisions.* The Lease between the Owner and the Family shall be in accordance with § 882.215, and any other applicable HUD regulations and requirements. The Lease must include all provisions required by HUD, and shall not contain any of the prohibited provisions in Appendix I.

(2) *Independent Group Residences.* Leases for Independent Group Residences shall incorporate by reference the supportive services to be provided in accordance with the written Service Agreement between the Owner and the Service Agency and/or other entities providing the necessary supportive services. If the lessor provides the supportive services, a Service Agreement is not required and the provision of these services shall be incorporated into the Lease. This Service Agreement or pertinent Lease provisions shall be approved in writing by the State prior to PHA execution of the Contract [See §§882.102 and 882.109(n)(6)].

(k) *Approval of Lease and Execution of Related Documents.* (1) If the PHA determines that a unit which an Eligible Family wishes to lease is in Decent, Safe, and Sanitary condition, that the rent is approvable, and that the proposed Lease complies with the requirements of this Part, the PHA shall notify the Owner and the Family of its determination of Lease approval, and furnish two copies of the Contract to the Owner.

(2) After notification: (i) The Family and the Owner shall execute the Lease; (ii) the Owner shall sign both copies of the Contract, and shall furnish to the PHA a copy of the executed Lease, and both copies of the executed Contract; (iii) the PHA shall execute the Contract and return an executed copy to the Owner.

(3) The PHA shall retain the following in its files: The Request for the Lease Approval, the approved Lease, inspection report(s), the certification pursuant to § 882.106(b) that the rent is reasonable and not in excess of rents currently being charged by the Owner for comparable unassisted units, and the executed Contract.

(l) *Disapproval of Lease.* (1) If the PHA determines that the Lease cannot be approved for any reason, including the condition of the unit, the PHA shall notify the Owner and the Family that:

(i) The proposed Lease and/or the proposed dwelling unit are/is disapproved, for specified reasons; and

(ii) If the conditions requiring disapproval are remedied, and a Request for Lease Approval is resubmitted on or before a specified date, the Lease will be approved if the PHA determines that the conditions have been remedied to its satisfaction.

(2) The Certificate of Family Participation shall not expire before the date specified pursuant to paragraph (l)(1)(ii) of this section.

(3) The PHA shall retain in its files the following: the Request for Lease Approval, the inspection report(s), if any, and the notification of disapproval of the Lease.

(m) *Continued Participation When Participant Family Moves.* (1) If a participant in the PHA's Section 8 program notifies the PHA, during or at the end of the term of the Lease, that the Family wants another Certificate so that the Family can move to another dwelling unit within the area in which the PHA has determined that the PHA is not legally barred from entering into Contracts, the PHA shall (unless the PHA determines it does not have sufficient funding for continued Section 8 assistance for the Family) either: (i) Issue another Certificate, or (ii) deny issuance of a Certificate in accordance with § 882.210.

(2) If a participant in the PHA's Section 8 program moves out of the area in which the PHA has determined that it is able to enter Contracts, the Family may obtain housing assistance under the Section 8 program only if the Family is admitted to participation in the Section 8 program of a PHA operating in the area to which the Family moves. The new PHA shall treat the Family either as a participant in the PHA's Section 8 program to whom the PHA is already providing assistance and who wants to move to another unit, or as a resident who has submitted an application for participation. In either case, the PHA shall not deny admission to the program on the ground that the Family income is above limits for admission in that jurisdiction.

16. Section 882.210 is revised, to read as follows:

§ 882.210 Grounds for denial or termination of assistance.

(a) This section states the grounds for denial of assistance to an applicant, or for denial or termination of assistance to a participant, because of action or inaction by the applicant or participant.

(b) The PHA may deny an applicant admission to participation in the program, may deny issuance of another Certificate to a participant who wants to move to another dwelling unit (see § 882.209(m)(1) and § 882.216(b)(1)(iv)), and may decline to enter into a Contract, or to approve a Lease, where requested by a participant, in the following cases:

(1) If the applicant or participant currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the United States Housing Act of 1937.

(2) If the applicant (as a previous participant in the Section 8 program) or participant has not reimbursed the PHA or another PHA for any amounts paid to an Owner under a Contract for rent or other amounts owned by the Family under the Lease (see § 882.112(d)), or for a vacated unit (see § 882.105(b)).

(3) If the applicant or participant has committed any fraud in connection with any federal housing assistance program.

(4) If the applicant or participant has violated any Family obligation under the Section 8 Existing Housing Program as stated in § 882.118.

(5) If the applicant or participant has breached an agreement as described in § 882.210(c).

(c) In the cases described in § 882.210(b)(1) and (2), the PHA may at its discretion offer the applicant or participant the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an Owner by a PHA. If the PHA elects to make such offer, the agreement shall be on terms prescribed by the PHA. The PHA may at any time deny or terminate assistance for breach of such agreement.

(d) In the following cases, the PHA may terminate housing assistance payments which are being made on behalf of the participant under an outstanding Contract: (1) If the participant has commited any fraud in connection with any federal housing assistance program. (2) If the participant has violated any Family obligation under the Section 8 Existing Housing Program as stated in § 882.118. (3) If the participant has breached an agreement as described in § 882.210(c) above. The provisions of this paragraph (d) shall not affect or limit the right of the PHA to exercise any Contract remedy against the Owner under an outstanding Contract, including the termination of housing assistance payments to the Owner (see § 882.211(c) and § 882.216(b)(2)(iii)).

17. Section 882.211 is revised to read as follows:

§ 882.211 Maintenance, operation and inspections.

(a) *Maintenance and Operation.* The Owner shall provide all the services, maintenance and utilities which the Owner agrees to provide under the Contract, subject to termination of housing assistance payments or other applicable remedies if the Owner fails to meet these obligations.

(b) *Periodic Inspection.* In addition to the initial inspection provided under § 882.209(h)(l), the PHA will inspect or cause to be inspected each dwelling unit leased to a Family at least annually and at such other times as may be necessary to assure that the Owner is meeting the obligation to maintain the unit in Decent, Safe and Sanitary condition and to provide the agreed upon utilities and other services. The PHA will take into account complaints and any other information coming to its attention in scheduling inspections. All complaints by Families concerning compliance by the Owner with the housing quality standards shall be retained in the PHA's files for three years.

(c) *Units Not Decent, Safe and Sanitary.* If the Owner fails to maintain a dwelling unit in Decent, Safe and Sanitary condition, the PHA may exercise any of its rights and remedies under the Contract, including termination of housing assistance payments (even if the Family continues in occupancy) and termination of the Contract. If the PHA determines to terminate the Contract, and the Family wants to move to another dwelling unit with assistance under the PHA's Section 8 program, the PHA shall issue another Certificate to the Family (unless the PHA denies issuance of a Certificate in accordance with § 882.210).

18. Section 882.213 is revised to read as follows:

§ 882.213 Overcrowded or oversized units.

The PHA shall issue a participant Family a new Certificate, and the Family and PHA shall try to find an acceptable unit as soon as possible, if: (a) The PHA determines that a Contract unit is not Decent, Safe and Sanitary because of an increase in Family size or a change in Family composition, or (b) The PHA determines that the Family is residing in a unit with a larger number of bedrooms than appropriate under the PHA standards (see § 882.209(b)(2)) because of a change in Family size or change in Family composition, and that the Gross Rent for the unit exceeds the Fair Market Rent for a unit with the number of bedrooms appropriate for the Family size and composition. (The PHA shall notify the Family that exceptions to the standards may be granted, and of the circumstances in which the grant of an exception will be considered by the PHA.) If an acceptable unit is found that is available for occupancy by the

Family, the PHA shall terminate the Contract in accordance with its terms.

19. Section 882.215 is revised to read as follows:

§ 882.215 Assisted tenancy.

(a) *Term of Lease.* (1) The term of the Lease shall begin on a date stated in the Lease, and shall continue until: (i) A termination of the Lease by the Owner in accordance with paragraph (c) of this section, (ii) a termination of the Lease by the Family in accordance with the Lease or by mutual agreement during the term of the Lease, or (iii) a termination of the Contract by the PHA.

(2) The term of the Lease shall begin at least one year prior to the end of the remaining term of the ACC. The Contract and the Lease shall end upon termination of the ACC.

(3) During the term of the Lease, the Contract Rent shall be subject to adjustment in accordance with § 882.108, and the Tenant Rent shall be subject to change in accordance with HUD regulations and requirements.

(4) The Owner may offer the Family a new Lease for execution by the Family after approval by the PHA in accordance with § 882.209(k), for a term beginning at any time after the first year of the term of the Lease. The Owner shall give the tenant written notice of the offer, with copy to the PHA, at least sixty days before the proposed commencement date of the new Lease term. The offer may specify a reasonable time limit for acceptance by the Family.

(5) The Lease shall permit a termination of the Lease by the Family without cause, at any time after the first year of the term of the Lease, or not more than sixty days written notice by the Family to the Owner (with copy to the PHA).

(b) *Housing Assistance Payments Contract.* (1) The Contract for a unit shall be in a form prescribed by HUD.

(2) The term of the Contract shall begin on the first day of the term of the Lease and shall end on the last day of the term of the Lease.

(c) *Termination of Tenancy (for Leases entered into on or after October 1, 1981).* (1) The Owner shall not terminate the tenancy except for:

(i) Serious or repeated violation of the terms and conditions of the Lease;

(ii) Violation of Federal, State, or local law which imposes obligations on the tenant in connection with the occupancy or use of the dwelling unit and surrounding premises; or

(iii) Other good cause.

(2) The following are some examples of "other good cause" for termination of tenancy by the Owner: Failure by the Family to accept the offer of a new Lease in accordance with paragraph (a)(4) of this section; a Family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or property; criminal activity by Family members involving crimes of physical violence to persons or property; the Owner's desire to utilize the unit for personal or family use or for a purpose other than use as a HUD assisted residential rental unit; or a business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental). This list of examples is intended as a non-exclusive statement of some situations included in "other good cause," but shall in no way be construed as a limitation on the application of "other good cause" to situations not included in the list.

(3) The Owner may evict the tenant from the unit only by instituting a court action. The Owner must notify the PHA in writing of the commencement of procedures for termination of tenancy, at the same time that the Owner gives notice to the tenant under State or local law. The notice to the PHA may be given by furnishing to the PHA a copy of the notice to the tenant.

(d) *Termination of Tenancy (for Leases entered into before October 1, 1981).* For Leases entered into before October 1, 1981, the PHA shall have the sole right to give the notice to vacate, with the Owner having the right to make representation to the PHA for temination of tenancy.

(e) *Concurrent Notices.* Any notices required under this section (see paragraphs (a)(4), (a)(5), (c)(3) and (d) of this section) may be combined with and run concurrently with any notices required under State or local law.

(f) *Non-applicability of Part 247—Evictions from Certain Subsidized and HUD-owned Projects.* Notwithstanding the provisions of 24 CFR 247.1, 24 CFR Part 247 shall not apply to a tenancy assisted under the Section 8 Existing Housing Program.

(g) *Applicability.* Paragraphs 882.215 (a), (b), (c)(2) and (c)(3) shall be applicable if a Lease or Contract is entered after May 10, 1984.

20. Section 882.216 is revised to read as follows:

§ 882.216 Informal review or hearing.

(a) *Informal Review of PHA Decision on Application for Participation in PHA Program.* (1) The PHA shall give an applicant for participation in the PHA's Section 8 Existing Housing Program prompt written notice of a decision denying assistance to the applicant including a decision denying listing on the PHA waiting list, issuance of a Certificate of Family Participation, or participation in the program). The notice shall also state that the applicant may request an informal review of the decision, and shall describe how to obtain the informal review.

(2) The PHA shall give the applicant an opportunity for an informal review of the decision, in accordance with review procedures established by the PHA. The informal review shall be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of such person. The applicant shall be given an opportunity to present written or oral objections to the PHA decision. The PHA shall promptly notify the applicant in writing of the final PHA decision after the informal review, including a brief statement of the reasons for the final decision.

(3) The PHA is not required to provide an opportunity for an informal review in accordance with paragraph (a):

(i) To review discretionary administrative determinations by the PHA, or to consider general policy issues or class grievances;

(ii) To review the PHA's determination of the number of bedrooms entered on the Certificate under the standards established by the PHA (see § 882.209(b)(2));

(iii) To review the PHA's determination that a unit located by a Certificate holder does not comply with the PHA's housing quality standards established in accordance with § 882.109, or the PHA's determination not to approve the Lease for the unit;

(iv) To review the PHA's decision not to approve a request by a Certificate holder for an extension of the term of the Certificate.

(b) *Informal Hearing on PHA Decision Affecting Participant Family.* (1) The PHA shall give a participant in the PHA's Section 8 Existing Housing Program an opportunity for an informal hearing to consider whether decisions relating to the individual circumstances of the Family are in accordance with law, HUD regulations and PHA rules, in the following cases:

(i) A determination of the amount of the Total Tenant Payment or Tenant Rent (not including determination of the PHA's schedule of Utility Allowances for Families in the PHA's Section 8 program).

(ii) A decision to deny or terminate assistance on behalf of the participant.

(iii) A determination that a participant Family is residing in a unit with a larger number of bedrooms than appropriate under the PHA standards (see § 882.209(b)(2) and § 882.213), and the PHA's determination to deny the Family's request for an exception from the standards.

(iv) In the case of an assisted Family which wants to move to another dwelling unit with continued participation in the PHA program (see § 882.209(m)(1)), a determination of the number of bedrooms entered on the Certificate under the standards established by the PHA (see § 882.209(b)(2)).

(2) The PHA is not required to provide an opportunity for an informal hearing in accordance with paragraph (b):

(i) To review discretionary administrative determinations by the PHA, or to consider general policy issues or class grievances;

(ii) To review the PHA's determination that a unit does not comply with the PHA's housing quality standards established in accordance with § 882.109, that the Owner has failed to maintain or operate a Contract Unit to provide decent, safe and sanitary housing in accordance with the HQS (including all services, maintenance and utilities required under the Lease), or that the Contract unit is not decent, safe and sanitary because of an increase in Family size or change in Family composition;

(iii) To review a decision by the PHA to exercise any remedy against the Owner under an outstanding Contract, including the termination of housing assistance payments to the Owner (see § 882.211(c)); or

(iv) To review the PHA's decision not to approve a Family's request for an extension of the term of the Certificate issued to an assisted Family which wants to move to another dwelling unit with continued participation in the PHA's Section 8 program.

(3)(i) The PHA shall give the participant prompt written notice of a decision described in § 882.216(b)(1) (ii) or (iii). The notice shall contain a brief statement of the reasons for the decision. The notice shall state that, if the participant does not agree with the decision, the participant may request an informal hearing on the decision, and shall also state the time by which the request for an informal hearing must be made by the participant.

(ii) When the PHA determines the amount of the Total Tenant Payment or the Tenant Rent as described in § 882.216(b)(1)(i), or determines the number of bedrooms entered on the Certificate of an assisted Family which wants to move to another dwelling unit as described in § 882.216(b)(1)(iv), the PHA shall notify the participant that the participant may ask for an explanation of the basis of the PHA determination, and that, if the participant does not agree with the determination, the participant may request an informal hearing on the decision.

(4) If the PHA has decided to terminate housing assistance payments on behalf of a participant under an outstanding Contract (and if the PHA is required to give the participant an informal hearing on the decision), the participant shall be afforded the opportunity for such informal hearing before the termination of housing assistance payments.

(5) In all cases where a hearing is required under paragraph (b), the PHA shall proceed with a hearing in a reasonably expeditious manner upon the request of the participant.

(6) The PHA shall adopt written procedures for conducting informal hearings for participants in the PHA's Section 8 program. The PHA hearing procedures shall comply with the following:

(i) The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of such person.

(ii) At its own expense, the participant may be represented by a lawyer or other representative.

(iii) The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures.

(iv) The PHA and the participant shall be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(v) The person who conducts the hearing shall issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the participant shall be based on the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the participant.

(7)(i) The PHA is not bound by a hearing decision: (A) Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing pursuant to § 882.216(b), or otherwise in excess of the authority of the person conducting the hearing under the PHA hearing procedures, or (B) Contrary to HUD regulations or requirements, or otherwise contrary to Federal, State or local law.

(ii) If the PHA determines that it is not bound by a hearing decision, the PHA shall promptly notify the participant of the determination, and of the reasons for the determination.

Appendix I—[Removed]

21. In Part 882, Appendix I—Required Lease Provisions is removed and Appendix II is redesignated as Appendix I.

22. In § 882.504, paragraph (j) is revised to read as follows:

§ 882.504 Assistance to owners and selection of units.

* * * * *

(j) The Lease between the Owner and the Family must be in accordance with § 882.511 and any other applicable HUD regulations and requirements. The Lease must include all provisions required by HUD, and must not include any of the prohibited provisions in Appendix I.

Authority: Section 8, United States Housing Act of 1937 (42 U.S.C. 1437f); sec. 326(e) of the Housing and Community Development Amendments of 1981 (Pub. L. 97-35); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 21, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 84-8387 Filed 3-28-84; 8:45 am]

BILLING CODE 4210-27-M

Solar Energy and Energy Conservation Bank

24 CFR Part 1800

[Docket No. R-84-1053; FR-1700]

Financial Assistance Program of the Solar Energy and Energy Conservation Bank; Correction

AGENCY: Solar Energy and Energy Conservation Bank, HUD.

ACTION: Final rule; correction.

SUMMARY: The purpose of this document is to correct a table contained in a final rule that set forth the requirements for implementing the Solar Energy and Energy Conservation Bank's program which was published in the **Federal Register** on March 16, 1984 (49 FR 9865).

FOR FURTHER INFORMATION CONTACT: Dr. Richard Francis, Manager, Solar Energy and Energy Conservation Bank, Telephone number, (202) 755-7166. (This is not a toll-free number.)

Accordingly, the following is being made in FR Doc. 84-7024 appearing in

the March 16, 1984 issue of the **Federal Register** beginning on page 9865:

1. On page 9889, middle of page, third column, remove the table from § 1800.67(a)(1) and insert the following new Tables I and II in its place:

TABLE I

Building type	Assistance as percentage of improvement cost	Maximum assistance			
		1-family building	2-family building	3-family building	4-family building
One- to four-family residential building. Annual income of recipient:					
80 percent or less of median area income	50 percent up to	$1,250	$2,000	$2,750	$3,500
80–100 percent of median area income	35 percent up to	875	1,400	1,925	2,450
100–120 percent of median area income	30 percent up to	750	1,200	1,650	2,100
120–150 percent of median area income	20 percent up to	500	800	1,100	1,440
Over 150 percent of median area income	20 percent up to	(1)	(2)	(2)	(2)

[1] $400 for a non-occupant owner.
[2] $400 per dwelling unit for an owner.

TABLE II

Building type	Assistance as percentage of improvement cost	Maximum assistance
Multifamily residential building	20 percent up to	(1)
Agricultural or commercial building	20 percent up to	$5,000

[1] $400 for a tenant with annual income not in excess of 150% of median area income; $400 per dwelling unit for an owner.

Authority: Secs. 506(e) and 520, Solar Energy and Energy Conservation Bank Act (12 U.S.C. 3604(e) and 3618).

Dated: March 23, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84-8420 Filed 3-28-84; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

Law and Order on Indian Reservations; Listing of Courts of Indian Offenses

Correction

In FR Doc. 84-5304 beginning on page 7365 in the issue of Wednesday, February 29, 1984, make the following corrections.

On page 7366, first column, in § 11.1(a), insert "(8) Kaibab (Arizona)." between paragraphs (7) and (9).

In the second column in the file line, "FR Doc. 84-5304" should read "FR Doc. 84-5303".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7947]

Income Tax; Taxable Years Beginning After December 31, 1953; Deduction for Motor Carrier Operating Authorities

Correction

In FR Doc. 84-5935 beginning on page 8246 in the issue of Tuesday, March 6, 1984, make the following corrections.

1. On page 8248, first column, third line of § 1.9200-1(c)(1)(ii), "paragraph (c)(1)(ii)" should have read "paragraph (c)(1)(i)".

2. On page 8249, second column, § 1.9200-1(g), eighteenth line of example (1)(iv), "$30,000" should have read "$130,000".

BILLING CODE 1505-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-170; Ref: Notice No. 484]

The Umpqua Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: As the result of a petition, this final rule establishes a viticultural area in Douglas County, Oregon, to be known as "Umpqua Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Umpqua Valley as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries to better designate where their wines come from and will enable consumers to better identify the wines from this area.

EFFECTIVE DATE: April 30, 1984.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7531).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Mr. David B. Adelsheim, Chairman of the Appellation Committee, Oregon Winegrowers Association, petitioned ATF to establish a viticultural area in Douglas County, Oregon, to be known as "Umpqua Valley." This viticultural area is located entirely within Douglas County in the southwestern part of the State and consists of approximately 768,000 acres. There are five wineries

and approximately 334 acres of grapes scattered throughout the area. In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 484, in the **Federal Register** on September 16, 1983 (48 FR 41604), proposing the establishment of the Umpqua Valley viticultural area.

Comments

No comments were received during the comment period. ATF has received no information from any source indicating opposition to the petition.

General Information

In *The Winemakers* by Purser and Allen, the beginnings of viticulture in the Umpqua Valley are traced to Jesse Applegate who planted 40 acres of grapes in 1876 that were probabley sold as table grapes. The Von Pessl brothers planted the first vinifera vines soon after, having brought cuttings from St. Helena and Lodi, California. The brothers grew Zinfandel, Riesling, and Sauvignon, made wine for home use, and also ran a distillery. Adam Doerner visited the Von Pessls in 1888, worked for the Beringers in St. Helena, then returned to the Umpqua Valley to grow Sauvignon and Riesling grapes. The winery he started continued to produce wine up until 1965 (selling most to home winemakers during Prohibition) under Adam's son and grandson.

Leon Adams, in *The Wines of America*, calls Richard Sommer the father of Oregon's current wine industry. The following quote is from Adams' book: "Remembering what Dr. Amerine (University of California at Davis professor) had taught, that the finest wine grapes in California are grown in the cooler districts, Sommer went where it is still cooler, to Oregon. He went * * * north, testing the grapes in each locality. At Roseburg in the Umpqua Valley he found some Zinfandels in the 80-year-old Doerner's Winery vineyard that tested right. In 1961 he bought a hillside farm * * * ten miles west of Roseburg, planted vines from the Napa Valley, and bonded his winery two years later." In the 22 years since that time, winegrape acreage in the Umpqua Valley has grown considerably. In the period between 1981 and 1983, vineyard acreage increased by about 201 acres. This is an increase of about 151 percent in two years and shows that this area is a rapidly developing grape-growing area.

Evidence Relating to the Name

The name "Umpqua Valley" is the name used in both academic and consumer-oriented wine and viticulture books to refer to the section of Douglas County where grapes are grown. *The Wines of America* by Leon Adams, McGraw-Hill Book Co., 1978, *Northwest Wine* by Ted Meredith, Nexus Press, 1980, and *Touring The Wine Country of Oregon* by Ronald and Glenda Holden, 1982, all make extensive mention of viticulture in the Umpqua Valley. In *The Winemakers* by Purser and Allen, Harbor House Publishing Ltd., 1977, the authors interchange "Umpqua Valley" with the more prosaic "Hundred Valleys of the Umpqua."

Umpqua Valley has been in use on approved wine labels since 1964, and became one of three appellations of origin approved for use on Oregon wines by the Oregon Liquor Control Commission in 1976. That appellation was defined, using political boundaries, as being all of Douglas County. Those county lines coincide almost exactly with the boundary of the Umpqua River basin. However, only the center, intermountain lowland section of that basin is cultivable. Consequently, the boundaries of the viticultural area have been drawn to coincide with this center, intermountain lowland section.

Historical/Current Evidence of Boundaries

Umpqua is a historic name in the State of Oregon. It was used by the Indians to refer to the locality of the Umpqua River and the name came to be applied both to the river and to an Indian tribe. The territorial legislature created an "Umpqua County" on January 24, 1851. It ceased to exist on October 16, 1862, its area having been added to Douglas and Lane Counties. The Hudson's Bay Company had an establishment in the Umpqua Valley as early as 1832, probably on Calapooya Creek. It was generally called Old Fort Umpqua, and Umpqua City was established near Reedsport in 1850 but gradually died out by 1867. The present Umpqua Post Office is on the Umpqua River, near the mouth of Calapooya Creek. It was originally known as Umpqua Ferry when it was established in 1877.

Contemporary attempts to define an "Umpqua Valley" viticultural area include the previously mentioned Oregon Liquor Control Commission-approved appellation and "Wine-Grape Adaptation to Oregon Climates" by Warren Aney in the *Proceedings* of the Oregon Horticultural Society, 1974. Mr. Aney used various climatological factors to isolate an oval-shaped area around Roseburg, 33 miles wide and 70 miles long, stretching from Elkton in the north to Canyonville in the south. A recent unpublished proposal by the same author (February 25, 1982) identifying various potential viticultural areas in the Pacific Northwest, defined the "Umpqua subregion" as "that part of the Umpqua basin above Elkton having—

(a) An elevation not greater than 300 meters (1,000 feet);

(b) An expected 20-year minimum not lower than minus 20 degrees Celsius (minus four degrees Fahrenheit);

(c) A growing season at least 180 days long; and

(d) At least 2,000 degrees-days from April through October."

A map of donation land claims (free land given to settlers by 1855) in the *Atlas of Oregon*, University of Oregon Books, 1976, page 8, and a map compiled from LANDSAT satellite photographs, found on page 23 of the same book, both clearly isolate the agricultural intermountain lowlands of the Umpqua basin from the surrounding forested coastal and Cascade Mountain regions. The most accurate map showing the cultivable land in the Umpqua River basin is the two-part General Soil Map contained in Appendix I–16, "Umpqua Drainage Basin," to *Oregon's Long-Range Requirements for Water*, State Water Resources Board, Salem, 1969. It divides all of the land in the central part of the basin into five classes of irrigation suitability, from excellent to very poor (non-irrigable), based on slope and soil type. In defining the boundaries of the viticultural area, we have tried to include all areas with soils in Classes I–IV in the central part of the basin, i.e., from Scottsburg upstream.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), the viticultural area should possess geographical features which distinguish the viticultural features of the area from surrounding areas.

The petition and attached documents contained substantial geographic and climatic information which show that:

(a) The Umpqua Valley viticultural area is basically the intermountain lowlands section of the Umpqua basin. It is bounded on the west and north by the Coast Range Mountains. The Klamath Mountains form the southern boundary and the Cascade Mountains the eastern. The area is separated from the Willamette Valley by an 800 foot divide at the Douglas/Lane County line. In comparison, the surrounding area is generally steeper and more rugged.

(b) The 1,000-foot contour line was chosen as the basic boundary of the viticultural area because elevation seems to be a fairly reliable indicator of suitability for cultivation. At the 1,000-foot level, low slopes turn into steep

slopes and become less hospitable to horticulture. Above the 1,000-foot contour line there is a noticeable difference in climate, soils, topography and vegetation. In addition, there are a few sections of the region below the 1,000-foot elevation, particularly south of the Umpqua River between Elkton and Scottsburg, which contain no cultivable soils. These have been excluded from the viticultural area. Similarly, in the Cascade foothills, the upper sections of the valleys of the North Umpqua River and Calapooya Creek have been excluded for lack of irrigable land.

(c) The soils reflect the complex geology of the region. In the flood plains of the Umpqua River and its tributaries, there is much recent alluvial material which is slightly acidic and well-drained. The flood plains are intensively used for irrigated specialty crops, including grapes. In comparison, the surrounding area is not part of the flood plains and consequently its soil is quite different.

(d) The climate of the Umpqua basin is characterized by cool winters, warm summers, and high annual precipitation with a definite summer deficiency. The mean January temperature at Roseburg is 41 degrees Fahrenheit and the July mean is 67 degrees Fahrenheit. The frost-free period averages 230 days and the April through October degree-day index is 2,380 which establishes this growing area as Region I as classified by the University of California at Davis system of heat summation by degree-days. This area has slightly greater annual temperature ranges than the Willamette Valley to the north and the coastal areas to the west.

Boundaries

The boundaries proposed by the petitioner are adopted. An exact description of these boundaries is discussed in the regulations portion of this document. ATF believes that these boundaries delineate an area with distinguishable geographic and climatic features.

Miscellaneous

ATF does not wish to give the impression by approving the Umpqua Valley viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Umpqua Valley wines.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

A copy of the petition and comments, along with the appropriate maps with boundaries marked, are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4407, Office of Public Affairs and Disclosure, 12th & Pennsylvania Avenue, NW, Washington, DC.

Drafting Information

The principal author of this document is Robert L. White, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.89. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.89 Umpqua Valley.

Par. 2. Subpart C is amended by adding § 9.89. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.89 Umpqua Valley.

(a) *Name.* The name of the viticultural area described in this section is "Umpqua Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Umpqua Valley viticultural area are two U.S.G.S. maps. They are titled:

(1) "Roseburg," scale 1:250,000 (1958, revised 1970); and

(2) "Medford," scale 1:250,000 (1955, revised 1976).

(c) *Boundaries.* The Umpqua Valley viticultural area is located entirely within Douglas County, Oregon, which is in the southwest part of the State. The beginning point is the intersection of Interstate Highway 5 with the Douglas/Lane County line in Township 21 South (T21S), Range 4 West (R4W) on the "Roseburg" map.

(1) From the beginning point, the boundary proceeds north along the Douglas/Lane County line approximately .5 miles to the the 1,000-foot contour line;

(2) Thence northwest along the 1,000-foot contour line to the Douglas/Lane County line; thence west along the Douglas/Lane County line approximately 2.5 miles, returning to the 1,000-foot contour line; thence in a

generally westerly direction along the 1,000-foot contour line to the R9W/R10W range line;

(3) Thence south along the R9W/R10W range line approximately 2.75 miles to the center of the Umpqua River; thence along a straight line in an easterly direction approximately 6.25 miles to the intersection of range line R8W/R9W with the center of the Umpqua River; thence south along range line R8W/R9W approximately 3.5 miles to its intersection with township line T22S/T23S;

(4) Thence southeast approximately 8.5 miles along a straight line to the intersection of township line T23S/T24S with range line R7W/R8W; thence south along the R7W/R8W range line approximately 8 miles to its intersection with the 1,000-foot contour line; thence in a southeasterly direction in a straight line approximately 3.5 miles toward the intersection of township line T25S/T26S with range line R6W/R7W, returning to the 1,000-foot contour line;

(5) Thence in a southerly direction along the 1,000-foot contour line to the intersection of township line T27S/T28S with range line R7W/R8W; thence in a southwesterly direction in a straight line approximately 3.5 miles toward the intersection of township line T28S/T29S with range line R8W/R9W, returning to the 1,000-foot contour line; thence south along the 1,000-foot contour line to its intersection with township line T29S/T30S;

(6) Thence east along township line T29S/T30S approximately .33 miles, rejoining the 1,000-foot contour line; thence in a northerly and eventually a southerly direction along the 1,000-foot contour line past the town of Riddle on the "Medford" map to range line R6W/R7W; thence south along the R6W/R7W range line approximately .5 miles back to the 1,000-foot contour line;

(7) Thence in an easterly, westerly, and eventually a northerly direction along the 1,000-foot contour line to a point approximately 3.5 miles east of Dillard, where the contour line crosses Interstate Highway 5 on the "Roseburg" map; thence northeast along Interstate Highway 5 approximately .25 mile, returning to the 1,000-foot contour line; thence in a generally northeasterly, southeasterly, northwesterly, and eventually a northeasterly direction along the 1,000-foot contour line past the town of Idleyld Park to the R2W/R3W range line;

(8) Thence north along range line R2W/R3W approximately 1.75 miles to the T25S/T26S township line; thence west along township line T25S/T26S approximately .25 mile, returning to the 1,000-foot contour line; thence in a generally westerly and then a northerly direction along the 1,000-foot contour line up the valley of Calapooya Creek to the R3W/R4W range line; thence north along range line R3W/R4W approximately 2.25 miles, back to the 1,000-foot contour line;

(9) Thence in a westerly and then a northerly direction along the 1,000-foot contour line to the T23S/T24S township line; thence east along the T23S/T24S township line approximately 2.75 miles to the 1,000-foot contour line; thence in a northerly direction along the 1,000-foot contour line to its intersection with the Douglas/Lane County line; thence north along the Douglas/Lane County line approximately .75 mile to the point of beginning.

Signed: January 24, 1984.

Stephen E. Higgins,

Director.

Approved: March 16, 1984.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 84-8254 Filed 3-27-84; 1:59 pm]

BILLING CODE 4810-31-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Tax Division Directive No. 47]

Organization of the Department of Justice; Appendix to Subpart Y—Redelegation of Authority To Compromise and Close Civil Claims; Redelegation of Authority To Compromise and Close Civil Claims

AGENCY: Tax Division, Department of Justice.

ACTION: Final rule.

SUMMARY: This directive gives the Attorney-in-Charge of the Dallas Field Office authority to accept offers in compromise in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $10,000, and to reject offers in compromise, regardless of amount. This directive supersedes Tax Division Directive No. 45. This revision is intended to simplify the Department's procedures.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Mildred L. Seidman, Tax Division, Department of Justice, Washington, D.C. 20530, (202) 724-6567.

SUPPLEMENTARY INFORMATION: The Assistant Attorney General for the Tax Division has determined that this directive is not a rule within the meaning of Executive Order 12291 or the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 0

Administrative practice and procedure; Authority delegations (Government agencies).

PART 0—[AMENDED]

In appendix to Subpart Y—Redelegation of Authority to Compromise and Close Civil Claims, Tax Division Directive No. 45 is deleted and Directive No. 47 is added as follows:

[Directive No. 47]

By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, particularly §§ 0.70, 0.160, 0.162, 0.164, 0.166, and 0.168, it is ordered as follows:

Section 1. The Chiefs of the Civil Trial Sections, the Claims Court Section, and the Appellate Section and the Attorney-in-Charge of the Dallas Field Office are authorized to reject offers in compromise, regardless of amount, provided that such action is not opposed by the agency or agencies involved.

Sec. 2. Subject to the conditions and limitations set forth in Section 8 hereof, the Chiefs of the Civil Trial Sections and Claims Court Section are authorized to:

(A) Accept offers in compromise in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $200,000,

(B) Approve administrative settlements not exceeding $100,000,

(C) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $100,000,

(D) Accept offers in compromise in injunction or declaratory judgment suits against the United States in which the amount of the related liability, if any, does not exceed $200,000, and

(E) Accept offers in compromise in all other nonmonetary cases,

provided that such action is not opposed by the agency or agencies involved, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Sec. 3. Subject to the conditions and limitations set forth in Section 8 hereof, the Chief of the Appellate Section is authorized to:

(A) Accept offers in compromise with reference to litigating hazards of the issues on appeal in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $200,000,

(B) Accept offers in compromise in declaratory judgment suits against the United States in which the amount of the related liability, if any, does not exceed $200,000, and

(C) Accept offers in compromise in all other nonmonetary cases which do not involve issues concerning collectibility,

provided that such action is not opposed by the agency or agencies involved or the chief of the section in which the case originated, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Sec. 4. Subject to the conditions and limitations set forth in Section 8 hereof, the Attorney-in-Charge of the Dallas Field Office is authorized to accept offers in compromise in all civil cases in which the amount of the Government's concesssion, exclusive of statutory interest, does not exceed $10,000, provided that such action is not opposed by the agency or agencies involved, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Sec. 5. Subject to the conditions and limitations set forth in Section 8 hereof, the Chief of the Office of Review is authorized to:

(A) Accept offers in compromise in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $500,000,

(B) Approve administrative settlements not exceeding $500,000,

(C) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $500,000,

(D) Accept offers in compromise in all nonmonetary cases, and

(E) Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amount.

provided that the action is not opposed by the agency or agencies involved or the chief of the section to which the case is assigned, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Sec. 6. Subject to the conditions and limitations set forth in Section 8 hereof, the Deputy Assistant Attorneys General and the Special Counsel to the Assistant Attorney General each is authorized to:

(A) Accept offers in compromise of claims against the Government in all cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $750,000,

(B) Approve administrative settlements not exceeding $750,000,

(C) Accept offers in compromise of claims in behalf of the Government in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $750,000 or 10 percent of the original claim, whichever is greater,

(D) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $750,000,

(E) Accept offers in compromise in all nonmonetary cases, and

(F) Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amount,

provide that such action is not opposed by the agency or agencies involved, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Sec. 7. Subject to the conditions and limitations set forth in Section 8 hereof, United States Attorneys are authorized to:

(A) Reject offers in compromise of judgments in favor of the Government, regardless of amount,

(B) Accept offers in compromise of judgments in favor of the Government where the amount of the judgment does not exceed $500,000, and

(C) Terminate collection activity by that office as to judgments in favor of the Government which do not exceed $50,000 if the United States Attorney concludes that the judgment is uncollectible,

provided that such action has the concurrence in writing of the agency or agencies involved, and provided further that this authorization extends only to judgments which have been formally referred to the United States Attorney for collection.

Sec. 8. The authority redelegated herein shall be subject to the following conditions and limitations:

(A) When, for any reason, the compromise or administrative settlement or concession of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totalling more than the respective amounts designated in Section 2, 3, 4, 5, 6, and 7 the case shall be forwarded for review at the appropriate level.

(B) When, because of the importance of a question of law or policy presented, the position taken by the agency or agencies or by the United States Attorney involved, or any other considerations, the person otherwise authorized herein to take final action (or the Chief of the Office of Review, in cases which have been considered by such office) is of the opinion that the proposed disposition should be review at a higher level, the case shall be forwarded for such review.

(C) If the Department has previously submitted a case to the Joint Committee on Taxation leaving one or more issues unresolved, any subsequent compromise or concession in that case must be submitted to the Joint Committee, whether or not the overpayment exceeds the amount specified in Section 6405 of the Internal Reveune Code.

(D) Nothing in this Directive shall be construed as altering any provision of Subpart Y of Part O of Title 28 of the Code of Federal Regulations requiring the submission of certain cases to the Attorney General, the Deputy Attorney General, or the Solicitor General.

(E) Authority to approve recommendations that the Government confess error, or make administrative settlements, in cases on appeal, is excepted from the foregoing redelegations.

(F) The Assistant Attorney General, at any time, may withdraw any authority delegated by this Directive as it relates to any particular case or category of cases, or to any part thereof.

Sec. 9. This Directive supersedes Tax Division Directive No. 45, effective June 6, 1983.

Sec. 10. This Directive shall become effective March 29, 1984.

Glenn L. Archer, Jr.,

Assistant Attorney General, Tax Division.

Dated: March 20, 1984.

Approved:

D. Lowell Jensen,

Acting Deputy Attorney General.

[FR Doc. 84-8298 Filed 3-28-84; 8:45 am]

BILLING CODE 4410-01-M

Office of the Attorney General

28 CFR Part 0, 16, and 50

[Order No. 1055-84]

Revision of Department of Justice Regulations Implementing the Freedom of Information Act and the Privacy Act of 1974

AGENCY: Office of the Attorney General, Justice.

ACTION: Final rule.

SUMMARY: This notice sets forth revisions to the procedural regulations of the Department of Justice that implement the Freedom of Information Act ("FOIA") and the Privacy Act of 1974 and provide for access to FBI identification records. The regulations implementing the FOIA and the Privacy Act are revised in their entirety. The Supplementary Information section below explains the modifications that have been made to the proposed regulations published at 48 FR 35892 (Aug. 8, 1983).

These revisions are intended to simplify the Department's procedures, clarify the system for the access of records under the FOIA and the Privacy Act, clarify the system for the referral of such requests within the Department (or from the Department to other government agencies), clarify procedures for handling law enforcement records and records about individuals, and provide for notice to submitters of business information of the filing of a request for that information. The revisions also clarify the distinctions between the procedures for responding to requests under the Freedom of Information Act and the Privacy Act.

Finally, this Notice also sets forth a revision of the Department's 1973 policy statement on the discretionary disclosure of investigatory records of historical interest. 28 CFR 50.8 has been updated to reflect the 1974 amendments to the Freedom of Information Act.

DATE: These regulations will become effective April 30, 1984, except that the

revised policy statement in 28 CFR 50.8 shall be effective March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Kevin R. Jones, Deputy Assistant Attorney General, Office of Legal Policy, United States Department of Justice, Room 4224, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530 ((202) 633–4606).

SUPPLEMENTARY INFORMATION: These rules do not constitute "major rules" within the meaning of Executive Order No. 12291 (Improving Government Regulations). These regulations will not cause a significant economic impact or other substantial effect on small entities; therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply

This final rule does not alter the current language of 28 CFR 16.9, relating to fees charged under the Freedom of Information Act, except to renumber it as 28 CFR 16.10. Revisions to this section are still under review and will be dealt with in a separate rulemaking proceeding.

I. Analysis of Comments Received

A total of 10 comments were postmarked or received within the comment period as extended. Comments were received from the following:

American Society of Newspaper Editors/ American Newspaper Publishers Association/National Newspaper Association
Center for National Security Studies
Rep. Glenn English
Rep. John N. Erlenborn
Freedom of Information Clearinghouse
Mr. D. R. Keller
Rep. Thomas N. Kindness
Mr. James T. O'Reilly
Mr. Y. Shanmugadhasan
Society of Professional Journalists/Sigma Delta Chi

Comments simply requesting an extension of time for the public comment period, which was scheduled to expire on September 7, 1983, were also received from the American Bar Association's Section of Administrative Law, the American Society of Newspaper Editors, Rep. English, Rep. Kindness, the National Newspaper Association, and the Society of Professional Journalists/Sigma Delta Chi. By order dated September 8, 1983 (Attorney General Order No. 1031–83, 48 FR 41181 (Sept. 14, 1983)), the initial comment period was extended to October 3, 1983. Another two comments, from the American Business Press and the ABA Section of Administrative Law, were postmarked and received after the expiration of the comment period as extended, and accordingly were not included in the analysis of the comments set forth below.

1. *Discretionary Disclosures (Proposed § 16.1(a)).* One commenter questioned the omission of the language in the current § 16.1(a) which authorizes the discretionary release of records that the Department may withhold under the FOIA, whenever it determines that such disclosure is in the public interest and is not otherwise prohibited by law. The language of proposed § 16.1(a) has been revised to make clear that discretionary releases may be made in appropriate situations.

2. *Priority of Requests (Proposed § 16.1(d)).* One commenter questioned the provision that provides that FOIA requests shall be processed in their "approximate order of receipt." This provision is expressly made to apply, however, only "to the extent consistent with sound administrative practice." The provision is intended to be consistent with *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C. Cir. 1976), and is not inconsistent with a two-track system—such as that used by the Federal Bureau of Investigation—which employs a chronological system for responding to requests but places larger "project requests" in a different processing pool than other requests.

3. *Decentralized Processing of Requests (Proposed § 16.3(a)).* One commenter questioned the provision relating to the referral of requests to individual components of the Department for initial response. This commenter asserted that such a "decentralized" method for responding to requests called into question the treatment of the Department as one agency under the FOIA and the Privacy Act.

This comment reflects a misunderstanding of the present practice and regulations of the Department. Current §§ 16.4 and 16.5 provide that, although FOIA requests are initially to be filed with the Office of Legal Policy, all FOIA requests are then referred to the responsible division for processing. Proposed § 16.3 is quite similar, except that it directs requesters to file their requests directly with the appropriate component or with the FOIA/PA Section, Justice Management Division, rather than the Office of Legal Policy. This change is made to bring the regulations more in keeping with present practice and to minimize the possibility of delays resulting from the need to refer requests to appropriate components. Proposed § 16.1(c) emphasizes the continuing policy role of the Office of Legal Policy in supervising the implementation of these regulations within the Department of Justice.

4. *Marking Requirement (Proposed §§ 16.3(a) and 16.41(a)).* One commenter questioned the requirement that envelopes containing initial requests for access must be addressed and marked in a particular manner. The proposed regulation is not intended to require that a request be deemed defective if the envelope was not so marked. However, all requesters are encouraged to mark their requests properly, to avoid unnecessary delays in the referral of requests once their nature has become apparent. The language of this section has been modified to encourage requesters to mark their requests properly, but so as not to appear to penalize a requester whose request was not so marked. As in the existing regulations, the new regulations provide that the time limits under the FOIA do not begin to run until the request is received by the appropriate component, or would have been received with the exercise of due diligence by Department personnel. Proposed § 16.41(a) has been modified in the same manner as this section.

5. *Agreement to Pay Fees (Proposed §§ 16.3(c) and 16.41(c)).* Several commenters objected to the requirement that requesters filing requests under the FOIA must state in their requests their willingness to pay fees up to $25.00, and to the provision that components of the Department may, in their discretion, treat requests not containing this assurance as defective in form and not to have been received until the requester gives such assurance after prompt inquiry by the component. This provision is said to contradict the ten day time limit of the FOIA, to have the possibility of deterring requesters whose fees would be less than $25.00, and to be administratively impracticable.

The Department believes that the provisions of proposed § 16.3(c) would be fully consistent with the requirements of the FOIA, and that, in any event, the invocation of these provisions would be discretionary with each component. However, to avoid the prospect of unnecessary paperwork for the Department and for requesters, and in accordance with the specific suggestion in one comment, the provisions of proposed 28 CFR 16.3(c) have been changed: (1) To reflect that the filing of a request under the FOIA shall be deemed to constitute agreement by the requester to pay all applicable fees up to $25.00, unless a waiver or reduction of fees is sought, (2) to provide that the acknowledgement letters from the Department shall confirm this

obligation of the requester, and (3) to encourage requesters to specify a maximum fee that, absent some further development, they are willing to bear. A similar revision has been made to proposed § 16.41(c) concerning requests for access under the Privacy Act.

6. *Referral of Requests to Other Components or Agencies (Proposed § 16.4).* Several commenters questioned the provisions for the referral of requests to other agencies or other components of the Department, in light of the decisions of the District of Columbia Circuit in *McGehee v. CIA*, 697 F.2d 1095 (D.C. Cir.), *vacated in part on panel reh'g, reh'g en banc denied*, 711 F.2d 1076 (D.C. Cir. 1983), and *Paisley v. CIA*, 712 F.2d 656 (D.C. Cir. 1983).

To the extent that proposed § 16.4 addresses the referral of requests among components of the Department of Justice, the *McGehee* decision has no applicability whatsoever. Nothing in 5 U.S.C. 552 or in *McGehee* or *Paisley* addresses the procedures for referring responsibility for responding to requests *within* an agency; that is a matter committed solely to each agency's discretion, consistent with sound administrative practice and the time limit provisions of 5 U.S.C. 552(a)(6). The language of the proposed regulation does not materially alter the Department's current procedures for referral of requests within the Department, except to provide for the filing of requests directly with the appropriate component or with the Justice Management Division's FOIA/PA Section rather than with the Office of Legal Policy. This change is intended to reduce the possibility of delays in the routing and referral of requests to the appropriate component.

To the extent that proposed § 16.4 provides for inter-agency referrals, *McGehee* and *Paisley* do not preclude this practice either. The discussion of this issue in *McGehee* is interlocutory and therefore does not bind agency policy. The *Paisley* decision is inapplicable because, although the court's opinion discussed inter-agency referrals, the facts of that case actually involved an intra-agency referral. Accordingly, it remains the Department's position that sound agency policy and practice continue to warrant such referrals under certain circumstances. *See FOIA Update*, Summer 1983, at 5. In fact, the provisions for referral of classified information under proposed § 16.4 to the component or agency that classified the information are essentially the same as the requirements of current § 16.10(b)(3).

With respect to the provisions of proposed § 16.42 which implement the Privacy Act, however, the regulations have been revised to provide for consultation rather than referrals. This is in accord with the different considerations under the Privacy Act governing access to systems of records.

7. *Date for Determining Responsive Records (Proposed § 16.4(j)).* Several commenters, again in light of the *McGehee* decision, questioned the provision that the date of receipt of a request ordinarily shall be the date for determining responsive records in response to that request. However, the *McGehee* decision expressly declined to rule on the appropriateness of the date-of-receipt provision applied by the agency in that case; instead, it remanded the issue to the district court for further consideration. *See* 697 F. 2d at 1103–04. Moreover, the particular concern of the court in that case was the agency's failure to give *any* notice of the time-of-receipt provision until the matter was in litigation some 2½ years later. *See id.* at 1097, 1105.

The purpose of proposed § 16.4(j) is to give notice to all requesters at the outset of the usual date for determining responsive records. The provision is not mandatory in all cases, and each component retains discretion to follow a different approach in particular cases rather than the date-of-receipt rule that "ordinarily" would apply. In any event, all that a requester desiring access to materials generated subsequent to the receipt of the initial request need do is to file a new request for the subsequent information.

8. *Business Notification Procedures (Proposed § 16.7).* The provisions for notification of submitters of business information, set forth in proposed § 16.7, were also addressed by several commenters. The following discussion addresses the specific issues raised by the comments.

a. *Explanation of provisions of section to submitters.* One commenter suggested that submitters be advised of the provisions of this section in any subpoena, civil investigative demand, or letter request issued by the Department. As a matter of sound administrative practice, all submitters should make themselves familiar with these regulations setting forth procedures for notice to submitters. These regulations are part of the public record and need not be reiterated in every communication with submitters.

b. *Circumstances in which notice is required (Proposed § 16.7 (b) and (c).* One commenter asserted that notification to business submitters should not be required in every case, suggesting that notice be required only in "close cases" under procedures similar to those of the Food and Drug Administration, 21 CFR 20.45. The provisions of proposed § 16.7(b) do not require notice in every case where business information is requested. Proposed § 16.7(g) expressly provides that notice need not be given if the agency decides not to disclose the information, the information has lawfully been made public, disclosure is required by law other than the FOIA, or the information relates to a criminal law enforcement investigation. Moreover, for information submitted after the effective date, notice is required only with respect to information for which the submitter has made a good faith designation of business or commercial sensitivity or which the component has reason to believe may result in commercial or business injury to submitter if disclosed. Accordingly, the regulations should not permit the designation of nonsensitive information and would not require notice to the submitter regarding information that the Department either withholds because it is clearly exempt or discloses because it is clearly not exempt.

These regulations, properly construed, are in fact similar to the approach suggested by the commenter and implemented by the FDA, except that the component would be required to give notice of intended disclosure in all cases where a submitter has designated information as confidential in good faith (except as provided in § 16.7(g)). (It may be noted in this regard that the FDA has recently broadened its notice procedures. *See FOIA Update*, Fall 1983, at 12.)

c. *Requirement to describe requested information to the submitter (Proposed § 16.7(b)).* One commenter questioned the need for the provision which would require that the notice to a submitter "should describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information." The provision is intended to give the submitter a clear understanding of the information the agency contemplates disclosing; under proposed § 16.7(g)(1), the component need not give any notice to the submitter at all if it determines not to disclose the requested information. The submitter is best able to present its objections to the component if it is made aware of the precise records at issue, not simply a generalized discussion of the nature of the request.

d. *Notice with respect to information less than ten years old (Proposed § 16.7(c)(1)(i)).* One commenter objected that this provision has no basis in the

FOIA and another questioned its clarity. Contrary to the former commenter's apparent assumption, the provision relating to notice to submitters for information that is less than ten years old does not purport to govern the ultimate question of the disclosure of the requested information.[1] Rather, it is designed only to delineate when a submitter should be given advance notice of a component's contemplated disclosure. Particularly with respect to information submitted prior to the effective date of these rules, the intent is to be somewhat overinclusive with respect to notice in order that any submitter with meritorious claims of confidentiality under the statutory standards will be able to make them.

e. *Notice with respect to information given under an express commitment of confidentiality (Proposed § 16.7(c)(1)(ii)).* One commenter questioned this provision, which concerns notice of disclosure with respect to documents previously provided to the Department. It would govern only the question of whether notice of an intended disclosure should be given to a submitter; it is not intended to establish a new rule with respect to the disclosability of the information. As discussed above with respect to information submitted prior to the effective date of these regulations, the intent is to be somewhat overinclusive in defining the circumstances in which notice will be given, in order to reach all submitters who might have valid objections to disclosure. The notice provision would not apply to the extent that the agency determined not to disclose the information. In any event, the submitter who objected to disclosure of information would continue to bear the burden of proof established by law.[2]

f. *Status of documents prepared before 1973 but submitted after 1983 (Proposed § 16.7(c)(2)).* One commenter inquired about the status under proposed § 16.7(c) of documents prepared before 1973 but not submitted to the agency until 1983. Under this paragraph, the ten-year period of paragraph (c)(1) (relating to documents previously submitted to the Department) is intended to provide a reasonable cutoff for notice purposes for information that might still be exempt under the FOIA, while the ten-year period of paragraph (c)(2) will run from the date of *submission* of the information to the agency, not from the date the document was prepared. Thus, under paragraph (c)(2), if a submitter anticipates that its information will retain its exempt status for more than ten years after its submission to the Department, the submitter should make a special showing for a longer notice period as provided therein.

g. *Effective date of the business notification provisions (Proposed § 16.7(c)(2)).* The date on which § 16.7 becomes fully effective (set for October 1, 1983 in the proposed regulation) has been changed to May 1, 1984, in order to give both submitters and requesters additional time to become familiar with the new provisions of § 16.7.

h. *Certification of claims of confidentiality (Proposed § 16.7(c)(2)).* One commenter suggested that any assertion of confidentiality by a submitter should be accompanied by a certification by a company officer that the information is in fact competitively sensitive and has not been disclosed outside the company. The Department is reluctant to impose such strict formalistic requirements for purposes of the notice requirement under this section. The Department contemplates that submitters will ensure that assertions of confidentiality are given full, good faith consideration prior to presentation to the Department. However, proposed § 16.7(c)(2) has been revised to provide that, whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the company that the information at issue is in fact confidential commercial or financial information and has not been disclosed to the public.

i. *Specific reference to Exemption 4 (Proposed § 16.7(d)).* As drafted, proposed § 16.7 did not specifically refer to the requirements of Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). The Department agrees that submitters of business information should object to disclosure only upon a showing that the information submitted is in fact exempt from disclosure under Exemption 4 or another provision of law. To emphasize this, the language of the objection provision in proposed § 16.7(d) has been expanded to include specific reference to the requirements of Exemption 4.

j. *Reasonable period for notification (Proposed § 16.7(d)).* One commenter suggested that the regulations should provide a specific time period for notification. However, in view of the existing time limit provisions of 5 U.S.C. 552(a)(6), which do not expressly authorize additional time in order to notify submitters of requests for information submitted by them, the Department is unable to specify precise periods for the notice to business submitters to be provided under proposed § 16.7. The intent is for the component to give the submitter a sufficient time to review and respond to the notice, within the existing time limit provisions of the FOIA as construed by the courts.

k. *Reference to grounds for nondisclosure (Proposed § 16.7(d)).* One commenter questioned whether this provision is intended to provide for withholding of information on grounds other than the exemptions of the FOIA. To avoid possible misinterpretation, the language of the provision has been clarified.

l. *Submitter's objections to disclosure (Proposed § 16.7(d)).* One commenter suggested that the Department advise business submitters that supporting information they provide in statements of objection to disclosure may be subject to the disclosure provisions of the FOIA. Inasmuch as such cautionary language may prevent future disclosures of sensitive information, or at least future rounds of notices to and responses from business submitters relating to information previously the subject of a FOIA request, such language will be added to proposed § 16.7(d).

m. *Notice to submitter of intent to disclose information (Proposed § 16.7(e)).* One commenter asserted that the Department should not give submitters advance notice of the intent to disclose information unless simultaneous notice is given to the requester, on the theory that the submitter otherwise would have an unfair advantage in selecting a forum for judicial review. However, inasmuch as this provision relates only to determinations to *disclose* requested business information, the requester ordinarily would have no occasion to seek judicial review. Nevertheless, to ensure that requesters are not placed at an unfair disadvantage in the selection of judicial forums, § 16.7(e) has been revised to require that a component forward to the requester of business information a copy of the notice to disclose at the same time it forwards such notice to the business submitter.

n. *Definition of "criminal law enforcement agency" (Proposed § 16.7(g)(4)).* In response to a request for clarification on this point, it should be noted that the Federal Bureau of Investigation is intended to be a "criminal law enforcement agency" within the meaning of proposed § 16.7(g)(4), but the Antitrust and Tax

[1] *Accord, Petkas v. Staats,* 501 F.2d 887, 889 (D.C. Cir. 1974) (prior commitment of confidentiality not dispositive under Exemption 4).

[2] *See Chrysler Corp. v. Brown,* 441 U.S. 281 (1979).

Divisions are not. For the purpose of notification to submitters under this provision, the term is intended to include the FBI and other agencies within the government dedicated to criminal law enforcement, not components that simply have some criminal law jurisdiction.

9. *FOIA Appeals (Proposed § 16.8).* One commenter suggested that the procedures governing administrative appeals from the denial of FOIA requests should specify time limits for action, and should state that an administrative appeal is not mandatory before judicial review can be sought. The requirement for timely response to all matters under the FOIA is stated in proposed § 16.1(d) and need not be restated throughout the regulations. Moreover, unless the agency has failed to comply with the time limits of 5 U.S.C. 552(a)(6), thereby constructively exhausting the requester's administrative remedies, an administrative appeal is indeed required before judicial review can be sought. *See, e.g., Tuchinsky v. Selective Service System*, 418 F.2d 155, 158 (7th Cir. 1969).

10. *Access to Records Under the Privacy Act (Proposed § 16.40(a)).* Two commenters questioned the provision stating that Subpart D of 28 CFR Part 16 sets forth the provisions for providing access under the Privacy Act to records contained in systems of records. This provision is intended simply to state that the procedures in the subpart are applicable to all such requests. To the extent that these comments relate to the relationship of the FOIA and the Privacy Act, that issue is discussed below.

11. *Statements of Disagreement (Proposed § 16.50(e)).* Two commenters questioned new language which would limit a statement of disagreement under the Privacy Act to one page. After consideration of this proposed change, the Department has decided to retain the current provision which limits these statements to one page per fact disputed.

12. *Relationship Between the Privacy Act and the FOIA (Current § 16.57).* Several commenters questioned the deletion of the provisions of current 28 CFR 16.57, which state the Department's position that requests by individuals for information on themselves are subject to all of the exemptions of the Privacy Act but, as a matter of administrative discretion, provide for such individuals to receive information exempt under the Privacy Act if it would otherwise be available under the FOIA.

The deletion of this regulation governing the Department's exercise of its discretion to disclose exempt information under the Privacy Act in fact simply reflects the Department's position in litigation under the FOIA and the Privacy Act since 1981. The Department's reconsideration of its position followed the decision of the district court in *Greentree v. United States Customs Service*, 515 F. Supp. 1145 (D.D.C. 1981), which held, contrary to the position of the plaintiff and the Department, that the Privacy Act operates as an exemption statute within the meaning of Exemption 3 of the FOIA, 5 U.S.C. 552(b) (3). In weighing whether to defend the district court's judgment, the Department also considered the prior *sua sponte* rulings by the Fifth and Seventh Circuits that the FOIA cannot compel disclosure of information exempt under the Privacy Act.[3] Only after reviewing these decisions, carefully reexamining the legislative history of the Privacy Act, and consulting with other interested agencies, including the Office of Management and Budget, did the Department decide to adopt its present policy and defend the district court's decision in *Greentree*.

As the comments reflect, the judicial decisions since then have been inconsistent. The D.C. Circuit and, recently, the Third Circuit, have reached the conclusion that the Privacy Act is not an Exemption 3 statute under the FOIA.[4] However, district courts in other circuits have reached the opposite conclusion.[5] Most recently, the question was decided squarely in the government's favor by the Seventh Circuit, which ruled that the Privacy Act is an Exemption 3 statute and, accordingly, that records exempt from disclosure under the Privacy Act need not be disclosed under the FOIA.[6] In addition, the Office of Management and Budget, which by law has the primary responsibility for the implementation and construction of the Privacy Act, has concurrently proposed to revise its "Implementation of the Privacy Act of 1974 Supplementary Guidance" to reflect the construction of the Privacy Act as an exemption statute under FOIA Exemption 3. *See* 48 FR 36359 (Aug. 10, 1983). As noted, the Solicitor General has asked the Supreme Court to resolve the conflict among the circuits on this issue.

The Department has taken the comments received carefully into consideration. In light of the conflicting construction by the courts and the lead agency for implementation of the Privacy Act, the Department has concluded that it is not appropriate at present to retain the policy incurrent 28 CFR 16.57, which purports to bind the Department to exercise its discretion in a particular manner in certain cases. As revised, Subpart D of the regulations would neither require nor forbid the Department to assert the exemptions of the Privacy Act in appropriate cases, but would leave the question to the sound discretion of the officials responding to the request in the particular circumstances of the case.

13. *Existing delegations of Authority.* One commenter inquired whether the existing Appendixes to Subpart A and D are affected by this Order which revises those subparts in their entirety. Those Appendixes, which are delegations of authority within the Federal Bureau of Investigation and were not adopted as part of those subparts, are unaffected by the revision to Subparts A and D and shall remain unchanged.

II. Other Changes in the Proposed Regulations

Several other changes discussed below have been made in the proposed regulations.

1. *References to the FOIA/PA Referral Unit.* The proposed regulations have been revised for clarity to change the name of the FOIA/PA Referral Unit to the FOIA/PA Section, Justice Management Division.

2. *Access to Historical Records Maintained in National Archives and Records Service Centers (Proposed §§ 16.3(a) and 16.41(a)).* These sections are intended in part to advise requesters seeking certain historical records maintained by National Archives and

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[3] *See Painter v. FBI*, 615 F.2d 689, 691 (5th Cir. 1980); *Terkel v. Kelly*, 599 F.2d 214, 216 (7th Cir. 1979), *cert. denied*, 444 U.S. 1013 (1980). *See also Fuffin v. Carlson*, 636 F.2d 709, 711 (D.C. Cir. 1980) (dictum).

[4] *See Greentree v. United States Customs Service*, 674 F.2d 74, 89 (D.C. Cir. 1982); *Porter v. United States Dep't of Justice*, 717 F.2d 787 (3d Cir. 1983); *Provenzano v. United States Dep't of Justice*, 717 F.2d 799 (3d Cir. 1983) (per curiam), *rehearing en banc denied by 6–4 vote* (3d Cir. Nov. 10, 1983), *petition for cert. filed*, 52 U.S.L.W. 3512 (U.S. Dec. 23, 1983) (No. 83–1045).

[5] *See Martin v. FBI*, No. 83–C–123 (N.D. Ill. Sept. 30, 1983); *Rachel v. United States Dep't of Justice*, Civil Action No. 83–C–0434 (N.D. Ill. Aug. 1, 1983); *Turner v. Ralston*, Civil Action No. 81–3227–CV–5–2 (W.D. Mo. Mar. 17, 1983); *Anderson v. Huff*, 3 Gov't Discl. Serv. ¶ 83,124 (D. Minn. June 8, 1982); *Heinzl v. INS*, 3 Gov't Discl. Serv. ¶ 83,121 (N.D. Cal. Dec. 18, 1981).

[6] *Shapiro v. DEA*, 721 F.2d 215 (7th Cir. 1983), *aff'g* 3 Gov't Discl. Serv. ¶ 83,122 (W.D. Wis. Oct. 8, 1982), *petition for cert. filed*, No. 83–5878 (U.S. Dec. 8, 1983). As the Court of Appeals summarized its holding (721 F.2d at 222):

"[T]he legislative history of the Privacy Act shows Congress' concern that individuals not use the Act to obtain access to their own criminal investigative files. It makes little sense to conclude that Congress would enact specific nondisclosure provisions in the Privacy Act to address this Concern, while at the same time allowing individuals to bypass these exemptions by using the broader terms of the FOIA."

Records Service centers that they must contact the General Services Administration directly, rather than the Department's FOIA/PA Section. These sections have been revised for clarity.

3. *Form of Action on Appeal (Proposed §§ 16.8(c), 16.48(c) and 16.50(d)).* The language of these provisions as proposed has been revised for clarity.

4. *Verification of Identity (Proposed § 16.41(d)(1)).* This provision has been modified to continue the present requirement that statements of identity be notarized. Statements of identity need not be provided on any special form, but an optional form is available and may be obtained from the FOIA/PA Section.

5. *Initial Action by Receiving Component (Proposed § 16.42(c)(2)).* The term "receiving component" means the component that has received a request for access to records. For clarity in the context of subsequent referrals of the responsibility for responding to a request, the phrase "in the hands of the receiving component" has been deleted.

6. *Requests for Correction of records and for Accounting of Record Disclosures (Proposed §§ 16.50(a) and 16.52).* To assist requesters in directing requests for correction of records or for accounting of record disclosures to the appropriate component, a sentence has been added to each of these sections advising requesters that Appendix I to Part 16 lists these components.

7. *Contracted Record Systems (Current § 16.53).* The Department's existing regulation governs contracts for the operation of record systems by or on behalf of the Department, in accordance with 5 U.S.C. 552a(m). This provision, inadvertently omitted from the proposed regulations, has been reinstated with minor revisions as new § 16.55.

8. *Use and Collection of Social Security Numbers (Current § 16.55).* This existing regulation, limiting the use and collection of Social Security numbers, was also inadvertently omitted from the proposed regulations, and has been reinstated with minor revisions as new § 16.56.

III. Revision of Department's Policy Relating to Disclosure of Law Enforcement Records of Historical Interest

This notice also sets forth a revision to 28 CFR 50.8, the Department's statement of policy regarding the discretionary disclosure of investigatory records of historical interest that are exempt from mandatory disclosure under the FOIA. The existing policy statement, promulgated in 1973 prior to the 1974 amendments to the FOIA, has long been out of date.

The revised policy statement is intended to emphasize the Department's practice of affording discretionary access to historical records contained in certain investigatory files compiled for law enforcement purposes. Through the sound exercise of its discretion, the Department intends to facilitate the public's awareness of historical matters in such files, to the extent it does not adversely affect the Department's law enforcement or other significant interests, such as the privacy of individuals. The new policy statement focuses on the nature of the records themselves, rather than on the status of the requester.

This new policy statement is promulgated in final form, to become effective upon publication in the **Federal Register.** The requirements of the Administrative Procedure Act for publication of a notice of proposed rulemaking and opportunity for comment, as well as a 30 day period of notice before the effective date, are not applicable for general statements of policy. 5 U.S.C. 553 (b)(A) and (d)(2). This revision is not intended to affect any request for historical records made before the effective date of the revised policy statement.

List of Subjects

28 CFR Part 0

Government employees, Organization and functions (Government agencies), Authority delegations (Government agencies).

28 CFR Part 16

Freedom of information, Privacy, Administrative practice and procedure.

28 CFR Part 50

Freedom of information.

PART 0—[AMENDED]

Accordingly, under the authority vested in me by 28 U.S.C. 509 and 510 and 5 U.S.C. 301, 552, and 552a, Parts 0, 16, and 50 of Chapter I of Title 28 of the Code of Federal Regulations are amended as follows:

1. Part 0 shall be amended as follows:

a. Section 0.23(c) is revised to read as follows:

§ 0.23 General functions.

* * * * *

(c) Manage and coordinate the discharge of Departmental responsibilities related to the Freedom of Information Act [5 U.S.C. 552] and the Privacy Act [5 U.S.C. 552a], including coordination and implementation of policy development and compliance within executive agencies and Departmental units relative to the Freedom on Information Act and within Departmental units relative to the Privacy Act; and supervise the Office of Information and Privacy which will, except as otherwise directed by the Attorney General, act on appeals taken from Departmental denials of access to records under the Privacy Act and the Freedom of Information Act.

* * * * *

b. Section 0.23a(a)(1) is revised to read as follows:

§ 0.23a Office of Information and Privacy.

(a) * * *

(1) Act on behalf of the Attorney General on Freedom of Information Act and Privacy Act appeals under §§ 16.8, 16.48, 16.50(d) and 16.52, respectively, under the supervision of the Assistant Attorney General, Office of Legal Policy, except that: (A) In the case of a denial of a request by the Assistant Attorney General, Office of Legal Policy, the Attorney General or his designee shall act on the appeal, and (B) a denial of a request by the Attorney General shall constitute the final action of the Department on that request.

* * * * *

2. The table of contents for Subparts A and D, Part 16, is revised to read as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.
16.1 General provisions.
16.2 Public reference facilities.
16.3 Requirements pertaining to requests.
16.4 Responses by components to requests.
16.5 Form and content of component responses.
16.6 Classified information.
16.7 Business information.
16.8 Appeals.
16.9 Preservation of records.
16.10 Fees.
16.11 Other rights and services.
* * * * *

Subpart D—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

16.40 General provisions.
16.41 Requests for access to records.
16.42 Responses by components to requests for access to records.
16.43 Form and content of component responses.
16.44 Classified information.
16.45 Records in exempt systems of records.

16.46 Access to records.
16.47 Fees for access to records.
16.48 Appeals from denials of access.
16.49 Preservation of records.
16.50 Requests for correction of records.
16.51 Records not subject to correction.
16.52 Requests for accounting of record disclosures.
16.53 Notice of subpoenas and emergency disclosures.
16.54 Security of systems of records.
16.55 Employee standards of conduct.
16.56 Contracting record systems.
16.57 Use of collection of social security numbers.
16.58 Other rights and services.

* * * * *

3. Subpart A is revised to read as follows:

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Authority: 5 U.S.C. 552.

§ 16.1 General provisions.

(a) This subpart contains the regulations of the Department of Justice implementing the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. All requests for records that are not processed under subparts C or D of this part shall be processed under this subpart. Information customarily furnished to the public in the regular course of the performance of official duties may continue to be furnished to the public without complying with this subpart, provided that the furnishing of such information would not violate the Privacy Act of 1974, 5 U.S.C. 552a, and would not be inconsistent with subparts C, D, or E of this part. To the extent permitted by other laws, the Department will also consider making available records which it is permitted to withhold under the FOIA if it determines that such disclosure could be in the public interest.

(b) As used in this subpart, the following terms shall have the following meanings:

(1) "Appeal" means the appeal by a requester of an adverse determination of his request, as described in 5 U.S.C. 552(a)(6)(A)(ii).

(2) "Agency" has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(e).

(3) "Component" means each separate bureau, office, board, division, commission, service, or administration of the Department of Justice.

(4) "Request" means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(5) "Requester" means any person who makes a request to a component.

(6) "Business information" means trade secrets or other commercial or financial information.

(7) "Business submitter" means any commercial entity which provides business information to the Department of Justice and which has a proprietary interest in the information.

(c) The Assistant Attorney General, Office of Legal Policy, shall be responsible to the Attorney General for all matters pertaining to the administration of this subpart within the Department of Justice. The Assistant Attorney General, Office of Legal Policy, may take or direct such actions, directly or through the Office of Information and Privacy within the Office of Legal Policy, to carry out this responsibility as he deems necessary.

(d) Components of the Department of Justice shall comply with the time limits set forth in the FOIA for responding to and processing requests and appeals, unless there are exceptional circumstances within the meaning of 5 U.S.C. 552(a)(6)(C). A component shall notify a requester whenever the component is unable to respond to or process the request or appeal within the time limits established by the FOIA. Components shall respond to and process requests and appeals in their approximate order of receipt, to the extent consistent with sound administrative practice.

§ 16.2 Public reference facilities.

(a) The Department of Justice shall maintain public reading rooms or areas at the locations listed below:

(1) United States Attorneys and United States Marshals—at the principal offices of the United States Attorneys listed in the United States Government Manual;

(2) Federal Bureau of Investigation—at the J. Edgar Hoover Building, 9th Street and Pennsylvania Avenue NW., Washington, D.C.;

(3) Immigration and Naturalization Service—at the Central Office, 425 I Street NW., Washington, D.C., and at each District Office in the United States listed in the United States Government Manual;

(4) All other components of the Department of Justice—Department of Justice, 10th Street and Constitution Avenue NW., Washington, D.C.

The public reference facilities of all components shall contain the materials relating to those components which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying.

(b) Each component shall maintain, make available for public inspection and copying, and publish each quarter a current index of the materials available at its public reading room or area which are required to be indexed under 5 U.S.C. 552(a)(2). However, if a component determines by order published in the **Federal Register** that publication of such an index would be unnecessary or impracticable, then it shall not be required to publish the index.

(c) Each component is responsible for determining which materials it generates or maintains are required to be indexed under 5 U.S.C. 552(a)(2). The Justice Management Division shall ensure that a current index of all materials required to be indexed under 5 U.S.C 552(a)(2) is published in the **Federal Register**, except to the extent that such publication is considered unnecessary or impracticable and an order to that effect is published in the **Federal Register**.

§ 16.3 Requirements pertaining to requests.

(a) *How Made and Addressed.* A requester may make a request under this subpart for a record of the Department of Justice by writing to the component that maintains the record. A request should be sent to the component at its proper address and both the envelope and the request itself should be clearly marked: "Freedom of Information Act Request." (Appendix I to this part lists the components of the Department and their addresses. The functions of each component are summarized in Part 0 of this title and in the description of the Department and its components in the United States Government Manual, which is issued annually and is available from the Superintendent of Documents.) A requester in need of guidance in defining a request or determining the proper component to which he should send his request may write to the FOIA/PA Section, Justice Management Division, United States Department of Justice, 10th Street and Constitution Avenue NW., Washington, D.C. 20530. Requests for certain historical records of the Department maintained in National Archives and Records Service centers must be directed to the General Services Administration in accordance with its regulations.

(b) *Request Must Reasonably Describe the Records Sought.* A request must describe the records sought in sufficient detail to enable Department personnel to locate the records with a reasonable amount of effort. A request for a specific category of records shall be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of Department operations. Wherever possible, a request should

include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. In addition, if the request seeks records pertaining to pending litigation, the request should indicate the title of the case, the court in which the case was filed, and the nature of the case. To the extent possible, requesters are encouraged also to include in their requests the file designations of the records they seek. If a component determines that a request does not reasonably describe the records sought, the component shall either advise the requester what additional information is needed or otherwise state why the request is insufficient. The component also shall extend to the requester an opportunity to confer with Department personnel with the objective of reformulating the request in a manner which will meet the requirements of this section.

(c) *Agreement to Pay Fees.* The filing of a request under this subpart shall be deemed to constitute an agreement by the requester to pay all applicable fees charged under § 16.10 of this subpart, up to $25, unless a waiver of fees is sought. The component responsible for responding to the request shall confirm this agreement in its letter of acknowledgement to the requester. When filing a request, a requester may specify a willingness to pay a greater amount, if applicable.

§ 16.4 Responses by Components to Requests.

(a) *In General.* Except as otherwise provided in this section, the component that: (1) First receives a request for a record; and (2) has possession of the requested record is the component ordinarily responsible for responding to the request.

(b) *Authority to Grant or Deny Requests.* The head of a component, or his designee, is authorized to grant or deny any request for a record of that component.

(c) *Initial Action by the Receiving Component.* When a component receives a request for a record in its possession, the component shall promptly determine whether another component, or another agency of the Government, is better able to determine: (1) Whether the record is exempt, to any extent, from mandatory disclosure under the FOIA; and (2) whether the record, if exempt to any extent from mandatory disclosure under the FOIA, should nonetheless be released to the requester as a matter of discretion. If the receiving component determines that it is the component or agency best able to determine whether or not to disclose the record in response to the request, then the receiving component shall respond to the request. If the receiving component determines that it is not the component or agency best able to determine whether or not to dislcose the record in response to the request, the receiving component shall either:

(i) Respond to the request, after consulting with the component or other agency best able to determine whether or not to disclose the record and with any other component or agency having a substantial interest in the requested record or the information contained therein; or

(ii) Refer the responsibility for responding to the request to the component best able to determine whether or not to disclose the record, or to another agency that generated or originated the record, but only if that other component or agency is subject to the provisions of the FOIA.

Under ordinary circumstances, the component or agency that generated or originated a requested record shall be presumed to be the component or agency best able to determine whether or not to disclose the record in response to the request. However, nothing in this section shall prohibit a component that generated or originated a requested record from referring the responsibility for responding to the request to another component, if the component that generated or originated the requested record determines that the other component has a greater interest in the requested record or the information contained therein.

(d) *Law Enforcement Information.* Whenever a request is made for a record containing information which relates to an investigation of a possible violation of criminal law or to a criminal law enforcement proceeding and which was generated or originated by another component or agency, the receiving component shall refer the responsibility for responding to the request to that other component or agency; however, such referral shall extend only to the information generated or originated by that other component or agency.

(e) *Classified Information.* Whenever a request is made for a record containing information which has been classified, or which may be eligible for classification, by another component or agency under the provisions of Executive Order 12356 or any other Executive Order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request to the component or agency that classified the information or should consider the information for classification. Whenever a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request to the component or agency that classified the underlying information; however, such referral shall extend only to the information classified by the other component or agency.

(f) *Notice of Referral.* Whenever a component refers all or any part of the responsibility for responding to a request to another component or to another agency, it ordinarily shall notify the requester of the referral and inform the requester of the name and address of each component or agency to which the request has been referred and the portions of the request so referred.

(g) *Agreements Regarding Consultations and Referrals.* No provision of this section shall preclude formal or informal agreements between components, or between a component and another agency, to eliminate the need for consultations or referrals of requests or classes of requests.

(h) *Separate Referrals of Portions of a Request.* Portions of a request may be referred separately to one or more components or to one or more other agencies whenever necessary to process the request in accordance with the provisions of this section.

(i) *Processing of Requests that Are Not Properly Addressed.* A request that is not properly addressed as specified in § 16.3(a) of this subpart shall be forwarded to the FOIA/PA Section, Justice Management Division, which shall forward the request to the appropriate component or components for processing. A request not addressed to the appropriate component will be deemed not to have been received by the Department of Justice until the FOIA/PA Section has forwarded the request to the appropriate component and that component has received the request, or until the request would have been so forwarded and received with the exercise of reasonable diligence by Department personnel. A component receiving an improperly addressed request forwarded by the FOIA/PA Section shall notify the requester of the date on which it received the request.

(j) *Date for Determining Responsive Records.* In determining records responsive to a request, a component ordinarily will include only those records within the component's possession and control as of the date of its receipt of the request.

§ 16.5 Form and content of component responses.

(a) *Form of Notice Granting a Request.* After a component has made a determination to grant a request in whole or in part, the component shall so notify the requester in writing. The notice shall describe the manner in which the record will be disclosed, whether by providing a copy of the record to the requester or by making a copy of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection shall not unreasonably disrupt the operations of the component. The component shall inform the requester in the notice of any fees to be charged in accordance with the provisions of § 16.10 of this subpart.

(b) *Form of Notice Denying a Request.* A component denying a request in whole or in part shall so notify the requester in writing. The notice must be signed by the head of the component, or his designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions which the component has relied upon in denying the request and a brief explanation of the manner in which the exemption or exemptions apply to each record withheld; and

(3) A statement that the denial may be appealed under § 16.8(a) and a description of the requirements of that subsection.

(c) *Record Cannot be Located or Has Been Destroyed.* If a requested record cannot be located from the information supplied, or is known or believed to have been destroyed or otherwise disposed of, the component shall so notify the requester in writing.

§ 16.6 Classified information.

In processing a request for information that is classified or classifiable under Executive Order 12356 or any other Executive Order concerning the classification of records, a component shall review the information to determine whether it warrants classification. Information which does not warrant classification shall not be withheld from a requester on the basis of 5 U.S.C. 552(b)(1). The Office of Information and Privacy shall, upon receipt of any appeal involving classified or classifiable information, take appropriate action to ensure compliance with Part 17 of this chapter.

§ 16.7 Business information.

(a) *In General.* Business information provided to the Department of Justice by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Notice to Business Submitters.* A component shall provide a business submitter with prompt written notice of a request encompassing its business information whenever required under paragraph (c), and except as is provided in paragraph (g), of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(c) *When Notice Is Required.* (1) For business information submitted to the Department prior to May 1, 1984, the component shall provide a business submitter with notice of a request whenever: (i) The information is less than ten years old; (ii) the information is subject to prior express commitment of confidentiality given by the component to the business submitter; or (iii) the component has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(2) For business information submitted to the Department on or after May 1, 1984, the component shall provide a business submitter with notice of a request whenever: (i) The business submitter has in good faith designated the information as commercially or financially sensitive information, or (ii) the component has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter. Notice of a request for business information falling within the former category shall be required for a period of not more than ten years after the date of submission unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(d) *Opportunity to Object to Disclosure.* Through the notice described in paragraph (b), a component shall afford a business submitter a reasonable period within which to provide the component with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) *Notice of Intent to Disclose.* A component shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a component decides to disclose business information over the objection of a business submitter, the component shall forward to the business submitter a written notice which shall include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date.

Such notice of intent to disclose shall be forwarded a reasonable number of days, as circumstances permit, prior to the specified date upon which disclosure is intended. A copy of such disclosure notice shall be forwarded to the requester at the same time.

(f) *Notice of FOIA Lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c), the component shall promptly notify the business submitter.

(g) *Exceptions to Notice Requirements.* The notice requirements of this section shall not apply if:

(1) The component determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The component is a criminal law enforcement agency that acquired the information in the course of a lawful investigation of a possible violation of criminal law.

§ 16.8 Appeals.

(a) *Appeals to the Attorney General.* When a request for access to records or for a waiver of fees has been denied in whole or in part, or when a component fails to respond to a request within the time limits set forth in the FOIA, the requester may appeal the denial of the request to the Attorney General within 30 days of his receipt of a notice denying his request. An appeal to the Attorney General shall be made in writing and

addressed to the Office of Information and Privacy, United States Department of Justice, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530. Both the envelope and the letter of appeal itself must be clearly marked: "Freedom of Information Act Appeal." An appeal not so addressed and marked will be forwarded to the Office of Information and Privacy as soon as it is identified. An appeal that is improperly addressed will be deemed not to have been received by the Department until the Office of Information and Privacy receives the appeal, or would have done so with the exercise of reasonable diligence by Department personnel.

(b) *Action on Appeals by the Office of Information and Privacy.* Unless the Attorney General otherwise directs, the Director, Office of Information and Privacy, under the supervision of the Assistant Attorney General, Office of Legal Policy, shall act on behalf of the Attorney General on all appeals under this section, except that: (1) In the case of a denial of a request by the Assistant Attorney General Office of Legal Policy, the Office of Information and Privacy or his designee shall act on the appeal, and (2) a denial of a request by the Attorney General shall constitute the final action of the Department on that request.

(c) *Form of Action on Appeal.* The disposition of an appeal shall be in writing. A decision affirming in whole or in part the denial of a request shall include a brief statement of the reason or reasons for the affirmance, including each FOIA exemption relied upon and its relation to each record withheld, and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or the District of Columbia. If the denial of a request is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

§ 16.9 Preservation of Records.

Each component shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Act.

§ 16.10 Fees.

(a) *When Charged.* Fees pursuant to 31 U.S.C. 9701 and 5 U.S.C. 552 shall be charged according to the schedules contained in paragraph (b) of this section for services rendered in responding to requests for Justice Department records under this subpart unless the official of the Department making the initial or appeal decision determines that such charges, or a portion thereof, are not in the public interest because furnishing the information primarily benefits the general public. Such a determination shall ordinarily not be made unless the service to be performed will be of benefit primarily to the public as opposed to the requester, or unless the requester is an indigent individual. Fees shall not be charged where they would amount, in the aggregate, for a request or series of related requests,to less than $3. Ordinarily, fees shall not be charged if the records requested are not found, or if all of the records located are withheld as exempt. However, if the time expended in processing the request is substantial, and if the requester has been notified of the estimated cost pursuant to paragraph (c) of this section and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees may be charged.

(b) *Services Charged for and Amount Charged.* For the services listed below expended in locating or making available records or copies thereof, the following charges shall be assessed:

(1) *Copies.* For copies of documents (maximum of 10 copies will be supplied) $0.10 per copy of each page.

(2) *Clerical searches.* For each one quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and producing requested record, $1.00.

(3) [Reserved]

(4) *Certification.* For certification of true copies, each, $1.

(5) *Attestation.* For attestation under the seal of the Department, $3.

(6) *Nonroutine, nonclerical searches.* Where a search cannot be performed by clerical personnel, for example, where the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel, and where the amount of time that must be expended in the search and collection of the requested records by such higher level personnel is substantial, charges for the search may be made at a rate in excess of the clerical rate, namely for each one quarter hour spent in excess of the first quarter hour by such higher level personnel in searching for a requested record, $2.00.

(7) *Examination and related tasks in screening records.* No charge shall be made for time spent in resolving legal or policy issues affecting access to records of known contents. In addition, no charge shall be made for the time involved in examining records in connection with determining whether they are exempt from mandatory disclosure and should be withheld as a matter of sound policy.

(8) *Computerized records.*

(i) *Computer time charges (includes personnel costs).*

1. Central processor charge per hour	$188.00
2. Main storage charge per 1,000 bytes per hour	.50
3. Channel charges per hour	.74
4. Card reading per 1,000 cards	.20
5. Printing per 1,000 lines	.43
6. Card punching per 1,000 cards	10.76
7. Tape mount	.50
8. Specific device charges:	
a. IBM 2260 Cathode ray tube or equivalent per hour	4.20
b. IBM 3330 Disk storage or equivalent per hour	39.72
c. IBM 2314 Disk storage or equivalent per hour	39.72
d. IBM 3420 Tape Drive or equivalent per hour	44.59

(ii) *Material charges.*

1. One-part paper per 1,000	$11.00
2. Two-part paper per 1,000	17.63
3. Three-part paper per 1,000	28.95
4. Four-part paper per 1,000	37.52
5. Five-part paper per 1,000	50.83
6. Stock Hollerith cards per 1,000	1.78
7. Magnetic tape per reel	9.50
8. Disk pack, each	775.00

(9) *Tape recordings and other audio records.*

(i) *Personnel charges.* Personnel charges in connection with the duplication of audio records shall be charged in accordance with paragraph (b)(2) or (b)(6) of this section, whichever is appropriate.

(ii) *Materials charges.*

1. 45 minute cassette	$0.56
2. 60 minute cassette	.60
3. 90 minute cassette	.77

(10) *Other charges.* When a response to a request requires services or materials other than the common ones described in paragraphs (b)(1) through (b)(9) of this section, the direct cost of such services or materials to the government may be charged, but only if the requester has been notified of such cost before it is incurred.

(c) *Notice of Anticipated Fees in Excess of $25.* Where it is anticipated that the fees chargeable under this

section will amount to more than $25, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In such cases, a request will not be deemed to have been received until the requester is notified of the anticipated cost and agrees to bear it. Such a notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with Department personnel with the object of reformulating the request so as to meet his needs at lower cost.

(d) *Form of Payment.* Payment should be made by check or money order payable to the Treasury of the United States.

(e) *Advance Deposit.* (1) Where the anticipated fee chargeable under this section exceeds $25, an advance deposit of 25 percent of the anticipated fee or $25, whichever is greater, may be required.

(2) Where a requester has previously failed to pay a fee under this section, an advance deposit of the full amount of the anticipated fee may be required.

(f) *Other Services.* Nothing in this section shall be construed to entitle any person, as of right, to any services or materials to which such person is not entitled under 5 U.S.C. 552.

§ 16.11 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under 5 U.S.C. 552.

4. Section 16.33 is revised to read as follows:

§ 16.33 Fee for production of identification record.

Each written request for production of an identification record must be accompanied by a fee of $11.00 in the form of a certified check or money order, payable to the Treasury of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 9701 and is based upon the clerical time beyond the first quarter hour to be spent in searching for, identifying, and reproducing each identification record requested as specified in § 16.10 of this part. Any request for waiver of the fee shall accompany the original request for the identification record and shall include a claim and proof of indigency.

5. Subpart D is revised to read as follows:

Subpart D—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

Authority: 5 U.S.C. 552a.

§ 16.40 General provisions.

(a) *Purpose and Scope.* This subpart contains the regulations of the Department of Justice implementing the Privacy Act of 1974, 5 U.S.C. 552a. The regulations apply to all records which are contained in systems of records maintained by the Department of Justice and which are retrieved by an individual's name or personal identifier. These regulations set forth the procedures by which an individual may seek access under the Privacy Act to records pertaining to him, may request correction of such records, or may seek an accounting of disclosures of such records by the Department. These regulations are applicable to each component of the Department.

(b) *Transfer of Law Enforcement Records.* The head of a component, or his designee, is authorized to make written requests under 5 U.S.C. 552a(b)(7) for transfer of records maintained by other agencies which are necessary to carry out an authorized law enforcement activity of the component.

(c) *Definitions.* As used in this subpart, the following terms shall have the following meanings:

(1) "Agency" has the meaning given in 5 U.S.C. 551(l) and 5 U.S.C. 552a(a)(1).

(2) "Component" means each separate bureau, office, board, division, commission, service, or administration of the Department of Justice.

(3) "Record" means any item, collection, or grouping of information about an individual which is maintained by any component within a system of records and which contains the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph.

(4) "Request for access" means a request made pursuant to 5 U.S.C. 552a(d)(1).

(5) "Request for correction" means a request made pursuant to 5 U.S.C. 552a(d)(2).

(6) "Request for an accounting" means a request made pursuant to 5 U.S.C. 552a(c)(3).

(7) "Requester" means an individual who makes either a request for access, a request for correction, or a request for an accounting.

(8) "System of records" means a group of any records under the control of any component from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to that individual.

§ 16.41 Requests for Access to Records.

(a) *Procedure for Making Requests for Access to Records.* An individual may request access to a record about him by appearing in person or by writing to the component that maintains the record. (Appendix I to this part lists the components of the Department of Justice and their addresses. The "Notice of Records Systems" published by the National Archives and Records Service, General Services Administration, describes the systems of records maintained by all federal agencies, including the Department and its components.) A requester in need of guidance in defining his request may write to the FOIA/PA Section, Justice Management Division, United States Department of Justice, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530. A request should be addressed to the component that maintains the requested record. Both the envelope and the request itself should be marked: "Privacy Act Request." Requests for certain historical records of the Department maintained in National Archives and Records Service centers must be directed to the General Services Administration in accordance with its regulations.

(b) *Description of Records Sought.* A request for access to records must describe the records sought in sufficient detail to enable Department personnel to locate the system of records containing the record with a reasonable amount of effort. Whenever possible, a request for access should describe the nature of the record sought, the date of the record or the period in which the record was compiled, and the name or identifying number of the system of records in which the requester believes the record is kept. The Notices the Department publishes in the Federal Register describing its components' systems of records may require, in appropriate instances, that requests for access to records describe the records sought with even greater specificity.

(c) *Agreement to Pay Fees.* The filing of a request for access to a record under this subpart shall be deemed to constitute an agreement to pay all applicable fees charged under § 16.47 up to $25.00. The component responsible for responding to the request shall confirm this agreement in its letter of acknowledgment to the requester. When filing a request, a requester may specify a willingness to pay a greater amount, if applicable.

(d) *Verification of Identity.* Any individual who submits a request for access to records must verify his identity in one of the following ways, unless the notice published in the Federal Register describing the relevant system of records provides otherwise:

(1) Any requester making a request in writing must state in his request his full name, current address, and date and place of birth. In addition, a requester must provide with his request an example of his signature, which shall be notarized. Sample forms used for such notarized statement of identity may be which may be obtained from the FOIA/PA Section, Justice Management Division, United States Department of Justice, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530. In order to facilitate the identification and location of the requested records, a requester may also, at his option, include in his request his Social Security number.

(2) Any requester submitting a request in person may provide to the component a form of official photographic identification, such as a passport or an identification badge. If a requester is unable to produce a form of photographic identification, he may provide to the component two or more acceptable forms of identification (such as a driver's license or credit card) bearing his name and address.

(e) *Verification of Guardianship.* The parent or guardian of a minor (or the guardian of a person judicially determined to be incompetent) who submits a request for access to the records of the minor or incompetent must establish: (1) His own identity and the identity of he subject of the record, as required in paragraph (d) of this section, (2) that the is the parent or guardian of the subject of the record, which may be proved by providing a copy of the subject's birth certificate showing parentage or by providing a court order establishing the guardianship, and (3) that he seeks to act on behalf of the subject of the record.

§ 16.42 Responses by components to requests for access to records.

(a) *In General.* Except as otherwise provided in this section, the component that: (1) First receives a request for access to a record, and (2) has possession of the requested record is the component ordinarily responsible for responding to the request.

(b) *Authority to Grant or Deny Requests.* The head of a component, or his designee, is authorized to grant or deny any request for access to a record of that component.

(c) *Initial Action by the Receiving Component.* When a component receives a request for access to a record in its possession, the component shall promptly determine whether another component, or another Government agency, is better able to determine whether the record is exempt, to any extent, from access. If the receiving component determines that it is the component or agency best able to determine whether the record is exempt, to any extent, from access, then the receiving component shall respond to the request. If the receiving component determines that it is not the component or agency best able to determine whether or not the record is exempt from access, the receiving component shall respond to the request, after consulting with the component or agency best able to determine whether or not the record is exempt from access. Under ordinary circumstances, the component or agency that generated or originated a requested record shall be presumed to be the component or agency best able to determine whether or not the record is exempt from access. However, nothing in this section shall prohibit a component that generated or originated a requested record from consulting with another component or agency, if the component that generated or originated the requested record determines that the other component or agency has an interest in the requested record or the information contained therein.

(d) *Law Enforcement Information.* Whenever a request for access is made for a record containing information which relates to an investigation of a possible violation of criminal law or to a criminal law enforcement proceeding and which was generated or originated by another component or agency, the receiving component shall consult with that other component or agency, as appropriate.

(e) *Classified Information.* Whenever a request for access is made for a record containing information which has been classified, or which may be eligible for classification, by another component or agency under the provision of Executive Order 12356 or any other Executive Order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request to the component or agency that classified the information or should consider the information for classification. Whenever a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request to the component or agency that classified the underlying information; however, such referral shall extend only to the information classified by the other component or agency.

(f) *Agreements Regarding Consultations.* No provision of this section shall preclude formal or informal agreements between components, or between a component and another agency, to eliminate the need for consultations concerning requests or classes of requests.

(g) *Processing of Requests for Access Not Properly Addressed.* A request for access that is not properly addressed as specified in § 16.41(a) of this subpart shall be forwarded to the FOIA/PA Section, Justice Management Division, which shall forward the request to the appropriate component or components for processing. A request not addressed to the appropriate component will be deemed not to have been received by the Department until the FOIA/PA Section has forwarded the request to the appropriate component and that component has received the request, or until the request would have been so forwarded and received with the exercise of reasonable diligence by Department personnel. A component receiving an improperly addressed request from the FOIA/PA Section shall notify the requester of the date on which it received the request.

(h) *Date for Determining Responsive Records.* In determining records responsive to a request for access, a component ordinarily will include only those records within the component's possession and control as of the date of its receipt of the request.

§ 16.43 Form and content of component responses.

(a) *Form of Notice Granting Request for Access.* After a component has made a determination to grant a request for access in whole or in part, the component shall so notify the requester in writing. The notice shall describe the manner in which access to the record will be granted and shall inform the requester of any fees to be charged in accordance with § 16.47 of this subpart.

(b) *Form of Notice Denying Request for Access.* A component denying a request for access in whole or in part shall so notify the requester in writing. The notice shall be signed by the head of the responsible component, or his designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason or reasons for the denial, including the

Privacy Act exemption or exemptions which the component has relied upon in denying the request and a brief explanation of the manner in which the exemption or exemptions apply to each record withheld; and

(3) A statement that the denial may be appealed under § 16.48(a) of this subpart, and a description of the requirements of that subsection.

(c) *Record Cannot be Located or Has Been Destroyed.* If a requested record cannot be located from the information supplied, or is known or believed to have been destroyed or otherwise disposed of, the component shall so notify the requester in writing.

(d) *Medical Records.* When an individual requests medical records pertaining to himself which are not otherwise exempt from individual access, the component may advise the individual that the records will be provided only to a physician, designated by the individual, who requests the records and establishes his identity in writing. The designated physician shall determine which records should be provided to the individual and which records should not be disclosed to the individual because of possible harm to the individual or another person.

§ 16.44 Classified information.

In processing a request for access to a record containing information that is classified or classifiable under Executive Order 12356 or any other Executive Order concerning the classification of records, a component shall review the information to determine whether it warrants classification. Information which does not warrant classification shall not be withheld from a requester on the basis of 5 U.S.C. 552a(k)(1). The Office of Information and Privacy shall, upon receipt of any appeal involving classified or classifiable information, take appropriate action to ensure compliance with Part 17 of this chapter.

§ 16.45 Records in exempt systems of records.

(a) *Law Enforcement Records Exempted Under Subsection (k)(2).* Before denying a request by an individual for access to a law enforcement record which has been exempted from access pursuant to 5 U.S.C. 552a(k)(2), the component must review the requested record to determine whether information in the record has been used or is being used to deny the individual any right, privilege, or benefit for which he is eligible or to which he would otherwise be entitled under federal law. If so, the component shall notify the requester of the existence of the record and disclose such information to the requester, except to the extent that the information would identify a confidential source. In cases where disclosure of information in a law enforcement record could reasonably be expected to identify a confidential source, the record shall not be disclosed to the requester unless the component is able to delete from such information all material which would identify the confidential source.

(b) *Employee Background Investigations.* When a requester requests access to a record pertaining to a background investigation and the record has been exempted from access pursuant to 5 U.S.C. 552a(k)(5), the record shall not be disclosed to the requester unless the component is able to delete from such record all information which would identify a confidential source.

§ 16.46 Access to records.

(a) *Manner of Access.* A component that has made a determination to grant a request for access shall grant the requester access to the requested record either by: (1) Providing the requester with a copy of the record or (2) making the record available for inspection by the requester at a reasonable time and place. The component shall in either case charge the requester applicable fees in accordance with the provisions of § 16.47 of this subpart. If a component provides access to a record by making the record available for inspection by the requester, the manner of such inspection shall not unreasonably disrupt the operations of the component.

(b) *Accompanying Person.* A requester appearing in person to review his records may be accompanied by another individual of his own choosing. Both the requester and the accompanying person shall be required to sign a form stating that the Department of Justice is authorized to disclose the record in the presence of both individuals.

§ 16.47 Fees for access to records.

(a) *When Charged.* A component shall charge fees pursuant to 31 U.S.C. 9701 and 5 U.S.C. 552a(f)(5) for the copying of records to afford access to individuals unless the component, in its discretion, waives or reduces the fees for good cause shown. A component shall charge fees only at the rate of $0.10 per page. For materials other than paper copies, the component may charge the direct costs of reproduction, but only if the requester has been notified of such costs before they are incurred. Fees shall not be charged where they would amount, in the aggregate, for one request or for a series of related requests, to less than $3.00. However, a component may, in its discretion, increase the amount of this minimum fee.

(b) *Notice of Estimated Fees in Excess of $25.* When a component determines or estimates that the fees to be charged under this section may amount to more than $25, the component shall notify the requester as soon as practicable of the actual or estimated amount of the fee, unless the requester has indicated in advance his willingness to pay a fee as high as that anticipated. (If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee.) Where the estimated fee exceeds $25 and a component has so notified the requester, the component will be deemed not to have received the request for access to records until the requester has agreed to pay the anticipated fee. A notice to a requester pursuant to this paragraph shall offer him the opportunity to confer with Department personnel with the object of reformulating his request to meet his needs at a lower cost.

(c) *Form of Payment.* Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(d) *Advance Deposits.* (1) Where the estimated fee chargeable under this section exceeds $25, a component may require a requester to make an advance deposit of 25 percent of the estimated fee or an advance payment of $25, whichever is greater.

(2) Where a requester has previously failed to pay a fee charged under this part, the requester must pay the component or the Department the full amount owed and make an advance deposit of the full amount of any estimated fee before a component shall be required to process a new or pending request for access from that requester.

§ 16.48 Appeals from denials of access.

(a) *Appeals to the Attorney General.* When a component denies in whole or in part a request for access to records, the requester may appeal the denial to the Attorney General within 30 days of his receipt of the notice denying his request. An appeal to the Attorney General shall be made in writing, addressed to the Office of Information and Privacy, United States Department of Justice, 10th Street and Constitution Avenue, NW., Washington, D.C. 20530. Both the envelope and the letter of appeal itself must be clearly marked: "Privacy Act Appeal." An appeal not so addressed and marked shall be forwarded to the Office of Information

and Privacy as soon as it is identified as an appeal under the Privacy Act. An appeal that is improperly addressed shall be deemed not to have been received by the Department until the Office of Information and Privacy receives the appeal, or until the appeal would have been so received with the exercise of reasonable diligence by Department personnel.

(b) *Action on Appeals by the Office of Information and Privacy.* Unless the Attorney General otherwise directs, the Director, Office of Information and Privacy, under the supervision of the Assistant Attorney General, Office of Legal Policy, shall act on behalf of the Attorney General on all appeals under this section, except that: (1) In the case of a denial of a request for access by the Assistant Attorney General, Office of Legal Policy, the Attorney General or his designee shall act on the appeal, and (2) a denial of a request for access by the Attorney General shall constitute the final action of the Department on that request.

(c) *Form of Action on Appeal.* The disposition of an appeal shall be in writing. A decision affirming in whole or in part the denial of a request for access shall include a brief statement of the reason or reasons for the affirmance, including each Privacy Act exemption relied upon and its relation to each record withheld, and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or the District of Columbia. If the denial of a request for access is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

§ 16.49 Preservation of records.

Each component shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request for access, appeal, or lawsuit under the Act.

§ 16.50 Requests for correction of records.

(a) *How Made.* Unless a record is exempted from correction and amendment, an individual may submit a request for correction of a record pertaining to him. A request for correction must be made in writing and must be addressed to the component that maintains the record. (Appendix I to this part lists the components of the Department and their addresses.) The request must identify the particular record in question, state the correction sought, and set forth the justification for the correction. Both the envelope and the request for correction itself must be clearly marked: "Privacy Act Correction Request." If a requester believes that the same record appears in more than one system of records, he should address his request for correction to each component that controls a system of records which contains the record.

(b) *Initial Determination.* Within 10 working days of receiving a request for correction, a component shall notify the requester whether his request will be granted or denied, in whole or in part. If the component grants the request for correction in whole or in part, it shall advise the requester of his right to obtain a copy of the corrected record, in releasable form, upon request. If the component denies the request for correction in whole or in part, it shall notify the requester in writing of the denial. The notice of denial shall state the reason or reasons for the denial and advise the requester of his right to appeal.

(c) *Appeals.* When a request for correction is denied in whole or in part, the requester may appeal the denial to the Attorney General within 30 days of his receipt of the notice denying his request. An appeal to the Attorney General shall be made in writing, shall set forth the specific item of information sought to be corrected, and shall include any documentation said to justify the correction. An appeal shall be addressed to the Office of Information and Privacy, United States Department of Justice, 10th Street and Constitution Avenue, NW., Washington, D.C. 20530, unless the appeal is from a denial by the Assistant Attorney General, Office of Legal Policy, in which case the appeal shall be addressed to the Attorney General, at the same address. Both the envelope and the letter of appeal itself must be clearly marked: "Privacy Act Correction Appeal."

(d) *Determination on Appeal.* The Director, Office of Information and Privacy, under the supervision of the Assistant Attorney General, Office of Legal Policy, or the Attorney General in appropriate cases, shall decide all appeals from denials of requests to correct records. All such appeals shall be decided within 30 working days of receipt of the appeal, unless there is good cause to extend this period. If the denial of a request is affirmed on appeal, the requester shall be so notified in writing and advised of: (1) The reason or reasons the denial has been affirmed, (2) the requester's right to file a Statement of Disagreement, as provided in paragraph (e) of this section, and (3) the requester's right to obtain judicial review of the denial in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the record is located, or the District of Columbia. If the denial is reversed on appeal, the requester shall be so notified and the request for correction shall be remanded to the component that denied the request for processing in accordance with the decision on appeal.

(e) *Statements of Disagreement.* A requester whose appeal under this section is denied shall have the right to file a Statement of Disagreement with the Office of Information and Privacy, 10th Street and Constitution Avenue, NW., Washington, D.C. 20530, within 30 days of receiving notice of denial of his appeal. Statements of Disagreement may not exceed one typed page per fact disputed. Statements exceeding this limit shall be returned to the requester for condensation. Upon receipt of a Statement of Disagreement under this section, the Director, Office of Information and Privacy, shall have the statement included in the system of records in which the disputed record is maintained and shall have the disputed record marked so as to indicate (1) that a Statement of Disagreement has been filed, and (2) where in the system of records the Statement may be found.

(f) *Notices of Correction or Disagreement.* Within 30 working days of the correction of a record, the component that maintains the record shall advise all components or agencies to which it previously disclosed the record that the record has been corrected. Whenever an individual has filed a Statement of Disagreement, a component shall append a copy of the Statement to the disputed record whenever the record is disclosed. The component may also append to the disupted record any written statement it has made giving the component's reasons for denying the request to correct the record.

§ 16.51 Records not subject to correction.

The following records are not subject to correction or amendment as provided in § 16.50 of this subpart:

(a) Transcripts of testimony given under oath or written statements made under oath;

(b) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings which constitute the official record of such proceedings;

(c) Presentence reports which are the property of the courts, but are maintained by a component in a system of records; and

(d) Records duly exempted from correction pursuant to 5 U.S.C. 552a(j) or 552a(k) by notice published in the **Federal Register.**

§ 16.52 Request for accounting of record disclosures.

(a) An individual may request a component that maintains a record pertaining to him to provide him with an accounting of those other agencies to which the component has disclosed the record, and the date, nature, and purpose of each disclosure. A request for an accounting must be made in writing and must identify the particular record for which the accounting is requested. The request also must be addressed to the component that maintains the particular record, and both the envelope and the request itself must clearly be marked: "Privacy Act Accounting Request." (Appendix I to this part lists the components of the Department and their addresses.)

(b) Components shall not be required to provide an accounting to an individual to the extent that the accounting relates to: (1) Records for which no accounting must be kept pursuant to 5 U.S.C. 552a(c)(1), (2) disclosures of records to law enforcement agencies for lawful law enforcement activities, pursuant to written requests from such law enforcement agencies specifying records sought and the law enforcement activities for which the records are sought, under 5 U.S.C. 552a(c)(3) and (b)(7), or (3) records for which an accounting need not be disclosed pursuant to 5 U.S.C. 552a (j) or (k).

(c) A denial of a request for an accounting may be appealed to the Attorney General in the same manner as a denial of a request for access, with both the envelope and the letter of appeal itself clearly marked: "Privacy Act Accounting Appeal."

§16.53 Notice of subpoenas and emergency disclosures.

(a) *Subpoenas.* When records pertaining to an individual are subpoenaed by a grand jury, court, or quasi-judicial authority, the official served with the subpoena shall be responsible for ensuring that written notice of its service is forwarded to the individual. Notice shall be provided within 10 working days of the service of the subpoena or, in the case of a grand jury subpoena, within 10 working days of its becoming a matter of public record. Notice shall be mailed to the last known address of the individual and shall contain the following information: The date the subpoena is returnable, the court or quasi-judicial authority to which it is returnable, the name and number of the case or proceeding, and the nature of the records sought. Notice of the service of a subpoena is not required if the system of records has been exempted from the notice requirement of 5 U.S.C. 522a(e)(8), pursuant to 5 U.S.C. 552a(j), by a Notice of Exemption published in the **Federal Register.**

(b) *Emergency Disclosures.* If the record of an individual has been disclosed to any person under compelling circumstances affecting the health or safety of any person, as described in 5 U.S.C. 552a(b)(8), the individual to whom the record pertains shall be notified of the disclosure at his last known address within 10 working days. The notice of such disclosure shall be in writing and shall state the nature of the information disclosed, the person or agency to whom it was disclosed, the date of disclosure, and the compelling circumstances justifying the disclosure. The officer who made or authorized the disclosure shall be responsible for providing such notification.

§ 16.54 Security of systems of records.

(a) The Assistant Attorney General for Administration, Justice Management Division, shall be responsible for issuing regulations governing the security of systems of records. To the extent that such regulations govern the security of automated systems of records, the regulations shall be consistent with the guidelines developed by the National Bureau of Standards.

(b) Each component shall establish administrative and physical controls to prevent unauthorized access to its systems of records, to prevent the unauthorized disclosure of records, and to prevent the physical damage or destruction of records. The stringency of such controls shall reflect the sensitivity of the records the controls protect. At a minimum, however, each component's administrative and physical controls shall ensure that: (1) Records are protected from public view, (2) the area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to the records, and (3) records are inaccessible to unauthorized persons outside of business hours.

(c) Each component shall establish rules restricting access to records to only those individuals within the Department who must have access to such records in order to perform their duties. Each component also shall adopt procedures to prevent the accidental disclosure of records or the accidental granting of access to records.

§16.55 Contracting record systems.

(a) No component of the Department shall contract for the operation of a record system by or on behalf of the Department without the express approval of the Attorney General, the Deputy Attorney General, or the Assistant Attorney General for Administration.

(b) Any contract which is approved shall contain the standard contract requirements promulgated by the General Services Administration to ensure compliance with the requirements imposed by the Privacy Act. The contracting component shall have responsibility for ensuring that the contracter complies with the contract requirements relating to privacy.

§ 16.56 Use and collection of social security numbers.

(a) Each system manager of a system of records which utilizes Social Security numbers as a method of identification without statutory authorization, or authorization by regulation adopted prior to January 1, 1975, shall take steps to revise the system to avoid future collection and use of the Social Security numbers.

(b) The head of each component shall take such measures as are necessary to ensure that employees authorized to collect information from individuals are advised that individuals may not be required to furnish Social Security numbers without statutory or regulatory authorization and that individuals who are requested to provide Social Security numbers voluntarily must be advised that furnishing the number is not required and that no penalty or denial of benefits will flow from the refusal to provide it.

§ 16.57 Employee standards of conduct.

(a) Each component shall inform its employees of the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions. Each component also shall notify its employees that they have a duty to: (1) Protect the security of records, (2) ensure the accuracy, relevance, timeliness, and completeness of records, (3) avoid the unauthorized disclosure, either verbal or written, of records, and

(4) ensure that the component maintains no system of records without public notice.

(b) Except to the extent that the Privacy Act permits such activities, an employee of the Department of Justice shall:

(1) Not collect information of a personal nature from individuals unless the employee is authorized to collect such information to perform a function or discharge a responsibility of the Department;

(2) Collect from individuals only that information which is necessary to the performance of the functions or to the discharge of the responsibilities of the Department;

(3) Collect information about an individual directly from that individual, whenever practicable;

(4) Inform each individual from whom information is collected of: (i) The legal authority that authorizes the Department to collect such information, (ii) the principal purposes for which the Department intends to use the information, (iii) the routine uses the Department may make of the information, and (iv) the practical and legal effects upon the individual of not furnishing the information;

(5) Maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as to ensure fairness to the individual in the determination;

(6) Except as to disclosures to an agency or pursuant to 5 U.S.C. 552a(b)(2), make reasonable efforts, prior to disseminating any record about an individual, to ensure that such records are accurate, relevant, timely, and complete;

(7) Maintain no record concerning an individual's religious or political beliefs or activities, or his membership in associations or organizations, unless: (i) The individual has volunteered such information for his own benefit, (ii) a statute expressly authorizes the Department to collect, maintain, use, or disseminate the information, or (iii) the individual's beliefs, activities, or membership are pertinent to and within the scope of an authorized law enforcement or correctional activity;

(8) Notify the head of the component of the existence or development of any system of records that has not been disclosed to the public;

(9) When required by the Act, maintain an accounting in the prescribed form of all disclosures of records by the Department to agencies or individual's whether verbally or in writing;

(10) Disclose no record to anyone, except a component, for any use, unless authorized by the Act;

(11) Maintain and use records with care to prevent the inadvertent disclosure of a record to anyone; and

(12) Notify the head of the component of any record that contains information that the Act or the foregoing provisions of this paragraph do not permit the Department to maintain.

(c) Not less than once each year, the head of each component shall review the systems of records maintained by that component to ensure that the component is in compliance with the provisions of the Privacy Act.

§ 16.58 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under 5 U.S.C. 552a.

6. An Appendix I is added to Part 16, to read as follows:

Appendix I to Part 16

Components of the Department of Justice

Unless otherwise noted, the address for each component is: United States Department of Justice, 10th Street & Constitution Avenue, NW., Washington, D.C. 20530.

Office of the Attorney General
Office of the Deputy Attorney General
Office of the Associate Attorney General
Office of the Solicitor General
Office of Legal Counsel
Office of Legal Policy
Office of Legislative and Intergovernmental Affairs
Antitrust Division
Civil Division
Civil Rights Division
Criminal Division
Land and Natural Resources Division
Tax Division
Office of Justice Assistance, Research, and Statistics, United States Department of Justice, 633 Indiana Avenue, N.W., Washington, D.C. 20531
Justice Management Division
Bureau of Prisons, United States Department of Justice, HOLC Building, 320 First Street., N.W., Washington, D.C. 20534
Community Relations Service, United States Department of Justice, 5550 Friendship Boulevard, Chevy Chase, MD 20815
Drug Enforcement Administration, Eye Street Building, 1405 Eye Street, N.W., Washington, D.C. 20005
Executive Office for Immigration Review, United States Department of Justice, 5203 Leesburg Pike, Falls Church, VA 22041
Executive Office for United States Attorneys
Executive Office for United States Trustees, United States Department of Justice, HOLC Building, 320 First Street, N.W., Washington, D.C. 20534
Federal Bureau of Investigation, 9th St. & Pennsylvania Ave., N.W., Washington, D.C. 20535 [for field offices, consult the list of FBI field offices in the United States Government Manual]
Federal Prison Industries, Inc., HOLC Building, 320 First Street, N.W., Washington, D.C. 20534
Foreign Claims Settlement Commission, Vanguard Building, 1111 20th Street, N.W., Washington, D.C. 20579
Immigration and Naturalization Service, 425 Eye Street, N.W., Washington, D.C. 20536 [for district offices consult the list of INS district offices in the United States Government Manual]
Office of Intelligence Policy and Review
Office of the Pardon Attorney, United States Department of Justice, Park Place Building, 5550 Friendship Blvd., Chevy Chase, MD 20815
Office of Professional Responsibility
Office of Public Affairs
United States Marshals Service, One Tysons Corner Center, McLean, VA 22102
United States National Central Bureau—Interpol
United States Parole Commission, Park Place Building, 5550 Friendship Blvd., Chevy Chase, MD 20815

PART 50—[AMENDED]

7. Section 50.8 of Part 50 is revised to read as follows:

§ 50.8 [Amended]

(a) The Department of Justice recognizes that portions of certain investigatory files compiled by the Department for law enforcement purposes, although of significant historical interest, are nevertheless exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552, as amended. In responding to requests pursuant to that Act, it is the general policy of the Department that such files that are more than fifteen years old and that are no longer substantially related to current law enforcement activities will be processed for disclosure subject to deletions to the minimum extent necessary to protect law enforcement efficiency, personal privacy, or other legitimate interests that

would be implicated by the disclosure of such files.

(b) The policy set forth in this section shall not be deemed to constitute a waiver of any applicable exemption under the Freedom of Information Act. By providing for exemptions in the Act, Congress conferred upon agencies the discretion to grant access to exempt materials, unless otherwise prohibited. All disclosures pursuant to the policy set forth in this section are at the sole discretion of the Attorney General and of those persons to whom authority therefor may be delegated.

(c) This policy is intended to further the public's knowledge of matters of historical interest and, at the same time, to preserve the Department's law enforcement efficiency and to protect personal privacy and other legitimate interests.

Dated: March 23, 1984.

William French Smith,

Attorney General.

[FR Doc. 84-8262 Filed 3-28-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

Correction

In FR Doc. 84-4627 beginning on page 6488, in the issue of Wednesday, February 22, 1984 make the following correction.

In line ten of the summary, insert the word "fully" between "comply" and "with."

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6528

[A-030682, A-033854, A-049677, AA-50511]

Alaska; Transfer of Jurisdiction; Revocation of Public Land Order 1102, as Amended; Partial Revocation of Public Land Orders 1345, 1523, and 2993

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes four public land orders affecting 613.19 acres of public land withdrawn for airports and military purposes. It also transfers jurisdiction of 39.97 acres of acquired land from the Department of the Army to the Department of the Interior. This action makes all the lands available for conveyance to the State of Alaska. The lands remain closed to all other forms of appropriation under the public land laws, including mining and mineral leasing, by Section 1425 of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, Alaska State Office, 907-271-3240.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by Section 1425 of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980; Pub. L. 96-487 (94 Stat. 2515), it is ordered as follows:

1. Public Land Order No. 1102 of March 23, 1955, as amended, which withdrew lands for use by the Department of Interior for an airport, is hereby revoked in its entirety, and Public Land Order Nos. 1345, 1523, and 2993, of October 16, 1956, October 8, 1957, and March 22, 1963, respectively, which withdrew lands for use by the Department of the Army for military purposes are hereby revoked as to the following described lands:

Seward Meridian, Alaska

T. 15 N., R. 3 W.,
Sec. 6, S½SW¼SE¼;
Sec. 7, N½SE¼;
Sec. 8, W½SW¼NW¼NW¼, W½W½S W¼NW¼, W½NW¼NW¼SW¼S W¼NW¼SW¼, W½SE¼NW¼SW¼, SE¼SE¼NW¼SW¼, S½SW¼, SW¼SE¼;
Sec. 16, fractional, lots 1, 2, and 3;
Sec. 17, fractional, lots 1, 2, 3, 5, and 6, N½ NE¼.

The area described contains 613.19 acres.

2. Subject to valid existing rights, jurisdiction of the following described land, which was acquired by the United States and used by the Department of the Army for the Nike Site Bay Military Reservation, is hereby transferred to the Department of the Interior for conveyance to the State of Alaska.

Seward Meridian, Alaska

T. 15 N., R. 3 W.,
Sec. 17, U.S. Survey No. 1087.

The area described contains 39.97 acres.

3. The lands described in paragraphs 1 and 2 remain closed to operation of the public land laws, including the mining and mineral leasing laws, by Section 1425 of ANILCA.

4. The lands described in paragraphs 1 and 2 will be conveyed to the State of Alaska under the provisions of Section 1425 of ANILCA, and the North Anchorage Land Agreement, as amended.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands, Bureau of Land Management, 701 "C" Street, Box 13, Anchorage, Alaska 99513.

Dated: March 22, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[MM Docket No. 84-1; FCC 84-87]

Compensation for Expenses Incurred in Mitigating the Effects of Cuban Interference to Services Rendered by AM Radio Stations in the United States

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This action establishes the requirements for compensation to United States AM radio broadcasters for certain allowable expenses they incur in mitigating interference from Cuban stations.

The Radio Broadcasting to Cuba Act directs the FCC to issue regulations prescribing such requirements.

AM broadcasters who meet the requirements set forth in the new regulations will be found eligible, by the FCC, to receive compensation payments by the United States Information Agency in such amounts, up to a maximum determined by the FCC, as the USIA finds appropriate taking into account the amounts of funds that Congress may in the future appropriate for this purpose and the demand for compensation by qualifying broadcasters.

EFFECTIVE DATE: August 1, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens or Wilson LaFollette, (202) 632-7792, (202) 632-5414, Mass

Media Bureau, Federal Communications Commission.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure, Cuban interference to radio stations.

Report and Order

In the matter of compensation for expenses incurred in mitigating the effects of Cuban interference to services rendered by AM Radio Stations in the United States; MM Docket No. 84-1.

Adopted: March 15, 1984.
Released: March 23, 1984.

By the Commission.

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I. Introduction

1. In a *Notice of Proposed Rule Making* adopted in this proceeding on January 4, 1984, 49 FR 1091, the Commission invited comments on proposed regulations mandated by section 7 of the Radio Broadcasting to Cuba Act ("the act")[1] Section 7 provides for a program of interim assistance to U.S. AM radio broadcasters in the form of compensation for allowable expenses incurred in mitigating the effects of interference from Cuban stations, and directs the Federal Communications Commission to issue regulations and establish the procedures for providing such compensation. Having considered this matter in light of the comments and reply comments filed in this proceeding, we now adopt the regulations set forth in Appendix B.

[1] Pub. L. No. 98-111, 97 Stat. 749 (Approved Oct. 4, 1983). Section 7 of this Act is set out in full in Appendix A.

II. Background

2. As we observed in the *Notice* inaugurating this proceeding, efforts so far have failed to resolve the problem of longstanding and shifting patterns of interference to AM radio broadcast stations in the United States by Cuban stations. It started before Cuba gave notice in November, 1980, of its intent to withdraw from the North American Regional Broadcasting Agreement as of November, 1981. It has worsened since Cuba withdrew from the Regional Administrative Radio Conference, Rio de Janeiro, 1981 and declined to sign the Final Acts of that conference (hereinafter sometimes referred to as "the Rio Final Acts"), which established a Region 2 Plan for mutual protection of the AM services of participating Western Hemisphere countries.

3. The Radio Broadcasting to Cuba Act recognizes that the eventual solution is to be sought by negotiating a settlement of U.S. claims to protection against Cuban interference, and the Act looks to the Secretary of State to pursue such a settlement. Meanwhile, the Act calls for the establishment of a program of interim assistance to the United States broadcasters who are adversely affected by Cuban radio interference and who, before, on, or after the date of its enactment (October 4, 1983) incur expenses in mitigating such interference pursuant to special temporary authorizations (STAs) issued by this Commission.

III. Commenting Parties

4. Comments and Reply Comments were filed by the below-listed parties:

Party	Comment	Reply comment
American Legal Foundation	X	
Clear Channel Broadcasting Service		X
Department of State, by the Coordinator for International Communications and Information Policy.	X	
Great Southern Broadcasting Company, Inc.	X	
Joint filing by: Florida Association of Broadcasters and South Florida Radio Broadcasters Association ("Florida Associations").	X	X
National Association of Broadcasters (NAB).	X	
National Radio Broadcasters Association (NRBA).	X	
National Telecommunications and Information Agency (NTIA).		
Plough Broadcasting Company	X	
Ronald F. Schatz	X	X
Sudbrink Broadcasting Company	X	X
Susquehanna Broadcasting Company	X	
United States Information Agency (USIA).		X

In deciding upon the regulations set forth in Appendix B, hereto, we have carefully considered the foregoing comments and reply comments. Their substance is noted in the following discussions of the several questions involved.

IV. Discussion

5. *Definition of Cuban Interference.* In AM broadcasting, both domestically and internationally, the presence or absence of interference is customarily determined by whether, at the point of reception, the field strength of the signals of other co-channel or adjacent-channel stations exceeds a stated ratio with respect to the signals of the protected station. The ratios generally applicable among the several countries of the Western Hemisphere are those set out in the Final Acts of the Regional Administrative Radio Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro, 1981. Our proposal to use this standard was generally supported by commenting parties. The comments filed jointly by the Florida Associations referred to departures from the provisions of the North American Regional Broadcasting Agreement (NARBA). However, while NARBA at one time prescribed the ratio applicable as between Cuba and the United States, it no longer governs.

6. We believe that the Final Acts of the 1981 AM Conference at Rio de Janeiro provide the appropriate standard to apply in making findings concerning Cuban interference for the purpose of determining eligibility for compensation under Section 7 of the Radio Broadcasting to Cuba Act. Cuba, as a Member of the International Telecommunication Union, has agreed not to cause "harmful interference" to the radio stations of other Members. The United States is an ITU Member. The term "harmful interference" is defined in the ITU Convention as "interference * * * which seriously degrades,

obstructs or repeatedly interrupts a radiocommunication service operating in accordance with the Radio Regulations." The Rio Final Acts, comprising an ITU Regional Agreement that has been signed by most countries of the Western Hemisphere (ITU Region 2), establish the norms generally applicable in Region 2 for determining when radiation exceeds a generally acceptable level and is considered to cause "objectionable interference." Under the ITU Radio Regulations this quantfied standard is applied, in lieu of the more loosely defined concept of "harmful interference, in determining whether signatories to a Regional Agreement are providing due protection to the stations of the other signatories. Cuba has not signed or adhered to the Rio Final Acts, but this is not to say that the interference standards established in that document are irrelevant or inapplicable to Cuba. The standards established in the Final Acts provide the appropriate basis for quantifying the level of radiation, from a non-signatory to the Rio Final Acts toward stations in any other country in the Western Hemisphere, that may reasonably be considered as likely to cause "harmful interference" within the meaning of the ITU Radio Regulations that do apply to Cuba. In fact, we would find it difficult to understand the justification for quantifying "harmful interference" from any non-signatory in Region 2 toward any other Western Hemisphere country otherwise than by applying the standards that most countries in this Hemisphere have agreed to apply in determining when radiations reach an objectionable level. We therefore consider it appropriate to apply the norms of the Rio Final Acts in determining whether radiations from Cuba toward AM stations in the United States constitute interference for the purposes of the Section 7 program of compensation to affected American broadcasters. We so provide in Section 1.1702 of the new regulations.

7. One result is that, in determining whether Cuban stations cause skywave interference to AM stations in the United States, we employ the 50% skywave signal incidence standard of the Rio Final Acts rather than the 10% standard that is applicable as among stations within the United States. This approach was supported by the NTIA and other parties, but was objected to in comments filed by the Florida Associations, who contend that because the Commission employs the 10% skywave signal incidence factor for other domestic purposes, it should similarly treat interfering Cuban skywave signals. We believe, however, that for the purpose of the program of compensation under Section 7 of the Act, which concerns interference from another country, it is more appropriate to apply the pertinent international standard.

8. *Method for Calculating the Level of Cuban Interference.* It is usually possible to base calculations of the level of interference on the locations of the interfering stations and known operating parameters such as power and antenna radiation pattern. It has been evident for some time, however, that numbers of Cuban stations are not operating with announced facilities, but are in fact employing powers and other station characteristics different from those reflected in regularly available data. Discrepancies between reported and actual operating powers have been apparent in the results of the Commission's monitoring of received field strengths of Cuban signals at locations within the United States, especially at its Fort Lauderdale monitoring station. In these circumstances, it will be necessary, in determining the power levels of Cuban AM transmissions for the purposes of the Section 7 compensation program, to establish a method that can appropriately be used for calculating such powers until Cuba comes into conformity with the established international practices concerning the announcement of proposed changes in frequency assignments and the avoidance of harmful interference to stations in other countries.

9. In paragraph 21 of the *Notice of Proposed Rule Making,* we recognized the need for periodic monitoring, at suitable locations, of the field strengths of the signals of Cuban stations on all 107 AM channels. Data so accrued, together with appropriate determinations as to the directions from which those Cuban signals are coming, will make it possible to estimate the powers and locations of Cuban AM stations. From the powers and locations so estimated and using the methods prescribed in the Rio Final Acts, it will be possible to predict the levels of interference caused by Cuban AM stations. The data so obtained will not only permit determinations of whether interference reaches the minimum levels qualifying licensees for compensation, but will also provide verified, documented, and consistently compiled particulars concerning Cuban operations on all 107 AM channels that will be indispensable to resolution of the Cuban interference problem that Section 7(a) expressly intends that the Secretary of State should seek.

10. The USIA recommended that the presence of Cuban interference be verified by continuous measurements taken on the periphery of the station's primary service area, that the interference be clearly identifiable and audible above other common noises, and that calculations of probable effects of monitored Cuban signals not be considered sufficient. It is pertinent to bear in mind that the limitations that are placed on compensation both by Section 7(b) of the Act and § 1.1708 of the new regulations will make it necessary for recipients of compensation to bear very substantial amounts of the costs involved in making the necessary facilities changes. For this reason, it is unlikely that AM broadcasters will embark on facilities changes unless significant interference is experienced on a scale that impinges harmfully on the service the station is able to render. The regulations contain safeguards against including in the compensation program facilities changes made for purposes other than recovering service lost to Cuban interference, such as to enlarge service areas beyond their previously established interference-free contours. In these circumstances, we have difficulty justifying the additional burdens and costs that would be associated with the kinds of showings of "actual" interference that the USIA proposed be required. The industry's responses to the Commission's invitation that it participate in the procedures necessary to carry out the program, including monitoring, was predominantly negative. One comment suggests that the cost of administration could be reduced if the task of administration program were contracted out. However, no analysis to support this view was provided in the comment.

11. We had proposed that monitoring for the purpose of determining the *existence* and the *level* of Cuban interference be conducted semimonthly. (We discuss later, in paragraphs 18 to 21 the differently structured monitoring methods proposed for the separate purpose of determining the *incidence* or *duration* of such interference.) The NTIA recommended that the monitoring from which the levels of Cuban interference would be determined be conducted much more frequently than semimonthly, in fact, as frequently as daily. That would increase the cost of such monitoring enormously and would be beyond the foreseeable resources of the Commission. Moreover, we do not believe that routine monitoring as detailed and voluminous as that is

necessary for reasonable implementation of the program of compensation established in Section 7 of the Act. Also, we do not believe that it would be necessary to carry out the purposes of other parts of the Act. In particular cases it may become appropriate to monitor more frequently than semimonthly. Within the capacities of available staff and equipment, that could be done on an *ad hoc* basis. The NTIA also expressed its concurrence with the technical procedures the Commission proposed for determining the locations and powers of Cuban AM stations, but cautioned that it may be desirable to correct the measured field strength data for the non-sea portions of the paths, and to take care that measured signals are not contaminated by other signals arising outside Cuba, or by skywaves. We agree. The procedures for monitoring were planned accordingly.

12. *Minimum Level of Interference Qualifying Licensees for Compensation.* As we observed in the *Notice*, the legislative history of the Act indicates that Congress intended that the FCC establish a threshold level of interference in order to qualify an applicant for compensation under Section 7. We proposed that such threshold level be established as follows. The applicant, presuming that the interfering Cuban station operates at the power and at the location derived by baseline studies of the monitoring data obtained as described in paragraph 10, above, and employing the methods of calculation prescribed in the Rio Final Acts, would determine what portion of its otherwise interference-free primary or secondary service area is subjected to Cuban interference. We proposed that the applicant would meet the required threshold level of interference only if the population in the area so subjected to Cuban interference totaled at least 10% of the population within the area in which the station would render interference-free primary or secondary service were it not for the Cuban interference. Most of the parties addressed this proposal.

13. The comments generally supported a requirement that the interference have some defined minimum level of impact. However, almost all of them advocated that holders of previously issued STAs to mitigate Cuban interference should be exempted from the requirement. Affected stations that expended substantial amounts of money for facilities changes to mitigate the effects of Cuban interference may be presumed to have been more than negligibly affected. This is supported by showings of interference submitted by applicants for STAs issued before the compensation program was contemplated. Thus in their case, separate, detailed, after-the-fact showings would not be needed. Their preparation and review would impose a needless burden. We agree, and have provided for such exemption in § 1.1706(b) of the new regulations.

14. The *Notice* Proposed a required showing of interference to 10% of the total *population* within the station's service area. The parties preponderantly advocated that, instead, applicants be permitted to do so in terms of interference to at least 10% of their otherwise interference-free service *areas*. It was pointed out, in response to our reference in the *Notice* to the example of the Florida Everglades as an area of limited population, that there are some local residents and some travelers needing radio service in that sparsely settled area. It was contended that the compensation program should embrace restoration of service to less densely settled areas as well as to the more densely populated places. We disagree. Station licensees are free to seek authorization for facilities changes that will restore service in any areas lost to Cuban interference without in turn interfering with other stations entitled to interference protection. However, Section 7 was not intended to provide full compensation for all costs incurred to mitigate Cuban interferene. The language of the statute and its legislative history indicate, rather, that it was intended to provide some assistance in cases where threshold requirements established by this Commission are met. Taking all pertinent circumstances into account, including the need to moderate the costs of the program, and the desirability of applying available funds so that they will benefit the largest numbers of persons subjected to interference, we have found it preferable to retain the population basis for determining whether applicants who are not exempted meet the 10 % service impact requirement.

15. The USIA, Susquehanna Broadcasting Co., and Ronald F. Schatz advocated that only interference to the primary service areas of affected stations be taken into account for purposes of compensation under Section 7. The Clear Channel Broadcasting Service, on the other hand, urge that it would be inappropriate not to include interference to secondary service areas. Specifically, CCBS states that, although it may not be possible to restore service to all affected parts of a Class I station's secondary service area, there are considerable numbers of persons dependent upon skywave signals for nighttime aural broadcast service, and excluding consideration of interference to secondary service areas would not be appropriate. We agree, and have drafted the regulations accordingly.

16. The USIA proposed raising the threshold still higher than the 10% level we had proposed. USIA proposed requirements that the measured harmful interference be shown to have increased by 50% or more since October 4, 1982 (one year before approval of the Act), that such interference have caused a reduction of 20% or more in the actual listening audience, and that it have caused a reduction of 10% or more in the station's revenues. The last mentioned requirement raises questions that we would be at a loss to answer. Many factors affect fluctuations in station revenues (for example, changes in economic conditions, programming changes, the competitive draw of programming offered by other stations, changes in management personnel or techniques). Even if it were possible to isolate the factor of Cuban interference, we believe that carrying out the necessary intensive economic and financial analyses of all the pertinent factors would be too time-consuming and burdensome, and require an unjustified addition of staff qualified to perform such analyses.

17. Measuring reduction in the listening audience as suggested by the USIA would require repeated, expensive, special surveys, and it is unclear how audience losses could be reliably attributed to the single factor of Cuban interference, when so many factors are known to bear on fluctuations in audience levels. Additionally, we do not find that the suggested requirement of a 50% increase in the level of interference would be justified. If Cuban stations are shown to cause interference in that part of a station's service area where at least 10% of the total population in the otherwise interference-free service area reside, it is realistic to consider that both the service and economic well-being of the station are significantly affected. We believe it is consistent with the intent of Congress that, in such circumstances, a station licensee who incurs expenses for mitigating such interference should be considered as eligible for the limited amount of compensation for which the regulations provide. Taking all the foregoing considerations into account, we believe it desirable, in the interests of economical administration of the program, to adhere to the proposal in the

Notice that the threshold requirement as to the *level* of received interference be established at 10% of the served population, and that the attainment of that level be calculated in the manner previously discussed in this *Report and Order* and provided for in §§ 1.1702, 1.1703 and 1.704(a) of the new regulations.

18. *Minimum Duration of Interference Qualifying Licensees for Compensation.* The legislative history of the Act indicates Congressional intent that the FCC consider threshold requirements not only as to the *level* of interference experienced from Cuban stations, but also as to its *duration.* (See section-by-section analysis of the Act placed in the Congressional Record by Representative Fascell, of Florida, Congressional Record for September 23, 1983, at page H 7680.) The *Notice* proposed that duration of the Cuban interference be shown by logged monitorings of Cuban signals by the station licensees within the affected portion of their service areas or, in some cases, near the station's transmitter. The NTIA urged that such monitorings be performed by the FCC, rather than by the stations. While this would be one way to assure consistent performance of the monitoring in accordance with accepted engineering practice, the task is beyond the resources that are available, or could be expected to be made available, to the Commission. Monitoring to show *duration* of the Cuban interference (as compared with its level) will be required on sixty consecutive days, in some cases both during daytime and nighttime hours. The Commission lacks the staff and equipment that would be necessary to monitor Cuban signals that many times, and at diverse station locations. The FCC staff will be prepared, however, if and when circumstances call for spot checks or reviews of monitoring conducted by station licensees, to perform such checks. In any event, the FCC staff will closely control the monitoring referred to in paragraph 10, above, that will be performed to establish the *levels* of radiation reaching the United States from Cuban stations on all 107 AM radio broadcast channels. This, it is believed, will provide an adequate and appropriate factual basis for future discussions envisaged for the purpose of resolving the problem of Cuban interference. Bearing in mind the limited purpose of monitoring by station licensees, the requirement that it be performed in accordance with good engineering practice, the review that the Commission will perform in order reasonably to assure that proper standards are observed, and the impossibility of the FCC taking on this additional monitoring task, we believe it desirable to adopt essentially the requirements proposed in the *Notice* with respect to monitoring to be performed by station licensees.

19. The Florida Associations urged that the burden on station licensees of performing the prescribed monitoring over a period of sixty days should be relieved by requiring that it be performed for only thirty days. It must be borne in mind that the purpose of the monitoring by licensees is to determine whether the interference is only sporadic or temporary, or is of sufficient duration to warrant compensation for part of the costs of facilities changes to mitigate its effects. Even sixty days is short for this purpose, but we proposed that period in order to economize on the time and expense of performing this task. We believe that any shorter period would be inappropriate, taking into account the additional fact that, insofar as nighttime skywave interference is concerned, the variability of skywave transmissions necessitates at least a sixty-day monitoring period.

20. The Florida Associations proposed that stations previously authorized to make facilities changes to mitigate Cuban interference be exempted from the requirement of monitoring to show *duration* of interference. The same considerations that we found to justify such stations from showings of the *level* of Cuban interference make it appropriate to apply the exemption also to showings of its duration. Section 1.1706(b) of the new regulations accordingly provides for it. We believe this to be appropriate even in cases where interference on which earlier STAs were based might be shown to have abated. The Act contemplates that the interference should be resolved, that the facilities changes authorized to mitigate it are temporary in nature, and that holders of STAs issued before the enactment of Section 7 may be called upon to return to their previous facilities without further compensation at such time as the interference is definitively removed. Thus, there is a need for a showing of duration of the interference in new cases, so that compensation will not be provided in cases of random or insubstantial interference. However, we find that no useful purpose will be served by requiring showings by stations that have already experienced interference of sufficient duration to justify their outlay of substantial sums for temporarily changed facilities, under previously issued STAs, before compensation by the Federal Government was contemplated.

21. Several parties recommended that the regulations make clear that monitoring efforts for the purpose of showing duration of interference be set up separately for interference experienced during the daytime and during nighttime hours. That is appropriate and consistent with the intent of the *Notice,* and § 1.1705 so provides. The requirement is that the interference be detected on at least thirty of the sixty days of prescribed monitoring by the station licensee, at least once during the prescribed daytime or nighttime hours, or both, as the case may be.

22. *Compensable costs: General Considerations.* The intent that the costs incurred in mitigating the effects of Cuban interference be compensated partially, rather than fully, is clearly evident not only in Section 7 of the Act, but also in its legislative history. The section-by-section analysis of the Act that Representative Dante Fascell placed on the record during remarks in the course of the floor debate on September 23, 1983 states, at page H 7680 of the Congressional Record: "The Commission may also consider establishing limits on the type and extent of reimbursable expenses." The USIA points out that the $5 million authorized for the Section 7 program may be expected to cover certain administrative costs as well as compensation payments. It further notes that no funds have yet been appropriated for these purposes, and counsels the need to moderate the size of compensation payments. In prescribing the kinds of costs that will be compensable, and the extent to which they may be compensated under this program, we have applied the limitations expressly laid down in the statute. Moreover, in exercising the discretion conferred on the Commission, we have endeavored to give due weight to considerations urged upon us by the parties. The paramount consideration, we believe, is provided by the current Federal budgetary deficit and the need it imposes to avoid undue demands on the Federal Treasury, while at the same time giving due effect to the Congressional purpose of providing some assistance to affected broadcasters. The American Legal Foundation recommended, in substance, that the Commission make a study of probable demand before establishing the requirements for compensation; but the statutory deadline for issuing the implementing regulations precludes that approach. With the objective of achieving an appropriate balance among all the pertinent considerations, we have

arrived at the following decisions as to the kinds and amounts of expenses that the new regulations should treat as compensable.

23. *Compensable Costs: Replaced Equipment.* In the *Notice of Proposed Rule Making* we considered the express provision of Section 7(b) that expenses eligible for compensation "shall be limited to the cost of equipment (replaced, less depreciation) and associated technical and engineering cost." We initially construed the quoted language as requiring that the amount of depreciation taken for income tax purposes on existing equipment that is replaced by new facilities must be subtracted from otherwise compensable equipment costs. We accordingly proposed to treat as compensable that part of the cost of new equipment remaining after subtracting the depreciation taken on replaced equipment. The USIA commented that, in its view, the legislation bars compensation for capital outlays for new equipment. It recommends that compensation for equipment be limited to the cost of "equipment replaced less depreciation."

24. We accept USIA's interpretation as conforming more closely to the literal language of the statute than the one we initially proposed in the *Notice*. It is pertinent to note that more direct, less debatable language could have been used to make the costs of new equipment expressly compensable, rather than the language in the Act, whose only express reference to includible equipment is to "replaced" equipment, i.e., existing equipment that is replaced by the new facilities. The legislative history is not helpful on this point.

25. Apart from the question of whether the Act bars inclusion of the costs of new equipment, is the probability that, at least in most cases, the basis proposed by the USIA will result in lower compensation than if the cost of new equipment were included. Upon further consideration, we have so drawn Section 1.1708 of the new regulations. We have, at the same time, balanced the resultant reduction in compensation by allowing compensation for the full amount of includible costs (within a $250,000 ceiling), rather than allowing only 50% of such costs, as we originally proposed. Although this may not be expected to offset fully the probable resultant net diminution of compensation, we believe that the course we have adopted properly carries out the mandate of the Act, and reasonably balances the objectives of providing some meaningful assistance to affected broadcasters, while duly moderating resultant demands on the Federal Treasury. Additionally, it will be simpler and more economical to administer.

26. *Compensable Costs: "Associated Technical and Engineering Costs."* The new regulations do not provide for compensation for outlays to acquire and install or construct new equipment, but they do permit compensation for "associated technical and engineering costs" that are provided for in the Act. These costs include out-of-pocket expenditures prudently made to carry out the planning, designing, engineering and testing of new facilities that are reasonably needed to mitigate the effects of Cuban interference, and to carry out monitoring that the regulations call upon station licensees to conduct. Licensees who received FCC authorizations to make such facilities changes before the new regulations prescribing monitoring requirements were adopted may seek compensation, provided they can demonstrate that the costs which they seek to have reimbursed were reasonable and prudently incurred previously in monitoring Cuban signals in order to obtain factual data that they presented to the FCC in support of their requests for such FCC authorizations. We believe that these are reasonable and appropriate conditions to impose on compensation for monitoring. To this extent we do not concur with the recommendation of Sudbrink Broadcasting Company that the costs of taking field strength measurements be compensated, with no qualifying conditions. Sudbrink also recommended that we include the costs of studying alternatives to the facilities changes made to mitigate Cuban interference. We do not consider this appropriate for generalized approval by regulation. Instead, we believe that it would be preferable to consider, on the facts of individual cases, whether the expenses so incurred should be accepted as reasonable and prudent, and otherwise suitable for compensation.

27. *Non-Compensable Costs: Land.* It may be impossible in some cases to construct necessary directional antenna systems on land already owned or used by an affected station for its transmitter and antenna tower(s). This would necessitate the acquisition, or possibly the leasing, of additional land to accommodate new transmission facilities. In the *Notice*, we proposed to exclude land costs as non-compensable. For one thing, it appeared doubtful that land came within the allowable categories of expenses to which compensation was limited by Section 7(b) of the Act. Susquehanna Broadcasting Company supported the proposed exclusion of land costs from compensation. Ronald F. Schuatz recommended in his Reply Comments that land costs be treated as compensable. The NTIA suggested that the ground on which antenna towers are erected, and which contains the essential ground system, should be considered part of the antenna and thus eligible for compensation. The NTIA also suggested that the cost of purchasing land should be allowed, at least in cases where it could not have been obtained by lease. We believe, however, that it would be unduly costly, burdensome, and beyond the Commission's resources to attempt to determine whether it would have been possible, upon adequate search of the entire area where the antenna might be located, to find land that the owners would be willing to lease. Collateral questions would be likely to arise, such as whether the costs of available leases were reasonable, or so excessive as to warrant purchase. The reasonableness of the price paid for land, and its residual value if its use were discontinued upon cessation of the interference, are questions illustrative of numerous others that we believe would arise and unduly complicate the administration of a provision permitting compensation for the cost of land. The Florida Associations proposed that the cost of leasing land, but not its purchase, be compensable. For reasons similar to those already stated, we consider this undesirable, apart from the fact that it is doubtful that the Act intended to make any land costs compensable, whether incurred for lease or purchase.

28. *Non-Compensable Costs: Legal Fees.* Plough Broadcasting Company disagreed with our proposal to treat legal fees as non-compensable, arguing that the Act may reasonably be construed as intending to provide compensation for legal fees when they are incurred in connection with the facilities changes necessitated by Cuban interference. We disagree. Legal fees do not come within the ordinarily understood meaning of the statutory terms used to describe the costs to which compensation is expressly limited: i.e. certain "equipment" costs, and the costs of "associated technical and engineering expenses." Accordingly, we have adhered to our proposal not to treat legal fees as compensable.

29. *Successive Facilities Changes.* Ambassador Diana Lady Dougan, Coordinator of International Communications and Information

Policy, Department of State, commented that it would be desirable that the regulations make clear whether a station licensee that had already been awarded compensation for expenses incurred in mitigating Cuban interference would be eligible for additional compensation if additional facilities changes were found later to be necessary to overcome the effects of further changes in the operating parameters of Cuban stations. The USIA recommended that such additional compensation be expressly barred, and that applicants be limited to compensation for only one such change of station facilities. We note in this regard that, after an initial modification, there would usually be relatively limited opportunity to make further changes that would not cause prohibited interference to other stations. There is, moreover, a limit on the capacity and the desire of Cuba to continue indefinitely to make changes in the pattern of its broadcast transmissions, considering the effects of changes in station frequencies and powers on services provided to Cuban listeners. We believe that it would be more equitable, and in keeping with the intent of the statute, that we deal individually with any applications that may be filed for compensation arising out of changes made after previous modifications for which compensation had been allowed. We would not expect that such additional compensation could be justified except in unusual and highly meritorious circumstances.

30. *Eligibility Confined to Stations Directly Affected.* It would, in our opinion, carry the compensation program beyond the intent of Congress to compensate expenses incurred, not for changes to affected stations, but for changes to other stations that would be necessitated by the remedial action taken by directly affected stations. This could lead to indefinite "daisy-chaining" effects that could multiply the costs far beyond those contemplated by Congress. It would, moreover, be contrary to Commission policy to grant authorizations for facilities changes that would cause prohibited interference to other stations.

31. *Ceiling on Compensation.* The Notice proposed to limit compensation of 50% of the amounts expended for compensable kinds of costs, up to a maximum of $250,000 in each case. Commenting broadcasters and associations opposed both these limitations. The USIA felt that compensable expenses should be limited to the lesser of the $250,000 ceiling or 20% of the fair market value of the station at the time the claim was made. We feel that the views of the USIA, as the agency charged by the Act with responsibility for making compensation payments under Section 7, are entitled to great weight. We believe, however, that it would be undesirable for this Commission to attempt to assay the market value of stations. Our decision to adopt the USIA's more restrictive proposals concerning allowance for equipment costs goes a long way toward achieving the underlying objective of moderating the costs of the program to the Federal Treasury. It appears probable that, if we were to curtail further the already substantially reduced basis for determining the amount of compensation payments, the amount of compensation would be reduced below levels intended by Congress.

32. *Priorities.* In the *Notice* we proposed to classify applications for compensation into three priority groups, and to sequence the applications within each of those groups. Insofar as the comments addressed the proposal, they generally concurred with it. Section 1.1710 of the new regulations contains essentially the proposed provisions. It should be understood, however, that the classification of an application within one of the three priority groups, and its sequencing within that group, does not establish a definitive entitlement to the payment of the amount of compensation in the full amount for which the FCC has found the applicant to be eligible. Nor, for the following reasons, would such finding by the Commission necessarily entitle applicants to receive compensation in the established priority sequence.

33. As provided in § 1.1710(e) and 1.1711 of the new regulations, the FCC will inform the USIA of its findings as to the applicant's eligibility for compensation, and as to its priority classification. That finding is provided for the information of the USIA, upon whom the Act confers the responsibility and the authority to make the compensation payments. Under the Act all appropriations of funds for the compensation payments are made to the USIA as the paying agency. The FCC will make determinations as to whether applicants meet the requirements of the Act and of the regulations for eligibility for compensation, and will determine the maximum amounts for which they qualify. But the Commission will not make the compensation payments or manage the funds that the Act provides will be appropriated to the USIA for this purpose. Since it cannot be known in advance whether funds will be appropriate in sufficient amounts to cover fully the aggregate amounts of compensation for which applicants are found eligible by the FCC, the question of whether the amount for which applicants are found eligible can or should be reimbursed fully, and in a single payment, are questions that must be determined by the USIA.[2]

34. It could happen that, if and when funds are appropriated, they might be insufficient to cover all of the amounts for which applicants will have been found eligible in the sense that they have been found to have satisfied the requirements of the Act and the implementating regulations. It is also possible that developments may expand the foreseeable demand for compensation beyond originally indicated levels, and beyond the amounts of funds that have been appropriated, or for which appropriations may be expected to be provided. In such cases, it may become necessary for the USIA to apportion available funds in some manner, thus making temporary or permanent payments of only some portion of the amounts of compensation for which the FCC has determined applicants to be eligible.

35. An additional reason why the prioritities established by the FCC cannot constitute a definitive entitlement arises from the fact that the priority group in which an application falls, and the sequence within the group, will be made initially when the FCC makes the provisional finding of eligibility under § 1.1711(a). Such provisional finding is issued before the new facilities are acquired and installed or constructed. Circumstances may intervene that would delay the construction and the consequent issuance of the definitive eligibility finding under § 1.1711(b). It would not be proper that earlier applicants who delay carrying out facilities changes be able to block the payment of compensation to later applicants who are found to be eligible, promptly install the new facilities, make all required showings, provide all required documentation and meet all other requirements for compensation in timely fashion.

36. Taking all the foregoing considerations into account, including uncertainty as to whether appropriated funds will be available to cover the entire amounts of compensation for which applicants will have satisified

[2] Although $5 million has been authorized to fund this compensation program, no funds have yet been appropriated for it. Without such appropriation, compensation payments cannot commence.

eligibility requirements, the Commission has concluded that it is appropriate to handle priorities as provided in § 1.1710(e) of the new regulations. Specifically, the Commission will initially designate each application as falling within the First, Second or Third Priority group, and will indicate its sequence within that group. Such determinations will be notified to the applicant and the USIA. This will provide the USIA with the particular information it would need if, in the performance of its function as the paying agency, the USIA found it possible and desirable to exercise its discretion so as to apply the priority ranking and sequence established by the FCC.

V. Order

37. Accordingly, pursuant to authority found in Section 7 of the Radio Broadcasting to Cuba Act, Section 553 of the Administrative Procedure Act, as amended, and Section 4(j) of the Communications Act of 1934, as amended, it is ordered, that, effective August 1, 1984, the regulations appended hereto and designated as Subpart M of Part 1 of the Rules and Regulations of the Federal Communications Commission are adopted.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Text of Section 7 of the Act

Section 7 of the Radio Broadcasting to Cuba Act, Pub. L. 98–111, 97 Stat. 749, (1983) provides as follows:

Sec. 7. (a) It is the intent of the Congress that the Secretary of State should seek prompt and full settlement of United States claims against the Government of Cuba arising from Cuban interference with broadcasting in the United States. Pending the settlement of these claims, it is appropriate to provide some interim assistance to the United States broadcasters who are adversely affected by Cuban radio interference and who seek to assert their right to measures to counteract the effects of such interference.

(b) Accordingly, the agency may make payments to the United States radio broadcasting station licensees upon their application for expenses which they have incurred before, on, or after the date of this Act in mitigating, pursuant to special temporary authority from the Federal Communications Commission, the effects of activities by the Government of Cuba which directly interfere with the transmission or reception of broadcasts by these licensees. Such expenses shall be limited to the costs of equipment (replaced less depreciation) and associated technical and engineering costs.

(c) The Federal Communications Commission shall issue such regulations and establish such procedures for carrying out this section as the Federal Communications Commission finds appropriate. Such regulations shall be issued no later than one hundred and eighty days after enactment of this Act.

(d) There are authorized to be appropriated to the Agency [United States Information Agency], $5,000,000 for use in compensating United States radio broadcasting licensees pursuant to this section. Amounts appropriated under this section are authorized to be available until expended.

(e) Funds appropriated for implementation of this section shall be available for a period of no more than four years following the initial broadcast occurring as a result of programs described in this Act.

(f) It is the sense of the Congress that the President should establish a task force to analyze the level of interference from the operation of Cuban stations experienced by broadcasters in the United States and to seek a practical political and technical solution to this problem.

(g) This section shall enter into effect on October 1, 1984.

Appendix B

PART 0—[AMENDED]

Section 0.61 of Part 0 of the Rules and Regulations of the Federal Communications Commission is amended by adding new paragraph (i), reading as follows:

§ 0.61. [Amended]

* * * * *

(i) Process applications for compensation submitted pursuant to Subpart M, Part 1 of this chapter.

PART 1—[AMENDED]

Part 1 is amended by adding a new Subpart M to read as follows:

* * * * *

Subpart M—Implementation of Section 7 of the Radio Broadcasting to Cuba Act: Compensation of Costs of Mitigating Cuban Interference

Sec.

1.1701 Purpose.
1.1702 Definition of Cuban interference.
1.1703 Method for calculating the level of Cuban interference.
1.1704 Minimum level and duration of interference qualifying licensees for compensation.
1.1705 Method for determining duration of Cuban interference.
1.1706 Waivers and exceptions.
1.1707 Required FCC authorizaton for modification of station facilities.
1.1708 Compensable costs.
1.1709 Requirements for filing applications for compensation.
1.1710 Priorities.
1.1711 Provisional and definitive findings of eligibility.
1.1712 Review of findings.

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Subpart M—Implementation of Section 7 of the Radio Broadcasting to Cuba Act: Compensation of Costs of Mitigating Cuban Interference

§ 1.1701. Purpose.

(a) The regulations in this Subpart implement Section 7 of the Radio Broadcasting to Cuba Act, Pub. L. 98–111, 97 Stat. 749 (1983). That statute is referred to in this Subpart as "the Act."

(b) Section 7 of the Act provides for the payment of compensation by the United States Information Agency (USIA) to radio broadcast station licensees for allowable expenses they incur in mitigating interference from Cuba to the broadcast service they provide. Subsection 7(c) directs the Federal Communications Commission to issue appropriate regulations and establish procedures for carrying out Section 7.

(c) The regulations in this Subpart M establish the standards, requirements, and procedures that the Federal Communications Commission will apply in making findings as to whether applicants for compensation under Section 7 of the Radio Broadcasting to Cuba Act qualify for it, and if they do, in what amounts. The Commission will transmit those findings to the USIA for guidance in the discharge of the responsibility that the Act places upon the USIA to make such compensation payments.

§ 1.1702. Definition of Cuban interference.

For the purposes of this Subpart M, Cuban interference to a United States AM broadcast station is radiation from a radio transmitter in Cuba at a level that, under the provisions of the Final Acts of the Regional Administrative Radio Conference, Rio de Janeiro 1981, ("the Rio AM Agreement") would be treated as causing objectionable interference if it occurred between signatory countries.

§ 1.1703. Method for calculating the level of Cuban interference.

(a) The FCC will prepare, periodically update, and make publicly available a list of Cuban stations known to be operating on the 107 channels allocated for AM broadcasting. The list will show the location and calculated operating power of each Cuban station.

(b) In order to obtain the data needed to calculate the power of Cuban stations, the Commission will arrange for the monitoring of the groundwave signals of Cuban AM stations at suitable locations. The field strengths of the

signals of Cuban stations operating on all 107 AM channels and the directions from which they are transmitted will be logged as nearly semi-monthly as practicable. The data so obtained will be used in making studies on the basis of which the location and transmitter power of each Cuban station will be calculated.

(c) In order to determine the existence and level of interference to United States AM radio broadcast stations for the purposes of this subpart, Cuban stations will be presumed to be operating at the locations and with the powers determined in the manner stated in paragraphs (a) and (b) of this section; and the methods for calculating interference prescribed in the "Rio AM Agreement" referred to in § 1.1702 will be used.

§ 1.1704. Minimum level and duration of interference qualifying licensees for compensation.

In order to be eligible for compensation under Section 7 of the Act, the licensee of a United States AM radio broadcast station that does not come within the exception under § 1.1706(b) of this subpart must:

(a) Using the methods provided in § 1.1703(c), and treating the station's primary and secondary service areas separately, show that a Cuban station causes objectionable interference to the affected station's signals in a portion of its primary and secondary service area where at least 10% of the total population within that otherwise interference-free primary or secondary service area reside;

(b) Using the methods provided in § 1.1705, show that the signals of a Cuban station have been detected within the service area of the affected station on at least half of the days during a prescribed test period. The reception of such Cuban signals must be separately shown to occur during that part or those parts of the day (i.e., during daytime hours, nighttime hours, or both) when the interference pertinent to an application for compensation occurs.

§ 1.1705 Method for determining duration of Cuban interference.

(a) Section 1.1703 prescribes how the *existence* and *level* of Cuban interference will be determined. This § 1.1705 prescribes how the *duration* or *incidence* of Cuban interference will be determined in order to show compliance with the minimum interference "duration" requirements of § 1.1704(b).

(b) Unless the exception in § 1.1706(b) applies, applicants for compensation shall monitor and log the signals of interfering Cuban stations in the manner prescribed in paragraphs (c) through (e) of this section, and shall submit the results of such monitoring to the Commission.

(c) Using equipment and methods conforming with good engineering practice, licensees whose applications for compensation are based on Cuban interference experienced during daytime hours shall, on 60 consecutive days, take and log field strength measurements of the signal of the interfering Cuban station between two hours after local sunrise and two hours before local sunset during brief intervals when the transmitter of the affected station is turned off. Except as provided in paragraph (e)(1) of this section, measurements shall be taken within the portion of the station's otherwise interference-free service area where the calculations performed in accordance with § 1.1703(c) predict that Cuban interference will occur.

(d) Applicants who experience interference by Cuban *groundwave* signals to their primary service areas at night shall similarly take and log field strength measurements as provided in paragraph (c) above, but during nighttime hours instead of during the daytime.

(e)(1) Applicants who experience nighttime interference by Cuban *skywave* signals to the primary service areas of their Class II, Class III, or Class IV stations shall similarly take and log field strength measurements of the Cuban signals on 60 consecutive days during the nighttime hours between two hours after local sunset and two hours before local sunrise. Such measurements shall be taken in the general vicinity of the affected station's transmitter, but not so close as to experience the effects of re-radiation from the station's own tower(s).

(2) Applicants who experience nighttime interference by Cuban *skywave* signals to their Class I stations shall take measurements as prescribed in the first sentence of paragraph (e)(1), above, at locations within the affected portion of their primary service areas, unless only their secondary service is affected. In the latter case, the measurements shall be taken within the affected portion of their secondary service area.

(f) The monitoring of Cuban signals prescribed in this section is designed to provide evidence of the *duration* or *incidence* of interfering Cuban signals for the purposes of determining compliance with the 50% requirement in § 1.1704(b). Although the procedures under this section call for the measuring and recording the field strengths of Cuban signals within the affected station's service area, the Commission, when determining whether the minimum *level* of interference prescribed in § 1.1704(a) exists, will ordinarily base its findings solely on calculations performed in conformity with § 1.1703, without taking into account the field strengths recorded by station licensees under this section. However, in cases where the data obtained by monitoring performed by the licensee under this § 1.1705 reflect a consistently large, unexplained disparity from the level of interference calculated under § 1.1703, the Commission may either request the applicant to take further measurements or defer reaching a finding on the application until it reviews and reconsiders the data previously assembled and the calculations previously made under § 1.1703. The Commission will take such further action in each such case as it may find appropriate in the circumstances of the case.

§ 1.1706 Waivers and exceptions.

(a) The Commission recognizes that compliance with some of the requirements for compensation may be needlessly burdensome for licensees whose facilities were modified, for the purpose of mitigating the effects of Cuban interference, under Commission authorization issued before the regulations in this Subpart L were adopted. Accordingly, the Commission will, upon the request of applicants in such cases, consider waiving or adjusting the showings generally required to be made by applicants.

(b) Licensees who were authorized before April, 1984 to modify their station facilities for the explicit purpose of mitigating the effects of interference from Cuba are generally excepted from the requirements of §§ 1.1703, 1.1704, and 1.1705 relating to showings of minimum levels and duration of Cuba interference; provided that, such licensees shall submit such information relating to interference received by them as the Commission may find it appropriate to request in individual cases.

§ 1.1707 Required FCC authorization for modification of station facilities.

(a) Section 7(b) of the Radio Broadcasting to Cuba Act provides for compensation for expenses incurred "pursuant to special temporary authority from the Federal Communications Commission" in mitigating the effects of Cuban interference. This requirement will ordinarily be satisfied by the issuance by the Commission of an "STA" (special temporary authorization)

for the purposes of enabling the station to restore service to areas prevented by Cuban interference from receiving interference-free primary or secondary service that the station could otherwise provide.

(b) As Congress was aware, most of the authorizations issued before the enactment of the Radio Broadcasting to Cuba Act, for the purpose of mitigating the effects of Cuban interference, were in the form of STAs. Other forms of licensing have been used in a few cases for the same explicit purpose. The substance of the statutory prerequisite to compensation referred to in paragraph (a) of this section is understood to be that the licensee have been authorized by the Federal Communications Commission to make the facilities changes in question for the purpose of mitigating the effects of Cuban interference, but not that such authorization necessarily have been issued in the explicit form of an STA. The Commission will act accordingly in determining whether applicants meet the requirements of Section 7(b) of the Act.

§ 1.1708 Compensable costs.

(a) The following costs are compensable under Section 7 of the Radio Broadcasting to Cuba Act, up to but not exceeding $250,000:

(1) The original cost of existing equipment used by the applicant for the operation of the affected station that it is necessary to replace by facilities specially authorized by the Federal Communications Commission in order to mitigate the effects of interference from Cuba, less the amount of depreciation on such existing equipment previously reported as deductions on Federal income tax returns;

(2) Technical and engineering cost associated with the facilities changes so authorized. The costs allowable under this paragraph (2) shall include costs prudently incurred in planning, designing, engineering and testing such new facilities, and in performing monitoring required by § 1.1704(b), or monitoring performed by licensees who submitted the results to the Commission in support of their applications for authorizations to change facilities to mitigate Cuban interference that were granted before March 15, 1984.

(b) The following costs are not compensable:

(1) The cost of acquiring, constructing or installing the new facilities authorized by the Commission, apart from the associated technical and engineering costs that are compensable under paragraph (a)(2);

(2) Remuneration or expenses paid to persons, such as the station engineer, who are in the regular employ of the applicant; provided that this shall not bar compensation for out-of-pocket outlays for payments to such employees for overtime work on the tasks listed in § 1.1708(a)(2);

(3) Attorney's fees;

(4) The costs of acquiring title or leasehold interests in land; and

(5) Any part of costs incurred for the purpose of extending the interference-free service of stations beyond the area to which the existing affected station would provide interference-free service if the Cuban interference were not present.

§ 1.1709 Requirements for filing applications for compensation.

(a) This section states the requirements for filing applications for compensation for expenses incurred in mitigating the effects of Cuban interference that are filed pursuant to this Subpart M. Applications for authorization by the Federal Communications Commission to make changes in authorized station facilities are governed by other applicable provisions of the FCC rules.

(b) Applications for compensation may be filed on or after the entry into effect of this Subpart M, by the licensees of AM broadcast stations in the United States who simultaneously file or had previously filed applications for authorization to change licensed station facilities in order to mitigate the effects of interference received from stations in Cuba. Applications shall be file with the Secretary to the Federal Communications Commission, Washington, D.C. 20554.

(c) Applications for compensation need not use any particular form, but shall contain all the information required under this Subpart M, and any supplemental information the Commission may request the applicant to file. When initially submitted, the applications need not be accompanied by the evidence of duration of interference required by §§ 1.1704(b) and 1.1705, or the proof of costs required by § 1.1709(f) that applicants file after the facilities changes have been completed.

(d) Applications for compensation, when initially filed, shall be accompanied by:

(1) A statement, with supporting breakdown, of the actual costs of constructing or acquiring and installing replaced equipment prescribed in § 1.1708(a)(1);

(2) A statement of the amount of depreciation on such replaced equipment previously reported as deductions on Federal income tax returns; and

(3) An estimate, with supporting breakdown, of the technical and engineering costs prescribed in § 1.1708(a)(2) prudently incurred and expected to be incurred in planning, designing, engineering and testing the new or changed facilities used to mitigate the effects of Cuban interference, but not including the cost of the new facilities themselves.

(4) A statement, with supporting breakdown, of the costs incurred and expected to be incurred in making the showing of duration of Cuban interference required under § 1.1704(b), from which the applicant is not exempted under § 1.1706.

(e) The data concerning duration of interference required by §§ 1.1704(b) and 1.1705 may be submitted in a supplemental filing for association with a previously filed application for compensation when the applicant completes the prescribed monitoring. However, if the applicant does not file such data within 120 days from the date of the filing of the application for compensation, or within such extended period as the Commission may for good cause permit, the application will be returned. In such case, any priority accrued under § 1.1710 will lapse; and if the application is subsequently refiled, it will be treated as a new application under § 1.1710(c).

(f) Upon the completion of facilities changes authorized to mitigate the effects of Cuban interference, applicants for compensation shall submit to the Federal Communications Commission a detailed financial statement of the out-of-pocket expenditures made for services and replaced equipment that are compensable under § 1.1708. The statement shall be supported by accompanying receipted bills, cancelled checks, and such additional evidence of actual and prudent outlays for such compensable kinds of services and equipment as the Commission may request in individual cases.

§ 1.1710 Priorities.

Because it is not possible to foresee the extent to which interference by Cuban stations may be experienced, and because it is therefore uncertain whether the available funds will be sufficient to cover all the allowable compensation payments to all qualifying applicants, the following priorities are established for eligibility for compensation payments, in order to provide an equitable basis for the distribution of available funds:

(a) *First Priority:* Applicants whose authorizations of facilities changes to mitigate Cuban interference were issued by the Federal Communications Commission prior to October 4, 1983 (the date of the enactment of the Radio Broadcasting to Cuba Act) and whose applications for compensation are filed before October 1, 1984 (the date Section 7 of that Act enters into effect). Within this first priority group, priority will be accorded in the order in which such authorizations were granted.

(b) *Second Priority:* Applicants whose authorizations of facilities changes to mitigate Cuban interference were issued on or after October 4, 1983 and before the effective date of the regulations adopted in this Subpart M, and whose applications for compensation are filed no later than October 1, 1984. Within this second priority group, priority will be accorded in the order in which the applications for authorization to make such facilities changes are filed with the Federal Communications Commission.

(c) *Third Priority:* Applicants who do not come within the first or second priority groups, and applicants whose priorities as a member of the second group have lapsed under § 1.1709(e). Within this third priority group, priority will be accorded in the order of the filing or refiling of applications for compensation that contain substantially all the information.

(d) The effect of the priority sequencing of applicants established under paragraphs (a) through (c), of this section, is governed by the fact that the responsibilities for processing and evaluating applications, and for making the compensation payments, have, by statute, been divided between the FCC and the USIA. While the FCC will initially receive, process and evaluate applications for compensation, the USIA has been designated by the Act as the agency that will make the payments, and to whom appropriations for this purpose will be made. In these circumstances, the matter of priority standing of applicants for compensation will be dealt with as provided in paragraph (e) of this section.

(e) The FCC will determine the priority group in which each applicant for compensation falls and the applicant's priority within that group, and will inform USIA and the applicant of that determination. However, the FCC does not administer the compensation payments or control the funds appropriated for those payments. The authority to perform those functions hving been conferred by statute upon the USIA, it is for USIA to determine the manner in which the priorities established by the FCC are applied in practice in the administration of the compensation funds entrusted to the USIA. Accordingly, such questions as whether all applicants within a particular priority group who are found by the FCC to qualify for compensation will receive such compensation fully before any applicants in a lower priority group, or whether available funds (if inadequate to cover all qualifying applicants) will be pro-rated in some fashion among members of the same priority group, or otherwise, will be for the USIA to decide, taking into account the amounts of appropriated funds and the demand for them.

§ 1.1711 Provisional and definitive findings of eligibility.

(a) As soon as practicable after the filing of applications containing all the information required under § 1.1709 (c), (d) and (e), the Commission will make a provisional findings as to whether the applicant meets the requirements of this Subpart M for compensation, and if so, in what estimated amount.

(b) When the facilities changes are completed and the documentation required by § 1.1709(f) is filed, the Commission will make a definitive finding as to the amount of compensation for which applicant meets the requirements of this Subpart M. Such amount shall not exceed the amount of compensation determined in the provisional finding adopted under paragraph (a) of this section.

(c) The findings reached under paragraphs (a) and (b) of this section will be adopted by order, which will be published and transmitted to the USIA and the applicant. Such findings do not constitute entitlement to compensation, which will depend upon the availability of appropriated funds and the satisfaction of such requirements as may be established by the United States Information Agency which, under the Act, is responsible for making the compensation payments.

§ 1.1712 Review of findings.

(a) Sections 0.61 and 0.283 of this chapter delegate to the Chief, Mass Media Bureau, the processing of applications for compensation under this Subpart M, and the adoption of orders containing provisional and definitive findings as to the amount of compensation for which applicants qualify under the Radio Broadcasting to Cuba Act and the regulations in this subpart.

(b) Sections 1.101, 1.102(b), 1.103, 1.104, 1.106, 1.108, 1.110 (except the last sentence thereof), 1.113, 1.115, and 1.117 of this chapter, which relate to reconsideration and review of actions taken by the Commission and pursuant to delegated authority, and to effective dates and finality of actions, shall apply to orders making provisional or definitive findings under § 1.1711.

(c) The Commission considers that orders adopted under § 1.1711 (a) or (b) by the Commission *en banc*, but not those adopted under delegated authority by the Chief, Mass Media Bureau, are final orders subject to judicial review under Section 402(a) of the Communications Act of 1934, as amended, 47 U.S.C. 402(a).

[FR Doc. 84-8316 Filed 3-28-84; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[13th Rev. S.O. No. 1474; Amdt. No. 5]

Car Service; Various Railroads Authorized to Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 5 to thirteenth revised service order No. 1474.

SUMMARY: Pursuant to section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96-254, this order authorizes various railroads to provide interim service over the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie), Trustee, and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 11:59 p.m., March 31, 1984, and continuing in effect until 11:59 p.m., June 30, 1984, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275-7840 or 275-1559.

List of Subjects in 49 CFR Part 1033

Railroads.

Decided: March 23, 1984.

Upon further consideration of Thirteenth Revised Service Order No. 1474 (48 FR 6989, 13047, 28992, 44559, and 56059), and good cause appearing therefor:

§ 1033.1474 [Amended]

It is ordered, Thirteenth Revised Service Order No. 1474 *various railroads authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor (Richard B. Ogilvie, trustee)* is amended by substituting the following paragraph (n) for paragraph (n) thereof:

* * * * *

(n) *Expiration date.* The provisions of this order are extended for an additional period of time, and shall expire at 11:59 p.m., June 30, 1984, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., March 31, 1984.

This action is taken under authority of 49 U.S.C. 10304–10305 and Section 122, Pub. L. 96–254.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–8423 Filed 3–28–84; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 49, No. 62
Thursday, March 29, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 904

Grapefruit Grown in a Designated Area in California; Order Directing That a Referendum Be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of Referendum Agents To Conduct the Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among growers of grapefruit grown in a designated area in California, to determine whether they favor continuation of the marketing order program.

DATES: Representative period, September 1, 1982 through August 31, 1983.

ADDRESSES: See information contained in supplementary information.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, telephone (202) 447–5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. This action is required to determine whether growers favor continuation of the marketing order for grapefruit grown in the production area as specified in the order.

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and Marketing Order No. 904, it is hereby directed that a referendum be conducted April 16–25, 1984, among the growers who, during the period September 1, 1982 through August 31, 1983 (which period is hereby determined to be a representative period for the purposes of such referendum), were engaged in the production area in the production of grapefruit covered by the marketing order, to ascertain whether continuation of the marketing order is favored by the growers.

Roland G. Harris and John H. Clark, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 845 South Figueroa—Suite 540, Los Angeles, California 90017, telephone (213) 688–3190, are hereby designated as referendum agents of the Secretary of Agriculture to conduct the referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR Part 900.400 *et seq.*).

Copies of the text of the aforesaid marketing order may be examined in the office of the referendum agents or the Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Ballots to be cast in the referendum may be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 904

Marketing agreements, Grapefruit, California.

Dated: March 20, 1984.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84–8335 Filed 3–28–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR PART 39

[Docket No. 84–NM–02–AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a new airworthiness directive (AD) which would require structural inspections and repairs or replacements, as necessary, on certain Boeing Model 737 series airplanes to assure continued airworthiness. Some Boeing Model 737 series airplanes are approaching or exceeding the manufacturer's original objective fatigue design life. These older airplanes are the ones most likely to develop fatigue cracks in the structure. The manufacturer has completed a structural reevaluation to identify structurally significant items where, if cracking does develop and is permitted to grow undetected, may result in an inability to carry the required loads specified in FAR 25.571. this proposed AD defines structural maintenance requirements for the identified items necessary to preclude this potentially catastrophic condition.

DATES: Comments must be received on or before April 30, 1984.

ADDRESSES: The service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information also may be examined at Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch ANM–120S, FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431–2920. Mailing Address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be

available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–02–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

Introduction

A significant number of transport category airplanes are approaching their design life goal. It is expected that these airplanes will continue to be operated beyond this point. The incidence of fatigue cracking on these airplanes is expected to increase as airplanes reach and exceed their goals.

In order to evaluate the impact of increased fatigue cracking with respect to maintaining fail-safe design and the damage tolerance of the airplane structure, large transport airplane manufacturers have been requested to conduct a structural reassessment of the airplane using modern damage tolerance evaluation techniques. The criteria for this reassessment are contained in FAA Advisory Circular (AC) 91–56, "Supplemental Structural Inspection Program for Large Transport Category Airplanes," as well as § 25.571 (Amdt. 25–45) of the Federal Aviation Regulations (FAR).

The structural reassessment involves:

(1) The identification of structural parts or components which contribute significantly to carrying flight, ground, pressure, or control loads whose failure could affect the structural integrity necessary for the safety of the airplane and whose damage tolerance or fail-safe characteristics are necessary, therefore, to establish or confirm. These are called Structural Significant Items (SSI).

(2) The calculation of residual strength, with multiple site damage and interactive crack growth under typical flight and ground loading, such that the airplane structure can sustain the load conditions stated for fail-safe qualification under the current FAR 25.571(b).

(3) The establishment of a procedure for developing inspection programs that provide a high probability of detecting fatigue damage before residual strength falls below fail-safe or damage tolerance requirements.

In conducting the assessment, or audit, The Boeing Company has developed continuing structural integrity programs for its transport airplanes. The program developed for the Boeing 737 (Boeing Document No. D6–37089, entitled "Boeing 737 Supplemental Structural Inspection Document" [SSID], in two volumes) ensures continuing structural airworthiness of the Boeing 737 by specifying details to be inspected, inspection intensities, and associated intervals based on the structural audit.

The Boeing 737 program makes use of the Damage Tolerance Rating (DTR) System developed by Boeing. This rating system is used to determine the probability of detecting fatigue damage, which is presumed to have occurred in a fleet of airplanes and has not been reported, before the residual strength of any airplane falls below regulatory fail-safe strength levels.

The supplemental inspection program developed for the Boeing Model 737 permits operator flexibility by adjusting or supplementing existing maintenance programs, where necessary, to meet the required damage tolerance rating. The program was developed in cooperation with members of the airline industry who participated with Boeing in working group sessions. These meetings were also attended by engineers and maintenance specialists from the FAA. Participants included representatives from 17 airlines. All SSI's, which require directed inspections for maintaining structural integrity and with no history of in-service fatigue cracking, are included in this document. An explanation and summary listing of the SSI's is given in detail in §§ 4.0 and 8.0, respectively, of Boeing Document D6–37089.

Damage tolerance rating forms (DTR Check Forms) are provided, in Volume 2, § 11.0, for each operator of candidate airplanes to select the inspection options which together meet the damage tolerance rating requirements. If an operator's existing maintenance program meets or exceeds the required damage tolerance rating no additional inspection requirements are necessary for that detail. If the current maintenance program falls below the required damage tolerance rating, an operator must improve or supplement its programs. To achieve this, an operator may increase the frequency or intensity of its normal maintenance for its candidate airplanes, or incorporate additional inspection methods, including non-destructive test techniques. Feasible inspection options, developed in conjunction with airline working group members, were used to complete an example rating for each SSI.

Known fatigue problems, which could affect the structural integrity necessary for safety of the airplane, covered by existing service bulletins have been reassessed and a safety of flight addendum added to each as required. A list of service bulletins with flight safety addenda is given in Section 9.0.

It is expected that fatigue related service bulletins subsequent to or resulting from the supplemental inspection program, that require a flight safety addendum, will also be referenced in Section 9.0.

Candidate Airplanes

Airplanes with the highest number of flight cycles are the most likely to experience initial fatigue damage in the fleet. Therefore, this program is based on supplemental inspection of high time (candidate) airplanes.

Directed inspection programs for these airplanes (i.e. the candidate fleet) coupled with reporting of discrepancies found and, where necessary, follow-up action, will maintain structural airworthiness in the total fleet when fatigue cracking occurs. to maintain adequate fleet surveillance, each operator with candidate airplanes must provide a directed inspection program for those airplanes which meet the requirements established by this document.

The initial Boeing 737 candidate fleet consists of those airplanes exceeding 37,500 landings by April 30, 1983. A list of candidate airplane serial and line numbers is listed in Boeing Document D6–37089 for the Model 737–100/200 series. The candidate list will be reviewed periodically and updated if there are significant changes in fleet distribution, composition, or utilization.

Structural Significant Items (SSI)

The two design principles for obtaining structural safety are "damage tolerance" and "safe life." Damage tolerance relies on some means of detecting damage before airplane safety is jeopardized. This is the preferred design principle whenever practical. A safe-life principle is used where there is little or no chance of detecting damage before residual strength is reduced below acceptable limits. A conservative fatigue damage threshold is used to limit the service life. On modern commercial jet transports, this design concept is generally limited to landing gear components.

Airplane structure can be categorized to determine safety analysis requirements and corresponding

maintenance considerations. The first breakdown is a determination of an item's function in relation to structural integrity. Any detail, element, or assembly, which contributes significantly to carrying flight, ground, pressure or control loads, and whose failure could affect the structural integrity necessary for the safety of the airplane, is classified as a SSI. Items not in this category are classified as secondary or other structure.

For the category of secondary or other structure, safety is ensure by demonstrating that a flight can be completed safely after the component has lost its ability to function or has separated from the aircraft. Structural maintenance is dictated by the economic consequences of major damage or loss of the component compared to those of an inspection program required to find damage early.

The second category is damage-tolerant design where damage is obvious or malfunction evident before reaching critical size. Examples of this are significant fuel tank leakage or controlled cabin depressurization. In this category, safety is ensured by providing adequate residual strength with extensive damage that is obvious during walk-around or functional checks to personnel whose primary responsibility may not be structural inspection. Economics may dictate structural maintenance where it may be desirable to detect damage early.

The rest of the damage tolerant structure falls into a third category in which structural integrity is maintained by timely damage detection in a planned inspection program. Inspection program requirements for detecting corrosion, stress corrosion, and accidental damage are based on operator experience on the same or similar structure. For fatigue damage, inspection program requirements are matched to structural characteristics that include residual strength, crack growth rate, and damage detection. All items in this category are included in the Boeing Model 737 supplemental inspection program. The parameters considered in determining the SSI's included:

Consequence of Cracking,
Inspectability, Stress Environment,
Multiple Cracking, Structural
Redundancy.

For each SSI, several cracking patterns were considered to determine the most critical. This generally resulted in a crack origin being considered in a location difficult to inspect. In some cases, a single SSI may have multiple cracking patterns due to various parts of the item being hidden from view. For example, a spar chord can be visible from both sides, hidden on either side, or hidden on both sides. For these SSI's, a DTR Check Form is provided for the most critical cracking pattern(s).

The fourth structural category is safe life. Operator experience is used to develop a maintenance program for preventing or detecting and repairing any corrosion, stress corrosion, or accidental damage.

Effect on Existing Maintenance Programs

In developing the SSID, the working group reviewed its operation and maintenance practices and existing maintenance programs with respect to the basic requirements of the SSID program. As a result, the Boeing 737 SSID allows affected operators to take credit for maintenance already being performed and gives the operators flexibility in revising their maintenance programs to incorporate the SSID for the affected airplanes.

Upon detection of damage on an individual SSI, an assessment will be made as to the need for inspection of all affected airplanes at a threshold and interval established from metallurgical examination and additional fracture mechanics analysis.

The SSID provides an operator with the minimum inspection requirements necessary to provide the required damage tolerance rating (DTR) and the means to evaluate their existing maintenance program. An operator, using the document, will be able to determine for a particular SSI if their regularly scheduled maintenance will provide the required DTR or if additional supplemental inspections must be accomplished.

If cracking does occur, it is likely to occur on older airplanes. The manufacturer has completed a structural reevaluation to identify significant structural components that, if cracking does develop and is permitted to grow undetected, may result in an inability to carry the required loads specified in FAR 25.571. This AD defines structural maintenance requirements for the identified components necessary to preclude this potentially catastrophic condition. As a consequence, the proposed AD would require all affected operators who have not already done so to incorporate in their FAA approved continuing airworthiness program and implement a revision which provides no less than the required damage tolerance rating for each SSI listed in the Boeing Document or later FAA approved revisions.

Information collection requirements contained in this proposed AD have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2120–0056.

Economic Impact

Approximately 92 airplanes of U.S. registry and 27 U.S. operators would initially be affected by the proposed AD. It is estimated that the implementation of the SSID program for a typical operator would take approximately 1000 manhours. It is also estimated that the average labor cost would be $35 per manhour. Based on these figures, the cost to implement the SSID program is estimated to not exceed $950,000.

The recurring inspection impact on the affected operators is estimated to be 500 manhours per airplane at an average labor cost of $35 per manhour. Based on these figures, the annual recurring cost of this AD is estimated to not exceed $1,700,000.

Based on the above figures, the total cost impact of this AD for the first year is estimated to not exceed $2,700,000 and $1,700,000 for each year thereafter.

For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291, or a significant rule under DOT Regulatory Policies and Procedures. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administrastion (FAA) proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CR 39.13) by adding the following new airworthiness directive (AD):

Boeing: Applies to Boeing Model 737 series airplanes, certificated in all categories, listed in Section 3.0 of Boeing Document No. D6–37089, "Supplemental Structural Inspection Document" (SSID), original issue, or later FAA approved revision, and aircraft serial number 20336. Compliance is required as indicated in the body of the AD.

To ensure the continuing structural integrity of these airplanes, accomplish the following, unless already accomplished:

A. Within one year after the effective date of the AD, incorporate a revision into the FAA approved maintenance inspection program which provides no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI) listed in Boeing Document D6–37089, Original Issue, or later FAA approved revision. The required DTR value for each SSI is listed in the

document. The revision to the maintenance program shall include and be implemented in accordance with the procedures in Sections 5.0 and 6.0 of the SSID.

B. Cracked structure shall be repaired before further flight in accordance with an FAA approved method.

C. Aircraft may be ferried to a maintenance base for repair in accordance with FAR 21.197 and 21.199.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Operators who have acceptably incorporated Boeing Document No. D6-37089 into their approved maintenance program are exempt from the provisions of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

The FAA has requested **Federal Register** approval to incorporate by reference the manufacturer's Supplemental Inspection Document identified and described in this proposal.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430 and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble: the FAA has determined that this document involves a proposed regulation which (1) is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities since few, if any, small entities operate Boeing Model 737 airplanes. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington, on February 7, 1984.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-8377 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-ASW-12]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Models AS350 and AS355 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) which requires repetitive inspection and repair or replacement, as necessary, of the main rotor mast on Aerospatiale Model AS350 and AS355 helicopters. This amendment is needed to provide for different inspection requirements for Model AS350 and AS355 helicopters, to provide for differences in operating environments, and to exclude corrosion resistant masts from the AD applicability.

DATE: Comments must be received on or before April 30, 1984.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Regional Counsel, Attention: Docket No. 83-ASW-12, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or delivered in duplicate to: 4400 Blue Mound Road, Room 158, Bldg. 3B, Fort Worth, Texas 76106.

Comments delivered must be marked: Docket No. 83-ASW-12.

Comments may be inspected in Room 158, Building 3B, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m.

The applicable service bulletins may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support.

A copy of each of the service bulletins is contained in the Rules Docket at the Office of the Regional Counsel, Federal Aviation Administration Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Chris Christie, Manager, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, telephone number 513.38.30; or R. T. Weaver, helicopter Policy and Procedures Staff, ASW-111, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2548.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 83-ASW-12." The post card will be date/time stamped and returned to the commenter.

After issuing Amendment 39-4599 (48 FR 14351), AD 83-07-05, as amended by Amendment 39-4698 (48 FR 37924), the FAA has determined, based on service experience and fatigue testing, that the repetitive inspection types and intervals required by the AD can be changed to consider differences in operating stresses and differences in operating environments. Also, the FAA has determined that if a corrosion resistant mast is installed on a Model AS355 helicopter, a service life is not needed. Accordingly, the proposed AD amendment will provide different inspection programs for AS350 and AS355 helicopters; it will provide for operations in corrosive environments; and it will exclude the corrosion resistant mast from the AD inspection and replacement requirements.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by further amending Amendment 39-4599 (48 FR 14351), AD 83-07-05, as amended by Amendment 39-4698 (48 FR 37924) by revising paragraphs e, f, g, and h, and by adding a new paragraph k as follows:

Aerospatiale Helicopter Corporation: Applies to Aerospatiale Model AS350 and AS355 series helicopters certificated in all categories.

Compliance is required as indicated (unless already accomplished).

* * * * *

e. For AS355 helicopters (within 10 hours' time in service after the effective date of this amended AD, unless already accomplished):

(1) Remove from service any main rotor mast which has accumulated 450 hours' or more total time in service of which 300 hours' or more time in service was in saline (or corrosive) environments.

(2) For helicopter masts operated in nonsaline (or noncorrosive) environments:

(i) Repeat the inspections of paragraph d of this AD at intervals not to exceed 300 hours' time in service from the last paragraph d inspection.

(ii) Visually inspect the upper mast flange-to-shaft radius at intervals not to exceed 50 hours' time in service from last inspection. Inspect for finish deterioration, corrosion, or cracks. Use a 10-power glass in area of suspected surface finish cracks. Conduct magnetic particle or dye penetrant inspections in accordance with paragraph d(2) of this AD of all areas where finish deterioration is found.

(iii) For AS355 helicopters with masts which have accumulated 450 hours' or more total time in service and have operated in saline (or corrosive) environments less than 300 hours, reduce the repetitive visual inspection interval of the upper mast flange-to-shaft radius from 50 to 25 hours.

(3) To qualify for consideration of nonsaline (or noncorrosive) environment operations, an individual Model AS355 helicopter mast must meet all the following criteria:

(i) It must not be operated over salt water for a major part of any month.

(ii) It must not have a total of 300 hours' or more time in service of over salt water operations.

(iii) It must not be installed on a helicopter that had a main rotor mast replaced due to corrosion.

f. For AS350 helicopters (within 10 hours' time in service after the effective date of this AD, unless already accomplished):

(1) Repeat the inspections of paragraph d of this AD at intervals not to exceed 300 hours' time in service from the last paragraph d inspection.

(2) Visually inspect the mast upper flange-to-shaft radius at intervals not to exceed 50 hours' time in service after the last inspection. Inspect for finish deterioration, corrosion, or cracks. Use a 10-power glass in areas of suspected surface finish cracks. Conduct magnetic particle or dye penetrant inspections in accordance with paragraph d(2) of this AD of all areas where finish deterioration is found.

g. Rework corroded masts in accordance with Aerospatiale Service Bulletin No. 05.08 or 05.13, dated April 19, 1983, or later FAA approved equivalent. Replace any masts corroded beyond the allowed rework.

h. Reinstall the main rotor hub in accordance with the appropriate Model AS350 or AS355 Maintenance Manual, or FAA approved equivalents, after completion of the inspections and rework of paragraphs d, e, f, and g.

k. After the installation of corrosion resistant masts (P/N 350A.37.1076.07), the repetitive inspections and life limits of paragraphs d, e, and f, no longer apply.

This proposed amendment further amends Amendment 39-4599 (48 FR 14351), AD 83-07-05, as amended by Amendment 39-4698 (48 FR 37924).

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) [Revised, Pub. L. 97-449, January 12, 1983]; 14 CFR 11.85)

Note.—The FAA has determined that this proposed regulation only involves 141 aircraft, makes only minimal changes to inspection requirements, and provides for use of a new corrosion resistant mast (as an option). Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, Texas on March 14, 1984.

F. E. Whitefield,

Acting Director, Southwest Region.

[FR Doc. 84-8372 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASW-14]

Proposed Revocation of Transition Area; Columbus, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to revoke the transition area at Columbus, TX. The intended effect of the proposed action is to cancel controlled airspace for aircraft executing a standard instrument approach procedure (SIAP) to the Columbus Airport. This action is necessary since the Columbus Airport has been closed and a requirement no longer exists for a 700-foot transition area to provide protection of aircraft operating at this airport.

DATE: Comments must be received on April 30, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2630.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart G 71.181 as republished in FAA Order 7400.6, Compilation of Regulations, dated January 3, 1984, contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Revocation of the transition area at Columbus, TX, will necessitate an amendment to this subpart. This amendment will be required at Columbus, TX, since the airport has been closed and the IFR procedure to the Columbus Airport has been cancelled.

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ASW-14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, or by calling (817) 877-2630. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Columbus, TX Revoked

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.61(c))

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

Issued in Fort Worth, TX, on March 19, 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-8379 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASO-8]

Proposed Designation of Transition Area; Fort Payne, Ala.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Fort Payne, Alabama, transition area to accommodate Instrument Flight Rule (IFR) operations at Isbell Field Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on a new non-Federal radio beacon (RBN), is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations.

DATE: Comments must be received on or before May 6, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320, telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with these comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. ———." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will designate the Fort Payne, Alabama, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Isbell Field Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to designate the Fort Payne, Alabama, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Fort Payne, Alabama—[New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Isbell Field Airport (Lat. 34°28'20"N., Long. 85°43'25" W.); within 3 miles each side of the 043° bearing from the Fort Payne RBN (Lat. 34°31'08" N., Long. 85°40'16" W.), extending from the 6.5-mile radius area to 8.5 miles northeast of the RBN.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1345(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the

anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on March 20, 1984.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 84-8371 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 165

[CGD-3-84-08]

Safety Zone Regulations: New York, New Jersey, Sandy Hook Channel, Raritan Bay, Arthur Kill

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone around all loaded Liquefied Petroleum Gas (LPG) vessels during their transit through New York Harbor. The safety zone will be discontinued, for LPG vessels entering port, when they are safely moored at the LPG receiving facility in the Arthur Kill and, for LPG vessels departing the port, when they pass the Scotland Lighted Buoy "S" (LLNR 1619) at the entrance to Sandy Hook Channel. This safety zone is proposed to minimize the risk of collision between LPG carriers and other vessels. This precautionary measure is deemed necessary in consideration of the nature and quantity of the LPG cargo involved and the limited ability of these vessels to take evasive action when maneuvering through New York Harbor or approaching and departing the terminal. This proposed safety zone regulation would require persons to comply with the general safety zone regulations contained in 33 CFR 165.23 which prohibits persons from entering the safety zone without authorization of the Captain of the Port. Mariners will be provided advance notice of scheduled LPG vessel harbor transits through the Port of New York via Marine Radio Broadcast Notice to Mariners.

DATES: Comments must be received on or before May 14, 1984.

ADDRESSES: Comments should be mailed to the Captain of the Port of New York, Bldg. 109 Governors Island, NY 10004. The comments will be available for inspection and copying between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander James M. Collin, Port Safety Officer, Captain of the Port, New York, Building 109, Governors Island, NY 10004; telephone 212-668-7917.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD-3-84-08) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. The proposed rules may be changed in light of the comments received. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant Gary W. CHAPPELL, project officer for the Captain of the Port, New York, and Ms. M. A. ARISMAN, project attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulation

This proposed safety zone is part of an overall safety program implemented by the Captain of the Port, New York, NY to enhance the safety of liquefied petroleum gas operations in the Port of New York. Under present procedures, the Captain of the Port, New York, issues a temporary safety zone each time an LPG vessel transits New York Harbor, specifying the time and date of the transit and describing the area of the zone. The area described is the same each time since all LPG vessels transit to and from LPG receiving facilities in the Arthur Kill. Because of the recurring nature of the zone, the Coast Guard proposes to issue a permanent safety zone regulation. This safety zone will be in effect whenever a loaded LPG carrier enters the port and transits Sandy Hook Channel, Raritan Bay, and the Arthur Kill enroute to an LPG receiving facility and will remain in effect until the vessel is safety moored; or, whenever a loaded LPG carrier departs an LPG facility and transits the Arthur Kill, Raritan Bay, and Sandy Hook Channel and will remain in effect until the vessel has passed the Scotland Lighted Buoy "S" (LLNR 1619). All marine traffic would be prohibited from entering the safety zone without authorization from the Captain of the Port, New York.

Mariners will be provided notice of scheduled arrivals and departures of loaded LPG vessels via a Marine Safety Information Broadcast Notice to Mariners. The safety zone during transit will be a "moving safety zone" in the waters within 100 yards of the LPG vessel. For incoming LPG vessels, a Coast Guard vessel will meet the LPG carrier at Ambrose Light and escort it from the Scotland Lighted Buoy "S" (LLNR 1619) to berth and will stay on scene until the LPG vessel is moored to the receiving waterfront facility, at which time the safety zone will be secured. For outgoing vessels, the process will be reversed. The concept of a moving safety zone around the LPG vessel minimizes the chance of collision with another vessel by eliminating crossing, overtaking or passing situations in New York Harbor. It minimizes disruption to other vessel traffic as operators can schedule vessel movements ahead of the LPG vessel transit or just after the LPG vessel has passed. The Exxon Bayway waterfront facility has been receiving LPG for many years. For each LPG vessel arrival the Captain of the Port, New York has exercised his authority and established a temporary safety zone describing conditions similar to those contained in this notice of proposed rulemaking. Interested persons who have communicated with the COTP New York have voiced approval of this "moving safety zone" concept during LPG vessel transits. The Coast Guard believes that establishing this safety zone as a permanent rule will enhance its effectiveness through greater dissemination.

Economic Assessment and Certification

This proposed regulations is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since the theory and practice of establishing a safety zone around a loaded LPG vessel has been in effect for many years. Small and large companies with vessels operating in New York Harbor are aware of scheduled LPG vessel harbor transits and adjust their vessel movements accordingly causing minimum economic impact. Based on this assessment it is

certified in accordance with section 605(b) of Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, by adding section 165.310 to read as follows:

§ 165.310 New York, New Jersey, Sandy Hook Channel, Raritan Bay, Arthur Kill—Safety Zone.

(a) The following areas are established as Safety Zones during the specified conditions:

(1) For incoming tank vessels loaded with Liquefied Petroelum Gas, the waters within a 100 yard radius of the LPG carrier while the vessel transits the Sandy Hook Channel, Raritan Bay East and West Reach, Ward Point Bend East and West Reach, and the Arthur Kill to the LPG receiving facility. The Safety Zone remains in effect until the LPG vessel is moored at the LPG receiving facility in the Arthur Kill.

(2) For outgoing tank vessels loaded with LPG, the waters within a 100 yard radius of the LPG carrier while the vessel departs the LPG facility and transits the Arthur Kill, Ward Point Bend West and East Reach, Raritan Bay West and East Reach, and the Sandy Hook Channel. The safety zone remains in effect until the LPG vessel passes the Scotland Lighted Buoy "S" (LLNR 1619) at the entrance to the Sandy Hook Channel.

(b) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

(c) The Captain of the Port will notify the maritime community of periods during which this safety zone will be in effect by providing advance notice of scheduled arrivals and departures of loaded LPG vessels via a Marine Safety Information Broadcast Notice to Mariners.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 160.5))

Dated: March 20, 1984.

James L. McDonald,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 84-8432 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 1

Disinterments From National Cemeteries

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The Veterans Administration proposes to change its regulation on disinterment from national cemeteries. The regulation currently states that disinterment of the remains of the dependent of a veteran which were interred in a national cemetery, based on an agreement by the veteran to be buried in the same or adjoining grave, may be authorized by the Chief Memorial Affairs Director. It has been determined that eligibility for burial of a dependent in a national cemetery is not contingent on the interment of the veteran in the same or any other national cemetery. Therefore, the paragraph providing procedures for this requirement is being removed.

DATES: Comments must be received on or before April 30, 1984.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed regulation to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection only in the Veterans Service Units, Room 132, of the above address, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Sonja McCombs, (202) 389-2987.

SUPPLEMENTARY INFORMATION: The requirement for a surviving veteran to complete an Agreement for Burial (Dependent), VA Form 40-4969, no longer exists. Since VA Form 40-4983, Request for Disinterment (Dependent), was contingent upon the requirement set forth in VA Form 40-4969, there is no longer a need for VA Form 40-4983. Therefore, 38 CFR 1.621(d) will be removed.

The Administrator has determined that this regulation is nonmajor in accordance with Executive Order 12291, Federal Regulation. The Administrator hereby certifies that this proposed amendment will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this proposed amendment is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations apply almost exclusively to individual veterans and their survivors. They will have no significant impact on small entities (i.e., small business, small private and nonprofit organizations, and small governmental jurisdictions).

There is no Catalog of Federal Domestic Assistance number involved.

List of Subjects in 38 CFR Part 1

Cemeteries, Claims, Government property, Veteran.

Approved: March 9, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

§ 1.621 [Amended]

38 CFR Part 1, *General*, is amended by removing paragraph (d) to § 1.621.

(38 U.S.C. 210(c))

[FR Doc. 84-8429 Filed 3-28-84; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. 1

[AD-FRL 2555-2]

Air Pollution Control; Regulation of Polycyclic Organic Matter Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On February 13, 1984 (49 FR 5580) EPA proposed not to regulate polycyclic organic matter (POM) as a specified air pollutant under the Clean Air Act. The State of New York has requested a 60 day extension of the comment period. This notice extends the comment period until May 29, 1984.

DATES: The comment date is extended from March 29, 1984 until May 29, 1984.

ADDRESS: Send comments (in duplicate, if possible) to the Central Docket Section (A-130), U.S. Environmental Protection Agency, 401 M Street, SW.,

Washington, D.C. 20460; Attn: Docket No. A–83–32.

FOR FURTHER INFORMATION CONTACT: Kent Berry, Strategic and Air Standards Division (MD–12), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–5504 or FTS 629–5504.

SUPPLEMENTARY INFORMATION: As discussed in the February 13, 1984 **Federal Register** notice, EPA is under court order to issue its final decision on POM by May 31, 1984. *State of New York* v. *Ruckelshaus, No. 82–CIV–4695.* As a result of this extension to the comment period, the date for issuing a final decision on POM is also being extended by an equivalent period of time to July 30, 1984. The February 13 notice also provided an opportunity for a public hearing if requested. Since no request for a hearing was made, a hearing will not be held.

Dated: March 22, 1984.

Sheldon Meyers,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 84–8355 Filed 3–28–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84–277; RM–4630]

FM Broadcast Station in Eveleth, Minnesota; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to substitute Class C Channel 250 for Channel 261A at Eveleth, Minnesota, and to modify the license for Station WEVE–FM to specify operation on the Class C channel in response to a petition filed by Iron Range Broadcasting Inc.

DATES: Comments must be filed on or before May 14, 1984, and reply comments on or before May 29, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subject in 47 CFR Part 73

Radio broadcasting.

Proposed Rule Making

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Eveleth, Minnesota) MM Docket No. 84–277, RM–4630.

Adopted: March 12, 1984.

Released: March 21, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Iron Range Broadcasting Inc.[1] ("petitioner"), seeking the substitution of Class C Channel 250 for Channel 261A at Eveleth, Minnesota, and modification of the license for Station WEVE to specify operation on Channel 250.

2. Petitioner submitted information in support of the proposal, indicating that even with translators, Station WEVE–FM, as a Class A station, has not been able to serve the surrounding area. Petitioner indicates that the substitution of Class C Channel 250 would increase its coverage, especially in the rural areas.

3. The proposed substitution of Class C Channel 250 for Channel 261A Eveleth, can be made in conformity with the minimum distance separation requirements provided there is a site restriction of 10.5 miles southeast of Eveleth. This restriction is necessary to avoid short spacing to Channel 251 in St. Cloud, Minnesota.

4. In accordance with established policy, we shall propose to modify the license of Station WEVE–FM (Channel 261A) to specify operation on Channel 250. However, should another party indicate an interest in the Class C assignment, then the modification could not be implemented. See, *Cheyenne, Wyoming,* 62 F.C.C. 2d 63 (1976). Instead an opportunity for the filing of a competing application may be provided.

5. Since Eveleth, Minnesota is located within 320 kilometers (200 miles) of the common U.S.-Canadian border, the Commission must obtain Canadian concurrence in the proposal.

6. In view of the need for a wide coverage area FM station, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Eveleth, Minnesota	261A	250

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before May 14, 1984, and reply comments on or before May 29, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: A. L. Stein, Esquire, Colorado Building, Washington, D.C. 20005 (Counsel to the petitioner).

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Kathleen Scheurele, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules IT IS PROPOSED TO AMEND the FM

[1] Iron Range Broadcasting Inc. is the licensee of Station WEVE, Channel 261A, Eveleth, Minnesota.

Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, and original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 84-8320 Filed 3-28-84; 8:45 am]
BILLING CODE 6112-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

Public Entry and Use, Ruby Lake National Wildlife Refuge, Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to issue revised regulations to govern boating on Ruby Lake National Wildlife Refuge (NWR). This proposed revision is necessary to permit the conduct of a five-year research effort to evaluate the effects of powerboating (10 horsepower or less) on redhead and canvasback duck broods. The Service proposes to extend motorized boating for approximately two weeks, on a limited basis, in the South Sump of Ruby Lake NWR. Powerboating would begin July 15, 1984. The design of the research study requires the early opening to be in effect in alternate years—1984, 1986 and 1988. The current August 1 date would be observed in 1985 and 1987. The alternate-year opening scheme would allow appropriate research treatments to be applied during the periods of non-motorized boating from July 15 to August 1.

DATE: Comments must be received on or before April 30, 1984.

ADDRESS: Comments may be addressed to Richard N. Smith, Associate Director, Research and Development, U.S. Fish and Wildlife Service, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Rollin F. Sparrowe, Director, Division of Wildlife Research, U.S. Fish and Wildlife Service, 18th and C Streets, NW., Washington, D.C. 20240 (telephone: 202-653-8762).

SUPPLEMENTARY INFORMATION: Ruby Lake NWR was established on July 2, 1938, by Executive Order No. 7923, as a refuge and breeding ground for migratory birds and other wildlife. The refuge supports the densest nesting population of canvasbacks in North America, and is the only major cancasback breeding area in the western United States. More than 10 percent of all canvasbacks breeding in the intermountain west nest at Ruby Lake, and more cancasback ducklings are produced annually at Ruby Lake NWR than any other national wildlife refuge. Also, redhead duck production has been estimated to nearly equal canvasback production at Ruby Lake. In all, fifteen different species of waterfowl nest on the refuge.

At the same time, and compatible with Ruby Lake's high value to waterfowl, the refuge has had a long history of boating use. Largemouth bass were introduced in the South Sump in 1932, and an excellent bass fishery has since developed. Boats began to be used for fishing on the South Sump during the mid-1940's. To protect waterfowl and othe refuge resources, the Service has regulated recreational boating on the South Sump of Ruby Lake since the 1950's. Motorless boats and boats with electric motors are currently allowed on the South Sump from June 15 through December 31, and motors of 10 horsepower (hp) or less are allowed on the South Sump August 1 through December 31.

Throughout the years, various regulatory options have been employed by the Service to ensure the continued compatibility of recreational boating with the major purposes for which Ruby Lake NWR was established. Much of the basis for developing boating regulations for Ruby Lake, and for determining compatibility, has been the reliance on biological data obtained on the effects of boating on canvasback and redhead duck nesting activity. Because the Service does not have as much data available on the effects of powerboating on brood behavior and survival as it does for the effects on nesting, it is proposing this research. To acquire additional data would further enhance the Service's waterfowl management capability and provide a biologically sound basis for determining the effects and assuring the compatibility of recreational boating. Therefore, the Service proposes to evaluate powerboating on the distribution, behavior and survival of canvasback and redhead broods at Ruby Lake NWR.

The proposed study will be conducted in the South Sump of Ruby Lake NWR

for a five-year period, beginning in the spring of 1984. The first year will be designated as a pilot year to develop techniques, field test equipment, and make the requisite initial observations of brood behavior in response to disturbances from powerboats. In order to permit this, the basic study design involves alternate motorized boating dates on an annual schedule beginning with a July 15 opening in 1984; then August 1, 1985; July 15, 1986; August 1, 1987; and July 15, 1988. Non-motorized boating use would remain the same each year, opening June 15. This framework will allow replicate testing among years.

Currently, motorized boats, using motors of 10 hp or less, are allowed on the South Sump of Ruby Lake NWR from August 1 through December 31. In order to implement the research study as designed, it is necessary to revise the special regulations contained in 50 CFR Part 26 to include the alternate year opening scheme, beginning with July 15, 1984.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966 (NWRSAA), as amended (16 U.S.C. 668dd), authorizes the Secretary of the Interior to permit public access, use and recreation on refuges whenever he determines that such uses are compatible with the major purposes for which such areas were established. The Service has determined that permitting the use of motorized boats from July 15 through December 31 in 1984, 1986 and 1988, in order to facilitate a research study on brood behavior and survival will not have a biological impact on waterfowl nesting. The Service also believes that the limited extension of the motorized boating season in the South Sump portion of the refuge in order to undertake the needed research will not result in a substantial biological impact on waterfowl broods. If at any time during the extended boating period, the research activities indicate that motorized boating may be having a biological detrimental effect on duck broods, additional restrictions may be imposed if deemed necessary to maintain compatibility with refuge purposes, as provided for in 50 CFR 25.21. Therefore, the additional 16 days of powerboat use necessary to implement the research study has been determined to be compatible with the major purposes for which Ruby Lake NWR was established.

The provisions of the NWRSAA relating to recreation are administered in accordance with the Refuge Recreation Act of 1962, 16 U.S.C. 460k, which authorizes the Secretary to permit recreational uses on refuges if they are appropriate incidental or secondary uses. In conformance with that Act, the Service has determined that motorized recreational boating governed by the proposed regulations permits a secondary use of Ruby Lake NWR that is not inconsistent with the primary objectives for which it was established. Further, the proposed recreational use will not interfere with the primary purposes for which the Ruby Lake NWR was established. In addition, funds are available within the FY 1984 annual refuge budget of approximately $218,000 for the administration of this recreational activity that will be required to permit a biological study of motorized boating impacts on canvasback and redhead duck broods. Funding to conduct the research study, other than for the expanded boating use, will come from Service sources outside the annual Ruby Lake refuge budget.

Economic Effect

Executive Order 12291 of February 19, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions, or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or government jurisdictions.

The proposed rulemaking is a temporary, minor adjustment to existing regulations for one refuge; therefore, this action will not have an adverse impact on the overall economy or a particular region, industry or group of industries, or level of government. With respect to small entities, the proposed rulemaking will not significantly alter the existing recreational uses of the refuge, and small entities such as sporting good stores, restaurants, motels and local governments will not be significantly affected by the rule.

Accordingly, the Department of the Interior has determined that this proposed rule is not a "major rule" within the meaning of Executive Order 12291, and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Environmental Effects

An environmental assessment (EA) and finding of no significant impact (FONSI) have been prepared to analyze the impacts of research to evaluate powerboating activity and its effects on the distribution, behavior and survival of canvasback and redhead broods at Ruby Lake National Wildlife Refuge. The limited trial extension of the morotized boating season is alternate years that is attendant to this research does not differ significantly from existing boating use in the area, and does not constitute a major Federal action. Supporting references used in making the FONSI determination include the EA prepared in 1976 concerning the effects of boating on the management of Ruby Lake NWR, the final enviromental impact statement for the "Operation of the National Wildlife Refuge System," that was filed with the Council on Environmental Quality on November 12, 1976, and the above-referenced EA. The EA and FONSI for the research proposal are available for public review and copying at the Service's Division of Wildlife Research, Room 515, Matomic Building, 1717 H Street, NW., Washington, D.C., or by contacting Rollin Sparrowe at the phone number provided above.

Maps of the South Sump are available from the Refuge Manager, Ruby Lake NWR, Ruby Valley, Nevada 89833, and will be posted at refuge boat landings. Copies of the maps can also be obtained from the Regional Director, U.S. Fish and Wildlife Service, 500 Northeast Multnomah Street, Suite 1692, Portland, Oregon 97232.

Primary author of this proposed rule is Noreen Clough, Division of Refuge Management, U.S. Fish and Wildlife Service, 18th and C St., NW., Washington, D.C. 20240.

List of Subjects in 50 CFR Part 26

National wildlife refuge system, Recreation, Wildlife refuges.

PART 26 [AMENDED]

For the reasons set out in the preamble, as provided for in 50 CFR 26.33, the following special regulations are set forth below.

§ 26.34. Special regulations concerning public access, use and recreation for Ruby Lake National Wildlife Refuge, Nevada.

Beginning June 15 annually, and continuing until December 31, annually, motorless boats and boats with electric motors will be permitted only on that portion of the Ruby Lake National Wildlife Refuge known as the South Sump. For a limited alternating period, beginning on July 15, 1984; July 15, 1986; and July 15, 1988, and continuing through December 31, 1984, 1986 and 1988, respectively, boats propelled with a motor or combination of motors in aggregate not to exceet 10 horsepower rating will also be permitted on the South Sump. Beginning on August 1, 1985, and August 1, 1987, and continuing through December 31, 1985, and 1987, respectively, boats propelled with a motor or combination of motors in aggregate not to exceed a 10 horsepower rating will be permitted in the South Sump. Boats may be launched only from landings approved and so designated by the Refuge Manager.

Authority: 16 U.S.C. 668dd and 460k.

Dated: March 16, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-8478 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-07-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

Caribbean Fishery Management Council; Swordfish Public Hearings

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

ACTION: Change of dates and announcement of locations for public hearings.

SUMMARY: In reference to a notice published March 14, 1984, 49 FR 9588, the Caribbean Fishery Management Council has changed the dates and has set the locations for their public input on the Swordfish Fishery Management Plan.

DATES: April 10, 1984, St. Thomas, Virgin Islands, from 7–10 p.m., and on April 12, 1984, La Jas, Puerto Rico, from 2–5 p.m.

ADDRESS: The hearings will take place at the following locations:

Conference Room, Legislative Building, St. Thomas, Virgin Islands;

and

Conference Room, Marine Science Laboratory, Isla Magueyes, La Jas, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Omar Munoz, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico, phone: (809) 753–4926.

Dated: March 26, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-8480 Filed 3-28-84; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 672

Groundfish of the Gulf of Alaska; Availability of Amendment To Fishery Management Plan and Request for Comments

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the North Pacific Fishery Management Council has submitted Amendment 13 to the fishery management plan for Groundfish of the Gulf of Alaska for review by the Secretary of Commerce and is requesting comments from the public. Copies of the amendment may be obtained from the address below.

DATE: Comments on the plan amendment will be accepted until June 11, 1984.

ADDRESSES: Send comments to Robert W. McVey, Director, Alaska Regions, NMFS, P.O. Box 1668, Juneau, AK 99802.

Copies of the amendment and its environmental assessment/initial regulatory flexibility analysis are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), (907) 586–7230.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce for review and approval or disapproval. The act also requires that the Secretary, upon receiving the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

Amendment 13 proposes measures for managing the pollock resource in the Western and Central Regulatory Areas of the Gulf of Alaska. Regulations proposed by the North Pacific Fishery Management Council and based on the amendment are scheduled to be published within 30 days.

(16 U.S.C. 1801 *et seq.*)

Dated: March 26, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-8481 Filed 3-28-84; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 62
Thursday, March 29, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Tongue River (Pilot) Watershed, Dam Rehabilitation Work, North Dakota; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice than an environmental impact statement is not being prepared for the proposed Rehabilitation Work on Dam No. T7–1, T3–2, T3–6, T8–1, T3–1, T2–4 and T2–2 of the Tongue River (Pilot) Watershed, Pembina and Cavalier Counties, North Dakota.

FOR FURTHER INFORMATION CONTACT: Mr. J. Michael Nethery, State Conservationist, Soil Conservation Service, P.O. Box 1458, Bismarck, North Dakota 58502, telephone (701) 255–4011, extension 421.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. J. Michael Nethery, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The major item of work, to be completed on all seven (7) structures is lining the principal spillway pipe(s) with polyethylene or polyurethane to prevent further degradation of the existing concrete and corrugated metal spillways. Typical installations will require between 250 and 300 linear feet of liner pipe and replacement of at least 20 linear feet of corrugated metal pipe. Associated work includes minor excavation, earth-fill and reseeding of disturbed areas. All work on the damsite will be within approximately a 100 foot radius of the outlet of the principal spillway pipe(s).

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Mr. J. Michael Nethery.

No administrative action on implementation of the proposal will be taken until 30 days after the day of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. State and local review procedures for Federal and federally assisted programs and projects are applicable)

Dated: March 21, 1984.

J. Michael Nethery,

State Conservationist.

[FR Doc. 84–8443 Filed 3–28–84; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Defense Priorities and Allocations System
Form Numbers: Agency—N/A; OMB—0625–0107
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 25,000 respondents; 16,667 reporting hours
Needs and Uses: Under the Defense Production Act of 1950, as amended, the President is given authority to allocate materials and facilities and to establish priorities in the performance of contracts and orders in support of the national defense. This authority has been delegated by the President to the Secretary of Commerce for industrial products, materials and services and is administered through the Defense Priorities and Allocations System (DPAS). Provisions have been established to audit transactions under the regulation to determine compliance with it. Every person subject to this regulation is required to keep records of transactions for 3 years and produce these records for inspection on demand.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: Recordkeeping
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Request for Special Priorities Assistance
Form Numbers: Agency—ITA–999; OMB—0625–0015
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 1,800 respondents; 900 reporting hours
Needs and Uses: This form is used by Defense Contractors to request Special Priorities Assistance (SPA) when placing defense rated orders with suppliers, or to obtain timely delivery of products or materials from suppliers, in support of authorized national defense and energy programs. The information is used by the Department of Defense and its associated defense agencies, the Department of Energy and the Department of Commerce to provide SPA.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Shipment of Nickel Alloy Products

Form Numbers: Agency—ITA-942; OMB—0625-0025
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 21 respondents; 14 reporting hours
Needs and Uses: The information collected provides data on defense rated shipments of nickel alloy products. The data are used by the Department of Commerce to establish and monitor the percentage obligation ("set-asides") of producers of nickel alloys to accept defense rated orders. The set-asides provide a means for equitably distributing the defense requirements for nickel alloy products among the nickel alloy product producers with a minimum disruption to commercial operations.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: Quarterly
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395-3785

Agency: International Trade Administration
Title: Controlled Materials Requirements (Production, Construction, or Research and Development)
Form Number: Agency—ITA-9048; OMB—0625-00133
Type of Request: Revision of a currently approved collection
Burden: 2,900 respondents; 1,250 reporting hours
Needs and Uses: This information is required in support of the President's priorities and allocations authority under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.), as implemented by the Defense Priorities and Allocations system regulation (15 CFR 350). The information collected provides data on the quarterly requirements of controlled materials—copper, steel, aluminum, and nickel alloys.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395-3785

Agency: International Trade Administration
Title: Aluminum Producers and Importers
Form Numbers: Agency—ITA-978; OMB—0625-0016
Type of Request: Revision of a currently approved collection
Burden: 300 respondents; 1,800 reporting hours
Needs and Uses: The information collected provides data on defense rated shipments of aluminum ingot and mill products. The data are used by Commerce to establish and monitor the obligation ("set-asides") of producers of aluminum ingot and mill products to accept defense rated orders.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: Monthly
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395-3785

Agency: International Trade Administration
Title: Steel Controlled Materials Report
Form Numbers: Agency—ITA-943; OMB—0625-0017
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 100 respondents; 133 reporting hours
Needs and Uses: The information collected provides data on defense rated shipments of iron and steel. The data are used by the Department of Commerce to establish and monitor the obligation ("set-asides") of producers of iron and steel to accept defense rated orders.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: Quarterly
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395-3785

Agency: International Trade Administration
Title: Emergency Application for Rating or Directive Assistance
Form Numbers: Agency—ITA-993; OMB—0625-0032
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 0 respondents; 1 reporting hour
Needs and Uses: In the event of a national emergency, this information would be used to assure that production materials for essential items may be obtained by contractors, and the distribution of these items be accomplished.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395-3785

Agency: International Trade Administration
Title: Radial Ball Bearings 30mm and Under
Form Numbers: Agency—ITA-985; OMB—0625-0044
Type of Request: Revision of a currently approved collection
Burden: 15 respondents; 8 reporting hours
Needs and Uses: The information collected provides data on the shipments, including defense orders and exports, and unfilled orders of radial ball bearings 30mm outer diameter and under. Minature and instrument radial ball bearings are used in many defense critical products. The Department of Defense (DOD) requires that DOD purchased items contain only U.S. manufactured radial ball bearing components. This form is used to monitor this requirement.
Affected Public: Businesses or other for-profit organizations
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395-3785

Agency: International Trade Administration
Title: Titanium Metal
Form Numbers: Agency—ITA-991; OMB—00625-0019
Type of Request: Revision of a currently approved collection
Burden: 35 respondents; 140 reporting hours
Needs and Uses: The information collected provides data on the supply, production and shipments of titanium sponge, ingot, and mill shapes, the consumption of scrap, and the imports of titanium sponge. This information is required in support of the President's industrial mobilization responsibilities under the Defense Production Act, as amended.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: Quarterly
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395-3785

Agency: International Trade Administration
Title: Shipments of Primary Nickel
Form Numbers: Agency—ITA-920; OMB—0625-0012
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 21 respondents; 14 reporting hours
Needs and Uses: This information is used in support of the President's industrial mobilization responsibilities under the Defense Production Act of 1950, as amended. The information collected provides data on shipments of primary nickel. The data are used by the Department of Commerce in supporting the Federal Emergency Management Agency in determining stockpile goals and establishing

acquisition and disposal programs, and the expansion of domestic supply.
Affected Public: Businesses or other for-profit organizations
Frequency: Quarterly
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395-3785

Agency: International Trade Administration
Title: Diamond Dies, Natural and Synthetic: Production, Import and Exports
Form Numbers: Agency—ITA-9015; OMB—0625-0033
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 22 respondents; 11 reporting hours
Needs and Uses: This information is used in support of the President's industrial mobilization responsibilities under Title III of the Defense Production Act, as amended. The information collected provides data on production, imports, and exports of diamond dies, natural and synthetic. The Federal Emergency Management Agency uses the data for its management of the Strategic and Critical Materials Stockpile, and for applications of Title III of the Defense Production Act. It is used by Commerce in support of industrial mobilization planning and preparedness programs.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395-3785

Agency: International Trade Administration
Title: Request to Dispose of Commodities or Technical Data Previously Exported
Form Numbers: Agency—ITA-699P; OMB—0625-0009
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 2,500 respondents; 2,500 reporting hours
Needs and Uses: The information requested by this report must be submitted to Office of Export Administration whenever applicants wish to reexport commodities or technical data that normally requires a validated license for export. The propose of this form is to prevent shipments of commodities in violation of the law.
Affected Public: Businesses or other for-profit organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Ken Allen, 395-3785

Agency: International Trade Administration
Title: Request for and Advice on Status of Pending Application, Amendment, or Reexport Request
Form Numbers: Agency—ITA-6019P; OMB—0625-0050
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 400 respondents; 700 reporting hours
Needs and Uses: This is a voluntary form that exporters use to follow-up on pending applications, amendments and reexport requests. The Office of Export Administration returns it giving the current status of their request.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Ken Allen, 395-3785

Agency: International Trade Administration
Title: Watch Quota Program
Form Numbers: Agency—ITA-321P, 360P, 361P; OMB—0625-0134
Type of Request: Revision of a currently approved collection
Burden: 7 respondents; 201 reporting hours
Needs and Uses: The information collected is used to administer the watch duty-exemption program (Pub. L. 97-446).
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion, annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Ken Allen, 395-3785

Agency: International Trade Administration
Title: Exhibitor and Mission Member Report Form
Form Numbers: Agency—ITA-4075P; OMB—0625-0034
Type of Request: Reinstatement of a previously approved collection
Burden: 3,000 respondents; 250 reporting hours
Needs and Uses: The information is collected from firms participating in overseas trade promotion events managed and funded by the Department of Commerce. It is used to evaluate efficiency impact, and effectiveness of the Department's trade promotion events.
Affected Public: Business or other for-profit organizations, small business or organizations
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Ken Allen, 395-3785

Agency: International Trade Administration
Title: Project License Procedure
Form Number: Agency-EAR 373.2(c); OMB—0625-0002
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 40 respondents; 120 reporting hours
Needs and Uses: The Project License Procedure was developed to provide a single license for the export of commodities needed for large-scale overseas operations. It eliminates the necessity for filing and processing of numerous individual license applications.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Ken Allen, 395-3785

Agency: International Trade Administration
Title: Export Trading Companies Contact Facilitation Service
Form Number: Agency-ITA-4094P; OMB—0625-0120
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 2,250 respondents; 363 reporting hours
Needs and Uses: Thousands of U.S. firms produce products that are marketable overseas but have never been exported. There is a need to put those new to exporting in contact with firms offering export trade services. The Contact Facilitation Service is designed as a matching system to put the producer together with the exporter or vice versa.
Affected Public: State of local governments, businesses or other for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Ken Allen, 395-3785

Agency: National Bureau of Standards (NBS)
Title: National Voluntary Laboratory Accrediation Program (NAVLAP)
Form Numbers: Agency—NBS-1144; OMB—0652-0003
Type of Request: Revision of a currently approved collection
Burden: 250 respondents; 750 reporting hours

Needs and Uses: Information is required of testing laboratories voluntarily applying for accrediation under NAVLAP. The information submitted is used by NBS to determine if the laboratory meets NAVLAP accrediation critera.
Affected Public: State or local governments, businesses or other for-profit organizations, federal agencies or employees, non-profit institutions, small businesses or organizations
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Ken Allen, 395–3785

Agency: National Oceanic and Atomspheric Administration (NOAA)
Title: Report of Observations/Samples Collected by Oceanographic Programs
Form Numbers: Agency—NOAA 24–23; OMB—0643–0033
Type of Request: Extension of the expiration date of a currenly approved collection
Burden: 30 respondents; 100 reporting hours
Needs and Uses: The United Nations Education, Scientific, and Cultural Organization (UNESCO), on recommendations from their working group on International Oceanographic Data Exchange (IDOE), sponsors an international marine data inventory entitled "Report on Observational Samples Collected by Oceanographic Programs." The U.S. delegation to the IDOE agreed that the U.S. will participate in this international inventory. NOAA's form is used by oceanographic researches to submit their data.
Affected Public: Federal agencies or employees, state or local governments, non-profit institutions
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Sheri Fox, 395–7231

Agency: National Oceanic and Atomspheric Administration (NOAA)
Title: Volunteer Severe Weather Observer
Form Numbers: Agency—NOAA–86–512; OMB—0648–0032
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 100 respondents; 53 reporting hours
Needs and Uses: The purpose of this collection is to supplement the National Severe Storms Laboratory's sensors (radars, surface stations, etc.) with visual observations of volunteer rural residents in prime data collection regions. These reports emphasize phenomenon that NOAA's sensors are least likely to adequately sample (hail, tornados) and de-emphasize phenomenon NOAA's instruments have previously proven to sample well (rain, wind). Date are used in basic and applied research on severe storms.
Affected Public: Individuals or households
Frequency: On occasion
Respondent's obligation: Voluntary
OMB Desk Officer: Sheri Fox, 395–7231

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent ot the respective OMB Clearance Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 84–8427 Filed 3–28–84; 8:45 am]
BILLING CODE 3510–CW–M

International Trade Administration

[C–484–015]

Tomato Products From Greece; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on tomato products from greece. The review covers the period January 1, 1982 through December 31, 1982.

As a result of the review, the Department has preliminarily determined the amount of bounty or grant to range from 5.62 to 68.91 Greek drachmas per gross kilogram, depending on the specific product. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 7261) the final results of its administrative review of the countervailing duty order on tomato products from Greece (37 FR 6360, March 28, 1972) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are tomato paste and sauce, peeled tomatoes and tomato juice. Such merchandise is currently classifiable under items 141.6520, 141.6540, 141.6600 and 166.3000 of the Tariff Schedules of the United States Annotated. The review covers the period January 1, 1982 thrqugh December 31, 1982 and one program: "production aid" to processors of tomatoes.

Analysis of Program

On January 1, 1981, Greece entered the European Communities ("the EC") and the EC established production subsidies to Greek processors of tomatoes. This program replaced the Greek government program that was the subject of earlier reviews. The EC grants the aid to tomato processors whose products meet the quality standards of the EC and who contract to pay tomato producers at or above the minimum Greek prices for tomatoes established by the EC.

The EC reported its schedule of payments to Greek tomato processors based on marketing years—1981/82 and 1982/83 beginning in July of each year. We calculated the amount of assistance provided to specific products for calendar year 1982 of the basis of concentrate ratios provided by the Greek government in an earlier submission. The average of the two payments reported in the schedules for each product was used to determine countervailable amounts.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the total bounty or grant during the period of review to be as shown in the appendix to this notice, ranging from 5.62 to 68.91 Greek drachmas per gross kilogram. Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties as indicated in the appendix on all shipments of Greek tomato products exported on or after

January 1, 1982 and entered, or withdrawn from warehouse, for consumption on or before March 21, 1982.

On March 22, 1982, the International Trade Commission ("the ITC") notified the Department that the Greek government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979. Should the ITC find that there is material injury or likelihood of material injury to an industry in the United States, the Department intends to instruct the Customs Service to assess countervailing duties in the amount of the estimated duties required to be deposited, on all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after March 22, 1982 and through the date of the ITC's notification to the Department of its determination.

As provided by section 751(a)(1) of the Tariff Act, we intend to instruct the Customs Service to collect cash deposits as indicated in the appendix on all shipments of tomato products from Greece entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. The deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 21, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

Appendix

For January 1, 1982 through December 31, 1982.

(1) Tomato Paste and Sauce:

Concentration (percent)		Drachmas per gross kilogram (packing size)				
Not less than	But less than	More than 1.5 kg	From 1.5 to 0.7 kg	From 0.7 to 0.25 kg	From 0.25 to 0.15	0.15 and less
12	14	10.16	11.91	12.88	15.28	17.56
14	16	11.10	13.01	14.07	15.61	19.18
16	18	12.03	14.11	15.26	18.49	20.80
18	20	12.99	15.23	16.47	19.96	22.45
20	22	13.92	16.33	17.66	21.39	24.06
22	24	14.86	17.42	16.85	22.83	25.68
24	26	15.80	18.52	20.04	24.27	27.30
26	28	16.73	19.62	21.22	25.71	28.92
28	30	17.76	20.72	22.41	27.15	30.54
30	32	18.61	21.81	23.60	28.59	32.16
32	34	19.54	22.91	24.79	30.03	33.78
34	36	20.48	24.01	25.97	31.47	35.39
36	38	21.42	25.11	27.16	32.91	37.01
38	40	22.37	26.23	28.37	34.37	38.66
40	42	23.31	27.33	29.56	35.81	40.28
42	93	24.24	28.43	30.75	37.25	41.90
93	100	68.91	68.91	68.91	65.91	68.91

(2) Tomato Juice: 5.62 drachmas per gross kilogram.

(3) Peeled Tomatoes: San Marzano Variety—9.19 Drachmas Per Gross Kilogram; Roma and Similar Varieties—7.02 Drachmas Per Gross Kilogram.

[FR Doc. 84-8288 Filed 3-28-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-485-006]

Carbon Steel Plate From Romania; Final Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Suspension Agreement.

SUMMARY: On January 19, 1984, the Department of Commerce published the preliminary results of its administrative review of the agreement to suspend the antidumping investigation on hot-rolled carbon steel plate from Romania. The review covers the one known exporter of this merchandise to the United States and the period January 4, 1983 through October 31, 1983. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, the final results remain unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Michael J. Altier Or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 317) a notice of suspension of the antidumping duty investigation of hot-rolled carbon steel plate from Romania. On January 19, 1984, the Department published in the **Federal Register** (49 FR 2281) the preliminary results of its administrative review of the suspension agreement. The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of hot-rolled carbon steel plate, currently classifiable under items 607.6620, 607.6625, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules of the United States Annotated.

The review covers the period January 4, 1983 through October 31, 1983, and Metalimportexport, the only known exporter to the United States of Romanian carbon steel plate covered by the suspension agreement.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received joint comments from Metalimportexport and TradeARBED Inc., an importer, and comments from the United States Steel Corporation. The comments of Metalimportexport and TradeARBED, Inc. will be referred to as those of Metalimportexport.

Comment 1: Metalimportexport claims that section 751 of the Tariff Act of 1930 ("the Tariff Act") requires the Department to review its method for establishing foreign market value, including its choice of surrogate.

Department's Position: We agree. In antidumping proceedings involving state-controlled economy countries the choice of surrogate is an issue which is appropriately addressed in each section 751 review. As discussed in Comments 3 and 13 below, we are not persuaded in this review that a change of surrogate is warranted.

Comment 2: Metalimportexport states that the Department has considerable discretion in determining foreign market value in proceedings involving imports from state-controlled economy countries. The Department's previous determinations, establishing a hierarchy for selecting the surrogate, are not countenanced by statutory provision nor approved by the Congress.

Department's Position: The statute gives the Department a certain amount of discretion in determining foreign

market value in state-controlled economy proceedings. Our regulations and the hierarchy which has evolved in our determinations are within the bounds established by the statute. We have a clear preference for using the home market price of a suitable surrogate producer as the basis for calculating foreign market value. We think this approach is appropriate because it fits most closely with the perferred basis for antidumping comparisons involving producers in market economy countries: a comparison of home market and U.S. prices. It is because the home market prices in state-controlled economies are not a valid basis for comparison that we need a surrogate. In choosing the surrogate for foreign market value we seek to approximate the price that the state-controlled economy producer would have charged in its home market, absent the element of state control. The closest approximation, in our vew, is the price charged by a suitable market economy producer in its home market. As long as the statute remains unchanged, we will continue our present practice.

Comment 3: Metalimportexport contends that the statute and the Department's regulations make it difficult if not impossible to predict the basis for calculating foreign market value in any state-controlled economy country proceeding.

Department's Position: We recognize that the difficulty in predicting which surrogate the Department will select is a shortcoming of section 773(c) of the Tariff Act. This is particularly true during the investigatory stage of a proceeding. The uncertainty affects both the petitioner and the respondent. Beyond the investigatory stage, however, the uncertainty ordinarily is reduced. Once we have found a suitable surrogate we are disposed to continue using that surrogate unless we are persuaded a better surrogate exists.

Comment 4: Metalimportexport asserts that foreign market value for state-controlled economy suppliers should not depend upon the existence of a willing surrogate. No market economy supplier having low home market prices could be expected to cooperate willingly and fully with the Department to aid U.S. market access for its competitor. Suppliers with a significant stake in the U.S. market also may be unwilling to cooperate because such cooperation may subject them to scrutiny under the U.S. antidumping law.

Department's Position: We agree with Metalimportexport that, where a foreign producer's prices are used as a surrogate for foreign market value, that producer's motives for cooperating may be questionable. However, unless the law is changed, we will continue to consider a cooperating free market producer's home market prices as the perferred basis for calculating foreign market value.

Comment 5: Metalimportexport recommends in general, and particularly in this case, that the Department consider according priority to the surrogate producer's U.S. prices as the basis for calculating foreign market value. Reliance on the surrogate's U.S. prices would enchance predictability, make the Department's procedures more transparent, avoid the problems of seeking a willing surrogate producer, facilitate adjustments for price comparability, minimize verification difficulties, and overcome the difficulties which result from exchange rate fluctuations.

Department's Position: We agree that using a foreign supplier's prices in the U.S. market as a basis for calculating foreign market value has advantages. It would reduce the uncertainty for both the petitioner and the state-controlled economy producer. However, in this instance, because the Finnish surrogate producer's U.S. sales are currently the subject of an antidumping investigation, use of its prices to the U.S. is inappropriate.

Comment 6: If the Department determines that foreign market value should again be based upon home market prices charged by the Finnish manufacturr, Rautaruukki Oy, Metalimportexport requests that the Department issue its semiannual estimates of foreign market value in the currency of the surrogate economy country.

Department's Position: We agree that, for suspension agreements involving state-controlled economies, it is appropriate to use the stated currency of the relevant sales transactions for the surrogate. We recalculated the estimated foreign market value in terms of Finnish markkas.

Comment 7: The Department received information on adjustments (e.g. year-end rebates, sales commissions) from the Finnish producer during the original investigation but not during this annual review. If the Department determines that foreign market value should again be based upon home market prices charged by Rautaruukki Oy, Metalimportexport requests that the Department update the price adjustment in a manner other than based upon national inflation indices.

Department's Position: The department allowed five different types of price adjustments (year-end rebates, sales commissions, freight equalization, credit and warranty) in its calculation of the last estimated foreign market value. We agree with Metalimportexport's suggested use of adjustment-to-base price ratios and have made the appropriate recalculations.

Comment 8: If the Department continues to use home market prices charged by Rautaruukki Oy, Metalimportexport requests that the Department make an appropriate level of trade adjustment in calculating the foreign market value and, further, that the Department fill in gaps in the Finnish information provided concerning discounts and rebates, through the use of the best information available, cognizant of the inevitably passive position of the state-controlled economy supplier and the total cooperation which Metalimportexport has extended to the Department from the onset of these investigations.

Department's Position: We are unable to make the requested adjustment because Metalimportexport has not provided adequate information for the Department to ascertain the amount of any level of trade adjustment. Further, we are not aware of any discounts or rebates which have not already been accounted for in calculating the estimated foreign market value. It is likely that the discounts or rebates perceived to be unaccounted for are those discussed in the Department's response to comment 11 below.

Comment 9: If the Department continues to use home market prices charged by Rautaruukki Oy, Metalimportexport requests that the Department make an appropriate adjustment for material and labor cost differentials measured by the production factors provided by Metalimportexport and verified by the Department, consistent with the Commerce Regulations.

Department's Position: We are not able to consider the requested adjustment because Metalimportexport has not provided adequate information for the Department to ascertain the amount of any adjustment relating to differences in costs of material and labor.

Comment 10: Metalimportexport has provided information from confidential sources concerning prices charged for carbon steel plate in the Finnish home market which appear to be at variance with those found by the Department. Metalimportexport requests that the Department take steps to ascertain the correct prices charged Finnish home market customers.

Department's Position: The Department has reviewed the information submitted by Metalimportexport and has found it not to be at variance with that reported by the Finnish producer.

Comment 11: Metalimportexport has provided information that, during the period October 1983 until January 4, 1984, there was an official temporary price reduction from Finnish list prices. Metalimportexport requests that the Department account for this additional price reduction.

Department's Position: The Department accounted for the official temporary allowance reduction granted off the Finnish list prices in its calculation of the estimated foreign market value.

Comment 12: Since there were no shipments of Romanian carbon steel plate to the United States during the period of review, the Department used Romanian carbon steel plate shipments to Finland as the best evidence of the product mix of Romanian carbon steel plate which would have entered the United States absent the suspension agreement. U.S. Steel states that this is an error both as a matter of law and as a mater of fact. U.S. Steel asserts that the use of any surrogate for the mix of Romanian carbon steel products in the United States is an error of law. Absent evidence of a sudden and dramatic shift in the preferences of U.S. buyers, the actual Romanian mix prior to the suspension agreement represents the best evidence as to what would have been shipped but for the agreement. U.S. Steel also asserts that the use of the mix of Romanian shipments to Finland as a surrogate for the mix of Romanian shipments to the U.S. is an error of fact. Given the disparity between Finland and the United States in terms of size and degree of sophistication of the steel consuming sector in the United States, U.S. Steel submits that it is inconceivable Finland could ever serve as a surrogate for the United States.

Department's Position: The Department as a matter of law continues to believe that the best evidence of the mix that would have entered the United States during the period of review is the contemporaneous product mix for Finland. As a matter of fact we are not persuaded that a different consumption pattern exists between Finland and the United States.

Comment 13: U.S Steel continues to believe that Italy constitutes the most appropriate surrogate for foreign home market value purposes. Given the difficulty the Department has experienced in obtaining the cooperation of potential surrogates and the enormous amounts of time required to research, analyze and brief the appropriateness (or lack thereof) of each candidate, U.S. Steel states that it will not make further comments unless and until they are informed as to which countries are in fact willing to serve in the surrogate role.

Department's Position: As discussed in our position to Comments 1 and 3 above we are inclined to continue using Finland as a surrogage until we are persuaded a better one exists. A complete explanation of the Department's position and process regarding Finland's selection as a surrogate can be found in the Department's preliminary affirmative determination of August 16, 1982 (47 FR 25646) and the accompanying decision memorandum dated August 9, 1982. We are in agreement with U.S. Steel regarding the difficulty in obtaining cooperation of poetntial surrogates and the extensive amounts of time required to select a willing surrogate.

Final Results of the Review

The final results of our review are the same as those presented in the preliminary results of review. Since there were no shipments of Romanian carbon steel plate to the United States during the period and the other terms of the agreement have been met, we determine that Metalimportexport has complied with the terms of the suspension agreement.

The new estimated foreign market value is effective for all entries, or withdrawals from warehouse, for consumption of Romanian carbon steel plate on or after the date of publication of this notice, and remains in effect until our next semiannual notification.

The Department intends to begin immediately the next administrative review. Interested parties are encouraged to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-8469 Filed 3-28-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-045]

Steel Wire Rope From Japan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On December 5, 1983, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on steel wire rope from Japan. The review covers 101 of the 104 known manufacturers and/or exporters and two known third-country resellers of this merchandise to the United States and the period October 1, 1981 through September 30, 1982.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Maureen A. Flannery or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On December 5, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 54528) the preliminary results of its administrative review of the antidumping finding on steel wire rope from Japan (38 FR 28571, October 15, 1973). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of steel wire rope, except brass electroplated steel truck tire cord of cable construction specially packaged for protection against moisture and atmosphere. Such steel wire rope is currently classifiable under items 642.1200, 642.1400, 642.1500, 642.1600, and 642.1700 of the Tariff Schedules of the United States Annotated.

The review covers 101 of the 104 known manufacturers and/or exporters and two known third-country resellers of Japanese steel wire rope to the United States and the period October 1, 1981 through September 30, 1982. We will cover shipments by three firms, Mitsui

and Co., Ltd., Shinyo Ropes Co., Ltd., and Wire Shoji, in a subsequent review.

Final Results of the Review

Interested parties were invited to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review remain unchanged from the preliminary results of review, and we determine that the following weighted-average margins exist for the period October 1, 1981 through September 30, 1982:

Manufacturer/exporter	Margin (percent)
Ace Industrial Co., Ltd	[1] 5.8
Ako Rope, K.K	7.29
Asada Corporation	7.29
Asahi Mini Rope Co., Ltd	[1] 9.68
Chrysanthemum Nippon Wire Rope Co., Ltd./Izumi Trading Co., Ltd	0
Chrysanthemum Nippon Wire Rope Co., Ltd./Kent-Moore Japan, Inc	0
Chuo Seisakusho Ltd./All exporters	[1] 1.30
Daido Corp	7.29
Daisen Kogyo	[1] 5.68
Daiwa Steel Co., Ltd. (also known as Daiwa Kogyo K.K.)	[1] 5.68
Daiyu Kogyo Co., Ltd	7.29
Dia Enterprises, Ltd	7.29
J. Gerber & Co. (Japan)	[1] 0
Godo Tessen Co., Ltd	[1] 9.68
Hakko Sangyo Co., Ltd	[1] 0
Hannan Wire Rope Mfg. Co., Ltd./Far East Industrial Co., Ltd	7.29
Hannan Wire Rope Mfg. Co., Ltd./Higashishiba & Co., Ltd	7.29
Iba Steel Rope Mfg. Co., Ltd./Hori Trading Co., Ltd	[1] 9.68
Igeta Wire Rope Co., Ltd./Mitsui & Co., Ltd	[2] 3.81
Igeta Wire Rope Co., Ltd./Kimura Shoten, Ltd. (formerly known as Osaka Ship Supplies Center)	[1] 3.81
Iwata Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd	[2] 0
Japan Steel Wire Rope Co., Ltd./Kohshin Co., Ltd	7.29
Kasuga Seiko Co., Ltd./Higashishiba & Co., Ltd	7.29
Kasuga Seiko Co., Ltd./Kohshin Co., Ltd	7.29
Kasuga Seiko Co., Ltd./Nissho-Iwai	7.29
Kasuga Seiko Co., Ltd./Sumitomo Corporation (also known as Sumitomo Shoji Kaisha Ltd.)	7.29
Kawashima Trading Co., Ltd	[1] 9.68
Kawatetsu Wire Products Ltd./Mitsui & Co., Ltd	[2] 0
Kiku Steel & Wire Rope Co., Ltd./Watanabe Trading Co., Ltd	0
Kiyohara & Co., Ltd	[1] 5.68
Kobayashi Metals, Ltd	[1] 5.68
Kokoku Steel Wire, Ltd	7.29
Kokoku Steel Wire, Ltd./Kanematsu-Gosho Ltd	7.29
Kokoku Steel Wire, Ltd./Kohshin Co., Ltd	7.29
Kokoku Steel Wire, Ltd./Kongo Corp	7.29
Kokoku Steel Wire, Ltd./Koyo Boeki Co., Ltd	7.29
Kokoku Steel Wire, Ltd./Mitsui & Co., Ltd	[2] 7.29
Kokoku Steel Wire, Ltd./Nichimen Co., Ltd	7.29
Kokoku Steel Wire, Ltd./Nissho-Iwai	7.29
Kokoku Steel Wire, Ltd./Shinkyo Shoji Kaisha Ltd. (also known as Shinsho Corp.)	7.29
Kokoku Steel Wire, Ltd./Sumitomo Corporation (also known as Sumitomo Shoji Kaisha Ltd.)	7.29
Kokoku Steel Wire, Ltd./Yutoku & Co., Ltd	7.29
Kondo Iron Works Co., Ltd	[1] 9.68
Koshihara Iron Works Co., Ltd	[1] 5.68
Kyosei Industry Co., Ltd	[1] 0
Kyowa Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd	[2] 7.29
Kyowa Wire Rope Mfg. Co., Ltd./S.M. Industries, Inc	7.29
Kyowa Wire Rope Mfg. Co., Ltd./Yutoku & Co., Ltd	7.29
Liberty Shokai, Ltd	[1] 5.68
Maruka Machinery Co., Ltd	[1] 5.68
Marusen Wire Rope Mfg. Co., Ltd./S.M. Industries, Inc	7.29
Marusen Wire Rope Mfg. Co., Ltd./Yutoku & Co., Ltd	0.23
Meiji Seiko Co., Ltd. (also known as Meiji Steel Wire Rope Co., Ltd.)/Mitsui & Co., Ltd	[2] 0
Misawa Trading Co., Ltd. (also known as Misawa Kosan Kaisha, Ltd.)/S.M. Industries, Inc	7.29
Naigai Rope Mfg. Co., Ltd./Mitani Kogyo Co	7.29
Nakasuji Seikosho	7.29
Naniwa Wire Rope Mfg. Co., Ltd./Higashishiba & Co., Ltd	7.29
Naniwa Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd	[2] 0
Naniwa Wire Rope Mfg. Co., Ltd./All exporters othe than Mitsui or Higashishiba	[1] 9.68
Nankai Senshu Steel Wire & Rope Co., Ltd./Sumitomo Shoji Kaisha Ltd. (also known as Sumitomo Corp.)	7.29
Nanri Trading Co., Ltd	7.29
Nihon (or Nippon) Miniature Rope Mfg. Co., Ltd./Kin-yo Co., Ltd	7.29
Nihon (or Nippon) Miniature Rope Mfg. Co., Ltd./S.M. Industries, Inc	7.29
Nihon (or Nippon) Miniature Rope Mfg. Co., Ltd./Yutoku & Co., Ltd	7.29
Nikko (Seiko) Steel Wire Rope Mfg. Co., Ltd./Daimyo Bussan Co., Ltd	7.29
Nikko (Seiko) Steel Wire Rope Mfg. Co., Ltd./F.A. Industries Corp	7.29
Nikko (Seiko) Steel Wire Rope Mfg. Co., Ltd./Union Co., Ltd	7.29
Nippon Steel Wire Rope Mfg. Co., Ltd./Higashishiba & Co., Ltd	7.29
Nippon Steel Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd	[2] 0
Nippo Wire & Rope Co., Ltd	7.29
Nishimura Wire & Rope Co., Ltd./Kin-yo Co., Ltd	7.29
Nishimura Wire & Rope Co., Ltd./K-M Int'l	7.29
Nishiya Wire & Rope Co., Ltd./Mitsui & Co., Ltd	[2] 0
Nissei Sangyo Co., Ltd	7.29
Nishi-Nippon Fujikura Co., Ltd	[1] 5.68
Nobuhara Mfg. & Supply Co	7.29
Ryoei Shoji Co., Ltd	7.29
Sakai & Co., Ltd	[1] 5.68
Sasaki Kogyo Yugen Kaisha Co., Ltd	7.29
Seiko Wire & Rope Co., Ltd./Kin-yo Co., Ltd	7.29
Seiko Wire & Rope Co., Ltd./Kohshin Co., Ltd	7.29
Seiko Wire & Rope Co., Ltd./Koutoku Trading Co., Ltd	7.29
Seiko Wire & Rope Co., Ltd./Okura & Co., Ltd	7.29
Seiko Wire & Rope Co., Ltd./S.M. Industries, Inc	7.29
Seo Hardware Corp	[1] 9.68
Shibamoto & Co., Ltd	[1] 5.68
Shimada & Co., Ltd	[1] 5.68
Shinko Wire Co., Ltd./Kanematsu-Gosho Ltd	[1] 0
Shinko Wire Co., Ltd./Mitsui & Co., Ltd	[2] 0
Shinko Wire Co., Ltd./Nissho-Iwai	[1] 0
Shinko Wire Co., Ltd./Shinsho Corp	0
Shinyo Ropes Co., Ltd	[2] 7.29
Shinyo Ropes Co., Ltd./Higashishiba & Co., Ltd	7.29
Shinyo Ropes Co., Ltd./Mitsui & Co., Ltd	[2] 0
Shinyo Ropes Co., Ltd./S.M. Industries, Inc	[1] 4.62
Shinyo Ropes Co., Ltd./Yutoku & Co., Ltd	0
Showa Boeki Co., Ltd	[1] 5.68
Sumiyoshi Kinzoku Kogyo	7.29
Taiho Seikosho Co., Ltd./Kin-yo Co., Ltd	7.29
Taiyo Seiki (Iron Works) Co., Ltd./Far EAst Industrial Co., Ltd	7.29
Y. Takeuchi and Co	7.29
Tanaka Metals Corp	[1] 5.68
Teikoku Sangyo Co., Ltd./Sumitomo Corporation (Sumitomo Shoji Kaisha, Ltd.)	7.29
Teikoku Sangyo Co., Ltd./The Tosho Co., Ltd	7.29
Teikoku Sangyo Co., Ltd./Mitsui & Co., Ltd	[2] 7.29
Teikoku Sangyo Co., Ltd./Mitsubishi Corp	7.29
Teikoku Sangyo Co., Ltd./Nissho-Iwai	7.29
Teikoku Sangyo Co., Ltd./Watanabe Trading Co., Ltd	7.29
Tokyo Rope Mfg. Co., Ltd./Aiaska Boeki, Ltd	[1] 7.29
Tokyo Rope Mfg. Co., Ltd./C. Itoh & Co., Ltd	[1] 2.21
Tokyo Sangyo Co., Ltd	7.29
Ui Steel Products Works Ltd	7.29
Union Wire Rope Mfg. Co., Ltd./Sanyu Bussan Kaisha, Ltd	2.23
Wire Shoji	[2] 7.29
Yamasho Co., Ltd	7.29
Yusas Trading Co., Ltd	[1] 5.68
Manufacture/Third-Country Reseller (Country)	
Daishin Shoji Co., Ltd./Vanguard Steel Ltd. (Canada)	7.29
Igeta Wire Rope Co., Ltd./Wesco Industries Ltd. (Canada)	7.29
Shinyo Ropes Co., Ltd./Vanguard Steel Ltd. (Canada)	7.29
Tokyo Rope Mfg. Co., Ltd./Wesco Industries Ltd. (Canada)	7.29

[1] No shipments during the period.
[2] For cash deposit purposes only.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service. Appraisement instructions for shipments by Mitsui & Co., Ltd., Shinyo Ropes Co., Ltd., and Wire Shoji will be deferred.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on future entries from these firms. Since the weighted-average margin for the manufacturer/exporter combination Marusen Wire Rope Mfg. Co./Yutoku & Co., Ltd. is less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall waive the deposit requirement for shipments of steel wire rope from that manufacturer/exporter combination. For any future entries from a new exporter not covered in this or prior reviews, whose first shipments of steel wire rope occurred after September 30, 1982 and who is unrelated to any reviewed firm, a cash deposit of 7.29 percent shall be required. These deposit requirements and waiver shall remain in effect until publication of the final results of the next administrative review.

The Department intends to begin immediately the next administrative review. The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: March 21, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-8468 Filed 3-29-84; 8:45 am]

BILLING CODE 3510-DS-M

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance; Golden Crescent, Inc., et al.

Petitions have been accepted for filing from the following firms: (1) Golden Crescent, Inc., P.O. Box 1358, Moultrie, Georgia 31768, producer of men's and women's slacks and shorts (accepted

February 23, 1984); (2) Euro-Style Fashions, Inc., 136 West 21st Street, New York, New York 10011, producer of women's footwear (accepted February 24, 1984); (3) Joseph Sander Supply Company, 3720 14th Avenue, Brooklyn, New York 11218, producer of apparel accessories and headwear (accepted February 24, 1984); (4) Ag-Rain, Inc., 600 S. Schrader Street, Havanna, Illinois 62644, producer of agricultural irrigation equipment (accepted February 28, 1984); (5) Electralloy Corporation, 475 Park Avenue South, New York, New York 10016, producer of stainless steel ingots, bars and plates (accepted February 28, 1984); (6) Josephson's Smokehouse & Dock, P.O. Box 412, Astoria, Oregon 97103, processor of seafood (accepted February 28, 1984); (7) Mid West Glove Corporation, 835 Industrial Road, Chillicothe, Missouri 64601, producer of work gloves (accepted March 5, 1984); (8) Mustang Tripsaver, Inc., P.O. Box 4306, Corpus Christi, Texas 78408, producer of oil field equipment (accepted March 5, 1984); (9) Carissa Creations, Inc., 335 Hudson Street, Hackensack, New Jersey 07601, producer of jewelry (accepted March 5, 1984); (10) Gaynor Electric Company, Inc., P.O. Box 2125, Waterbury, Connecticut 06720, producer of electro-mechanical switches (accepted March 5, 1984); (11) Allied Roll Builders, Inc., P.O. Box 425, Titusville, Pennsylvania 16354, producer of steel rods (accepted March 5, 1984); (12) Tompkins Rubber Company, 550 Township Line Road, Blue Bell, Pennsylvania 19422, producer of rubber components for medical devices (accepted March 6, 1984); (13) East Shoe Chemical Company, Inc., P.O. Box 448, Muskegon, Michigan 49443, producer of organic chemicals (accepted March 6, 1984); (14) Prestini Musical Instruments Corporation, 2301 Patagonia Highway, Nogales, Arizona 85621, producer of musical instrument pads and reeds (accepted March 6, 1984); (15) Allen's Apiaries, Route 1, Box 16B, Payette, Idaho 83661, producer of honey, beeswax and pollen (accepted March 6, 1984); (16) Van Dyk Research Corporation, 45 South Jefferson Road, Whippany, New Jersey 07981, producer of copiers, duplicators and supplies (accepted March 6, 1984); (17) Wayne Floral Company, Inc., P.O. Box 6, Newark, New York 13903, producer of cut flowers and potted plants (accepted March 6, 1984); (18) Federal Packing of Puerto Rico, Inc., P.O. Box 29046, Rio Piedras, Puerto Rico 00929, processor of meat (accepted March 6, 1984); (19) McKeesport Steel Castings Company, 200 25th Street, McKeesport, Pennsylvania 15132, producer of steel castings (accepted March 7, 1984); (20) Horix Manufacturing Company, 1384 Island Avenue, McKees Rocks, Pennsylvania 15136, producer of food processing and other machinery and equipment (accepted March 8, 1984); (21) Kiowa Corporation, 610 S. 12th Avenue, Marshalltown, Iowa 50158, producer of metal diecastings (accepted March 9, 1984); (22) Namsco, Inc., 331 31st Street, Bellwood, Illinois 60104, producer of automotive wheel covers (accepted March 9, 1984); (23) United Speaker Systems, Inc., 6400 Youngerman Circle, Jacksonville, Florida 32244, producer of loudspeakers (accepted March 9, 1984); (24) Stranahan Gear Company, Inc., 1 Cabot Boulevard East, Langhorne, Pennsylvania 19047, producer of industrial gears (accepted March 9, 1984); (25) Swift Engineering Company, Inc., P.O. Box 27, Pontiac, Michigan 48056, producer of machine tools and special machinery (accepted March 9, 1984); (26) Viola Sportswear, Inc., 5115 El Paso Drive, El Paso, Texas 79905, producer of men's and children's pants (accepted March 9, 1984); (27) Quabaug Rubber Company, 17 School Street, North Brookfield, Massachusetts 01535, producer of footwear soles and heels (accepted March 9, 1984); (28) B.M.D. Fashions, Inc., 49 Columbus Boulevard, New Britain, Connecticut 06051, producer of women's tops (accepted March 9, 1984); (29) Curry and Sorensen, Inc., 2105 Edwards Avenue, S. El Monte, California 91733, producer of hand tools (accepted March 9, 1984); (30) Jay Bee Engineering, Inc., 6190 West 55th Avenue, Arvada, Colordo 80002, producer of metal equipment parts (accepted March 9, 1984); (31) Warley Worsted Mills, Inc., 12 Perkins Street, Lowell, Massachusetts 01854, producer of yarn (accepted March 9, 1984); (32) RBC Industries, Inc., 355 E. Ontario Street, Philadelphia, Pennsylvania 19134, producer of plastic toys (accepted March 9, 1984); (33) Loyola Beach Vegetable Company, Box 71, Riviera, Texas 78379, producer of vegetables and fruit (accepted March 9, 1984); (34) MGS, Inc., RD 3, Box 202, Denver, Pennsylvania 17517, producer of fabricated steel components (accepted March 9, 1984); (35) Richmond Sales, Inc., 42 Power Road, Pawtucket, Rhode Island 02860, producer of jewelry (accepted March 9, 1984); (36) Micro Controls, Inc., P.O. Box 728, Burleson, Texas 76028, producer of communication and data transmittal equipment (accepted March 12, 1984); (37) U.S. Synthetic Corporation, 365 S. Mountainway Drive, Orem, Utah 64058, producer of synthetic industrial diamonds and drill bits (accepted March 12, 1984); (38) Ruska Instrument Corporation, 3601 Dunvale, Houston, Texas 77063, producer of measurement, control, calibration and analysis instruments and other electronic products (accepted March 13, 1984); (39) Elegant Knitted Headwear Company, Inc., 195 Front Street, Brooklyn, New York 11201, producer of headwear, scarves and legwarmers (accepted March 13, 1984); (40) Hollywood Lingerie, Inc., 600 Broadway, New York, New York 10013, producer of women's nightgowns and underwear (accepted March 13, 1984); (41) Falcon Sportswear, Inc., 112 Lincoln Avenue, Bronx, New York 10454, producer of men's shirts and women's blouses (accepted March 14, 1984); (42) President Novelty & Jewelry Company, Inc., 104 West 29th Street, New York, New York 10001, producer of jewelry (accepted March 14, 1984); (43) Quad Company, 12 Grove Street, Ballston Spa, New York 12020, producer of wood trunings and plastic snowballs and packaging inserts (accepted March 14, 1984); (44) Elwood Manufacturing Company, 105 S. St. Louis Street, Elwood, Illinois 60421, producer of agricultural tractor components (accepted March 15, 1984); (45) The Zeller Corporation, P.O. Box 278, Defiance, Ohio 43512, producer of automotive parts (accepted March 16, 1984); (46) Vatco Industries Corporation, 184 Everett Avenue, Allston, Massachusetts 02134, producer of automotive seat covers and cushions (accepted March 19, 1984); (47) Selvin Shoe Manufacturing Company, 2413 Eastern Avenue, Baltimore Maryland 21224, producer of men's, women's and children's footwear (accepted March 19, 1984); (48) Metros Company, 1499 Delp Drive, Harleysville, Pennsylvania 19438, producer of metal-working, parts-handling and assembly machines (accepted March 19, 1984).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93–618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received

by the Director, Certification Division, Office of Trade Adjustment Assistance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A-95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,

Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 84-8467 Filed 3-28-84; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Delaware Coastal Management Program, et al.; Intent To Evaluate

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Delaware Coastal Management Program (CMP); Louisiana CMP; Michigan CMP; New Jersey CMP; Wisconsin CMP; and Washington National Estuarine Sanctuary (Padilla Bay) through June 1984. These reviews will be conducted pursuant to Section 312 of the Coastal Zone Management Act (CZMA) which requires a continuing review of the performance of the states with respect to coastal management, and their adherence to the terms of financial assistance awards funded under the CZMA. Coastal zone management is funded under Section 306, and the Estauarine Sanctuary program is authorized by Section 315, CZMA. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. A subsequent notice will be placed in the Federal Register announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street NW., Washington, D.C. 20235 (telephone: 202/634-4245).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: March 21, 1984.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 84-8493 Filed 3-28-84; 8:45 am]

BILLING CODE 3510-08-M

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Sanctuaries; Availability of Findings

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for Oregon, Alaska, Florida, Mississippi, Guam, and Northern Mariana Islands Coastal Zone Management Programs, and/or Coastal Energy Impact Programs and/or National Estuarine Sanctuaries. Section 312 of the Coastal Zone Management Act of 1972, as amended, requires a continuing review of the performance of each coastal state with respect to the implementation of its federally approved Coastal Management Program, Coastal Energy Impact Program, and National Estuarine Sanctuary financial assistance awards. The states and territories evaluated were found to be adhering both to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in Section 303(2)(A)-(I) of the Coastal Zone Management Act.

A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street NW., Washington, D.C. 20235 (telephone: 202/634-4245).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: March 21, 1984.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 84-8447 Filed 3-28-84; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing an Increase in the Import Limits for Certain Cotton Apparel Products From Indonesia

March 23, 1984.

ACTION: Increasing by the application of carryforward the import limits for men's and boys' woven cotton shirts in Category 340 from 324,210 dozen to 344,818 dozen and for cotton trousers in Category 347/348 from 579,519 dozen to 616,108 dozen, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1983.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

SUMMARY: The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of November 9, 1982 between the Governments of the United States and Indonesia provides, among other things, for the borrowing of yardage from the succeeding year's level (carryforward) with the amount used being deducted from the level in the succeeding year. At the request of the Government of Indonesia, increases for carryforward are being applied to the restraint limits for cotton textile products in Categories 340 and 347/348.

EFFECTIVE DATE: March 23, 1984.

FOR FURTHER INFORMATION CONTACT: Diana Bass, International Trade Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On June 30, 1983, a letter was published in the Federal Register (48 FR 30181) from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established restraint limits for Categories 340 and 347/348, produced or manufactured in Indonesia and exported to the United States during the twelve-month period which began on July 1, 1983 and extends through June 30, 1984. In accordance with the terms of the bilateral agreement, and at the request of the Government of Indonesia, the United States Government has agreed to increase the limits for cotton textile products in Categories 340 and 347/348. Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the levels to the designated amounts.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 23, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On June 24, 1983, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry of goods exported during the twelve-month period beginning on July 1, 1983 and extending through June 30, 1984 of certain cotton textile products, produced or manufactured in Indonesia, in excess of designated limits. The Chairman further advised you that the limits are subject to adjustment.[1]

Effective on March 23, 1984, the directive of June 24, 1983 is hereby amended to include the following adjusted twelve-month limit for for cotton textile products in Categories 340 and 347/348, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1983.

Category	Adjusted 12-mo. limit [1]
340	344,818 dozen.
347/348	616,108 dozen.

[1] The limits have not been adjusted to account for any imports after June 30, 1983.

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of November 9, 1982, between the Governments of the United States and Indonesia which provide, in part, that: (1) specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

The action taken with respect to the Government of the Republic of Indonesia and with respect to cotton textile products from Indonesia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-8366 Filed 3-28-84; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange and MidAmerica Commodity Exchange: Proposed Amendments Relating to the Live Cattle Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange (CME) and MidAmerica Commodity Exchange (MCE) have submitted proposals to amend their live cattle futures contracts. The proposed amendments would revise the list of exchange-approved delivery points on both the CME and MCE live cattle contracts. The Commodity Futures Trading Commission ("Commission") has determined that the proposals are of major economic significance and that, accordingly, publication of these proposals is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before April 30, 1984.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Reference should be made to CME and MCE live cattle futures contracts.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, (202) 254–6990.

SUPPLEMENTARY INFORMATION: The current CME and MCE live cattle contracts specify par delivery of cattle at any of six exchange-approved locations: Peoria, Illinois; Joliet, Illinois; Omaha, Nebraska; Sioux City, Iowa; Guymon, Oklahoma; and Greeley, Colorado. Under the CME and MCE proposals, Dodge City, Kansas and Amarillo, Texas would be designated as new delivery points on the live cattle contract and Guymon, Oklahoma would be deleted from the current list of Exchange-approved delivery points. The proposed delivery points at Dodge City and Amarillo would be added at par subject to the requirements that cattle delivered at these points must be in the yards by 9:00 a.m. on the day of delivery and must stand without feed and water prior to weighing.

The CME states that the propposed designation of new delivery points at Dodge City, Kansas and Amarillo, Texas is based on structural changes which have occurred in the cattle industry. According to the CME, since 1965 the number of fed cattle marketed has declined in the Eastern Corn Belt and increased dramatically in the Plains states, primarily in the states of Texas and Kansas. The CME further indicates that during this time period, structural changes in the cattle slaughter industry have paralleled the changes that have been occurring in the location of cattle marketings. The CME states that cattle slaughter has decreased in the Corn Belt and increased sharply in the Plains states, particularly in the states of Texas, Nebraska and Kansas.

The CME believes that the designation of new delivery points in Kansas and Texas would reflect the shift of production and slaughter from the Corn Belt to the Plains region. The CME submits that delivery facilities at Amarillo, Texas and at Dodge City, Kansas have the physical capacity to accommodate CME deliveries. The CME states that the number of pens, the number of scales and the number of USDA graders at the two locations is comparable to or surpasses the physica facilities at existing live cattle delivery points. The CME further maintains that the designation of the two new delivery points should not increase the uncertainty faced by long traders with respect to the location of the point of delivery. The CME states that there are a sufficient number of major beef packers located in the current CME live cattle delivery areas which also operate plants in the Amarillo and Dodge City areas.

Under the CME's proposal, Guymon would be deleted from the list of delivery points on the live cattle contract. The CME indicates that during most years since 1975, deliveries at Guymon have accounted for a very

small percentage of total CME live cattle deliveries. The CME further states that becasue USDA graders must travel to Guymon to grade CME deliveries, deliveries made at Guymon are more expensive than at other exchange-approved delivery points. The CME maintains that the addition of the two new delivery points at Amarillo and Dodge City would serve the same geographic region as currently served by Guymon while eliminating the need to dislocate USDA graders for CME deliveries. The CME believes that the elimination of a delivery point at Guymon, Oklahoma will have a minimal impact on producers and packers in that area and would reduce the potential for market congestion which might result from an inadequate number of graders to evaluate CME deliveries if Guymon was retained as a delivery point given the proposed addition of delivery points at Amarillo and Dodge City.

The CME is also proposing that cattle delivered at Amarillo, Texas and Dodge City, Kansas must be in the yards no later than 9:00 a.m. on the day of delivery and must stand without feed and water prior to weighing. The CME states that a specification of a 9:00 a.m. stand at Amarillo and Dodge City would facilitate USDA grading of the cattle. The CME submits that Southern Plains cattle traditionally are marketed at a lighter weight than Corn Belt cattle or Northern Plains cattle and that lighter weight cattle have a greater percentage of intestinal fill. The CME indicates that with a 9:00 a.m. stand, cattle delivered at Amarillo and Dodge City would receive their final feeding the evening prior to delivery and, thus, shrink would occur prior to grading and the degree of fill among deliveries should be consistent.

The MidAmerica Commodity Exchange (MCE) has also submitted a proposal to amend its live cattle contract which would be analogous to the proposed CME live cattle amendments. The MCE indicates that the current terms and conditions of the MCE's 20,000 pound live cattle contract are deliberately designed to parallel the terms and conditions of the CME's 40,000 pound live cattle contract in order to provide MCE members and their customers access to the liquidity and price discovery mechanism of the CME live cattle futures market through inter-market spreading. As a result, according to the MCE, an active two-for-one MCE to CME contract inter-market spread has developed. The MCE indicates that the proposed changes in the CME contract would create adverse consequences for inter-market spreaders without appropriate amendments to MCE rules. Therefore, the MCE is proposing amendments which would conform to those proposed by the CME as noted above.

The MCE submits that during the past five years, the volume of slaughter cattle marketings in the Dodge City and Amarillo areas has been among the largest in the United States. The MCE maintains that because of the high number of feedlots and packers in both areas, a substantial number of potential futures market participants, including producers in western Kansas, the Oklahoma panhandle and northwestern Texas, could make delivery at either Amarillo or Dodge City. The MCE further indicates that several of the largest packers have slaughter facilities in the regions close to the proposed delivery points, which the MCE feels would provide a market for cattle and prices equivalent to those at other exchange-approved delivery points.

The MCE further believes that the proposed Amarillo delivery point would be superior to the current Guymon delivery point due to the high concentration of packers in the Amarillo area, which the MCE maintains would provide a more liquid cash market. The MCE also states that because USDA graders have to travel to Guymon to grade MCE live cattle deliveries, deliveries to Guymon are more expensive to the short than deliveries at other exchange-approved delivery points. The MCE submits that due to the additional grding costs of Guymon deliveries, the effectiveness of the Guymon delivery point for cash/futures arbitrage and assurance of cash/futures convergence is limited. The MCE indicates that there have been no MCE live cattle deliveries at Guymon during the past five years.

The proposed amendments to the CME and MCE live cattle futues contracts would become effective after Commission approval for all contract months subsequently listed by the ERxchanges for trading, but would not be applicable to currently listed months.

In accordance with Section 5a(12) of the Community Exchange Act, 7 U.S.C. 7a(12) (1982), the Commission has determined that the proposals submitted by the CME and MCE concerning their live cattle futures contracts are of major economic significance. Accordingly, the CME and MCE proposals will be available for inspection at the Office of the secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME and MCE in support of the proposed rules may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1982)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033, K Street NW., Washington, D.C. 20581, by April 30, 1984. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C. on March 26, 1984.

Jane K. Studkey,

Secretary to the Commission.

[FR Doc. 84-8473 Filed 3-28-84; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information Survey of Households With Coal or Wood-burning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*) the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval through August 31, 1984, of a proposed collection of information in the form of a survey of households having a wood-burning fireplace, a wood or coal-burning stove, a fireplace insert, or a wood-burning furnace.

The survey is intended to provide information about types and ages of wood and coal-burning heating equipment now in use; types of chimneys and chimney connectors; types of fuel; patterns of use; and fire incidents and injuries associated with these appliances. The Commission staff will use the information obtained from this survey to assign relative risks of fire

among wood and coal-burning appliances.

Additional Details About the Proposed Collection of Information

Agency Address: Consumer Product Safety Commission, 1111 18th Street NW., Washington, D.C. 20207.

Title of Information Collection: Solid Fuel Appliance and Chimney Survey.

Type of Request: New plan.

Frequency of Collection: One time.

General Description of Respondents: Households having a wood-burning fireplace, wood or coal-burning stove, fireplace insert, or wood-burning furnace.

Estimated Number of Respondents: 700.

Estimated Number of Hours per Response: 0.25.

Comments: Comments on this request for approval of a proposed collection of information should be addressed to Andy Velez Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washingtoin, D.C. 20503; telephone (202) 395–7313. Copies of the request for approval of the proposed collection of information are available from Francine Shacter, Office of Budget, Program Planning, and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: March 26, 1984.

Sayde E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84–8479 Filed 3–28–84; 8:45 am]

BILLING CODE 6455–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Water Resources Management Study for the Oswego River Watershed, NY, Under Resolution of the House Committee on Public Works Adopted on 11 April 1974 (House Document Number 846, 76th Congress)

AGENCY: U.S. Army Corps of Engineers District, Buffalo, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

Proposed Action: The proposed action would result in implementing new lake level regulation plans (target rule curves) on Canandaigua Lake, Keuka Lake, Owasco Lake, Skaneateles Lake, and Otisco Lake. No new target rule curve will be initiated on either Seneca Lake or Cayuga Lake; however, the Basis of Comparison (an adjusted standard to provide a uniform standard profile of existing conditions) will be modified due to the fact that a new target rule curve will be implemented on Keuka Lake. Keuka Lake flows directly into Seneca Lake, which in turn flows into Cayuga Lake. Therefore, under the new Keuka Lake target rule curve, minor changes to existing conditions on Seneca Lake and Cayuga Lake are expected. In addition, to implement the new target rule curve on Canandaigua Lake and Keuka Lake some structural modification in their outlets must be constructed. Canandaigua outlet modifications will require about 4 miles of channelization from the lake downstream to Chapin, NY, and construction of a new control structure. Keuka Lake will require the removal of an earthen weir at the lake outlet and construction of a new control structure in its place. There will be no change to the current operating policy on Oneida Lake.

Alternatives Considered: Each of the eight lakes was examined to determine it specific characteristics hydraulically, hydrologically, environmentally, and economically. These parameters created the bounds within which a computer model was operated to produce new target rule curves. In excess of 100 target rule curves were evaluated for the eight lakes involved in this study.

Plans Considered in Detail: In addition to the No Action alternative, a resource management plan was considered in detail. These alternative plans are briefly described below.

a. *No Action*—This alternative plan implies that the Federal Government acting through the Corps of Engineers, would neither make any structural modifications within the project area nor initiate implementation of any new lake level regulation plans. Operation of existing control structures would continue in accordance with existing target rule curves.

b. *Resource Management Plan*—This is a composite plan. It is made up of eight distinct parts. Each of the eight lakes was evaluated individually, in order to determine which new target rule curve and/or structural measures would maximize the planning objectives for that lake. Once the component parts of the plan were determined, they were combined to form the management plan for the watershed (reference Proposed Action).

Public Involvement: Considerable public involvement has been conducted for the Oswego Watershed project. Six public workshops were conducted from November 1982 through August 1983 at various locations throughout the watershed. During each session public input was solicited.

Issues: Significant issues to be evaluated in the DEIS and/or feasibility report will be impacts from new target rule curves, the construction of new control structures, channelization, and disposal of dredged and excavated material. These impacts will be analyzed to determine both positive and negative impacts upon the following parameters: Flood control, water supply, water quality, fish and wildlife, recreation, navigation, hydropower generations, and irrigation. In addition all applicable laws and statutes outlined in 40 CFR 1502.25 and Corps of Engineers Regulation ER 200–2–2 will be reviewed and consulted during the preparation and review of the DEIS.

Scoping Needs: No scoping meeting will be held, since adequate coordination has already been conducted. A public meeting will be scheduled during the DEIS review period.

Availability: The Draft Environmental Impact Statement should be available for public review on or about June 1984.

ADDRESS: Questions about the proposed action and DEIS can be answered by Dr. Stephen Yaksich, project manager, of the Water Quality Branch, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY, 14207, telephone number (716) 876–5454, extension 2272.

Dated: March 22, 1984.

Robert R. Hardiman,

Colonel, Corps of Engineers, District Commander.

[FR Doc. 84–8386 Filed 3–28–84; 8:45 am]

BILLING CODE 3710–GP–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Veterans' Cost-of-Instruction Payments program; Payments to Institutions of Higher Education; Application Notice for Transmittal of Applications for New Awards for Fiscal Year 1984

Applications for new awards are invited from institutions of higher education under the Veterans' Cost-of-Instruction Payments Program. This program issues awards to institutions or combinations of institutions of higher

education to assist them in providing specific services to veterans.

Authority for this program is contained in Section 420 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070e–1.

Closing Date for Transmittal of Applications: An application for a new award must be mailed or hand delivered by May 11, 1984.

Applications delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Veterans' Cost-of-Instruction Program Branch (Room 3514, ROB–3) 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application to be hand delivered must be taken to the U.S. Department of Education, Veterans' Cost-of-Instruction Program Branch (Room 3514, ROB–3) 7th and D Street, SW., Washington, D.C. Hand delivered applications will not be accepted after 4 p.m. on the closing date.

Program Information and Application Forms: Program information packages and application forms are expected to be ready for mailing by April 6, 1984. They may be obtained by writing to the U.S. Department of Education, Office of Postsecondary Education, Veterans' Cost-of-Instruction Program Branch (Room 3514, ROB–3) 400 Maryland Avenue, SW., Washington, D.C. 20202.

Available Funds: There is authorized 3.0 million dollars for new awards under this program in fiscal year 1984.

Applicable Regulations: The regulations applicable to this Program include the following:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78); and

(b) Regulations governing the Veterans' Cost-of-Instruction Payments to Institutions of Higher Education (34 CFR Part 629).

Further Information: For further information contact Dr. James F. Rogers, Chief, Veterans' Cost-of-Instruction Program Branch, U.S. Department of Education (Room 3514, ROB–3) 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: 202–245–2806.

(20 U.S.C. 1070e–1)

Dated: March 26, 1984.

(Catalog of Federal Domestic Assistance Number 84.540; Higher Education Veterans' Cost-of-Instruction Program (VCIP))

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84–8430 Filed 3–28–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

National Petroleum Council, Distribution Task Group of the Committee on the Strategic Petroleum Reserve; Meeting

Notice is hereby given that the Distribution Task Group of the Committee on the Strategic Petroleum Reserve will meet in April 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on the Strategic Petroleum Reserve will address various aspects of the Strategic Petroleum Reserve and the long-term availability and movement patterns of tankers worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location, and agenda of the Distribution Task Group meeting follows:

The Coordinating Subcommittee will hold its first meeting on Thursday, April 12, 1984, starting at 9:00 a.m., in Room 3507, Exxon Company, U.S.A., 800 Bell Avenue, Houston, Texas.

The tentative agenda for the Distribution Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.

2. Discuss the scope of the overall study.

3. Discuss the study assignment of the Distribution Task Group.

4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Distribution Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Distribution Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Gerald J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353–3032 prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 22, 1984.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 84–8488 Filed 3–28–84; 8:45 am]

BILLING CODE 6450–01–M

Review of Enforcement Case Settlements; Increased Public Participation

AGENCY: Department of Energy.

ACTION: Notice of increased public participation in the review of enforcement case settlements.

SUMMARY: The Department of Energy is seeking increased public participation in the review and assessment of proposed settlements of cases involving the enforcement of federal petroleum price and allocation regulations. Wider public participation will be invited in the review of proposed consent orders in which the amount of liability in controversy exceeds ten million dollars and in which disputed issues covering a wide range of regulatory matters are resolved. In these cases, the public will be provided detailed information on the basis and rationale of the proposed settlement and will be invited to participate in a public hearing on the settlement. The public hearing will expand the opportunity for interested persons to provide information, comments and recommendations to the Department of Energy as to whether a proposed consent order should be made

final, modified or rejected by the Department as not in the public interest. The procedures described in this notice will be conducted pursuant to the regulations governing the issuance of consent orders. See 10 CFR 205.199J.

FOR FURTHER INFORMATION CONTACT: Milton C. Lorenz, Special Counsel, or Carl A. Corrallo, Solicitor, Economic Regulatory Administration, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 29585, (202) 252–8900 or 252–4167.

Background

Since 1979, Department of Energy procedural regulations have formally provided for "consent orders" which may resolve any or all outstanding compliance proceedings involving a person or firm subject to the now-terminated federal petroleum price and allocation regulations. 10 CFR 205.199J. The procedure for making proposed consent orders involving more than $500,000 (excluding interest and penalties) final orders requires a notice in the **Federal Register** that invites written public comments on the settlement. Following a comment period of at least thirty days, the Department may reject the proposed consent order, or it may decide to make the proposed consent order a final order. The decision to make a proposed order final is also published in the **Federal Register.**

In following this procedure in the past, the Department has provided in its public notices summary information on proposed consent orders, and the notices have emphasized the remedial terms of the settlements. The comments received in response to these notices have focused primarily on the disposition of the settlement refunds. Comments generally have not been received on other aspects of settlement agreements, including the Department's rationale and basis for proposing a settlement. The Department wishes to provide information to enable the public to understand fully the reasons a settlement is considered by the Department to be in the public interest and to encourage public comment on the adequacy of and rationale for the settlement.

The Department has carefully reviewed its consent order procedures to determine if they could be utilized in a manner that would enhance the public comment process. Settlements remain the Department's preferred method of resolving these complex and expensive litigation matters, and to the extent such settlements can be reached, the public should be provided a full explanation and opportunity for comment. As a result of this review the Department's consent order procedures will be applied in a manner designed to enhance the public's participation in the review of proposed settlements.

Procedure

The process for the review of a proposed consent order begins with a **Federal Register** notice that will provide comprehensive information on the settlement. Information will be included on the audit findings, the negotiation process, enforcement actions pending against the company, disputed issues resolved, the impact of the disputed issues on overcharge calculations, maximum overcharge liability, litigation risks, and the amount proposed to be paid in resolution of the disputed issues. The proposed consent order will also be included in this notice.

Following the **Federal Register** notice, there will be the thirty-day written comment period during which interested persons may submit information, comments and recommendations to the Department on the proposed settlement.

Upon completion of the comment period, the Economic Regulatory Administration will hold a public hearing to receive oral comment on the proposed settlement. The public hearing will be announced in the **Federal Register** notice on the proposed consent order. The hearing will be presided over by the ERA Administrator or his designee, along with a panel of enforcement officials from the ERA and the Department's Office of General Counsel. Oral comment will be received from any interested person, with reasonable time limitations imposed to permit broad public participation. Comments will be received on all aspects of the settlement, with the exception of its remedial provisions. The remedial provisions will be subject to public comment and participation before the Office of Hearings and Appeals if, and after, the consent order is made final. The hearing will be recorded with transcripts available to the public.

The information from the written comments and the public hearing will be reviewed by ERA and OGC enforcement officials and the proposed settlement will be evaluated on the basis of this information. The consent order will be renegotiated and revised, as necessary, with a decision on a final order made by the ERA Administrator.

Notice of the final consent order will be published in the **Federal Register,** and the notice will address the significant written and oral comments, as well as any other considerations that were relevant to the Administrator's decision. The text of the final order will be included in the notice.

This increased public participation will be sought for all consent orders in which the amount in controversy exceeds ten million dollars (excluding interest and civil penalties) and in which a wide range of issues are resolved. Settlements for $500,000 or more, regardless of the amount in controversy or the range of issues, will continue to be published for public comment in the **Federal Register.**

Issued in Washington, D.C., on March 23, 1984.

Donald Paul Hodel,

Secretary of Energy.

[FR Doc. 84–8487 Filed 3–28–84; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA–FC–84–007; OFP Case No. 61048–9245–20–24]

Powerplant and Industrial Fuel Use; Prohibition Orders, Exemption Requests; Calcogen, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Calcogen, Inc.

SUMMARY: On February 28, 1984, Calcogen, Inc. (Calcogen) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at the Metropolitan State Hospital, Norwalk, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant for which the petition was filed is an approximately 27 MW (net) combined cycle cogeneration facility consisting of: (1) A gas turbine generator, (2) a waste heat recovery steam generator, and (3) a steam extraction turbine generator. The

plant will burn only natural gas. It is expected that virtually all of the net annual electric power produced by the cogenerator will be sold to Southern California Edison (SCE), making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The facility will produce approximately 12,625 lbs. of steam per hour which will supply Metropolitan Hospital's needs. Calcogen will operate the facility.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the SUPPLEMENTARY INFORMATION section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extenson, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before May 14, 1984. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–007, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Docket No. ERA–FC–84–007 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–073L, Washington, D.C. 20585, Phone (202) 252–1774

Marya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A–141, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252–6739

SUPPLEMENTARY INFORMATION: Calcogen proposes to install a cogeneration system at Metropolitan Hospital, Norwalk, California, which will: (1) Generate electrical power for sale to SCE, and (2) produce steam to meet the hospital's heating and cooling requirements. The proposed cogeneration system will be operated by Calcogen. The system will consist of a gas turbine generator which will produce electric power, a waste heat recovery system, and an extraction steam turbine which will produce steam and additional electric power for sale to SCE.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Calcogen has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the congeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Calcogen has also included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of: (1) An Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Calcogen is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on March 23, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84–8393 Filed 3–28–84; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

American Statistical Association Committee on Energy Statistics

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given that the American Statistical Association's Committee on Energy Statistics will meet with representatives of the Energy Information Administration (EIA) on Thursday, April 12, 1984, at the J. W. Marriott Hotel, 1331 Pennsylvania Avenue, Northwest, Washington, D.C., from 1:30 p.m. to approximately 5:00 p.m. The meeting will continue on Friday, April 13, 1984, in the J. W. Marriott Hotel, from 9:00 a.m. until approximately 3:30 p.m.

The purpose of the meeting is to enable the EIA to utilize the American Statistical Association's Committee on Energy Statistics to obtain advice on EIA programs and to benefit from the Committee's expertise concerning other energy statistical matters.

The tentative agenda is as follows:

A. Opening Remarks

B. Major Topics:

1. Progress Report: Approaches to Verifying Model Documentation
2. Estimating Changes in Household Energy Characteristics
3. EIA's Quality Audit Program
4. Progress Report: Quality Control Activities in the Petroleum Supply Division
5. EIA Sampling Processes

a. Sampling Multiple Attributes
b. EIA–782 Phase II Sample Design and Estimation
c. Frames Development Methodology
6. Progress Report: Consistency Between Forecasts in the *Short-Term Energy Outlook* and the *Annual Energy Outlook*
7. Short-Term Price Forecasting Methodology
8. Adjusting for Data Shifts Due to Changes in Survey Forms and Definitions

C. Public Comments
D. Topics for Future Meetings

The meeting is open to the public. Any member of the public may file a written statement with the EIA for forwarding to the Committee, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should inform Ms. Kathleen Repass Weigl, EIA Committee Liaison, (202) 252–6463, or Dr. Fred C. Leone, Executive Director of the American Statistical Association, (202) 393–3253, at least five days prior to the meeting and reasonable provisions will be made to include their presentations on the agenda. Subsequent to approval by the Committee, minutes of an executive summary of the meeting will be available for public review and copying at the Office of Planning and Resources, EI–32, EIA, 1000 Independence Avenue, SW., Rooom 2H–055, Washington, D.C. 20585, (202) 252–6460, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Issued at Washington, D.C., on March 22, 1984.

J. Erich Evered,

Administrator, Energy Information Administration.

[FR Doc. 84–8392 Filed 3–28–84; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF84–166–000]

Air Products and Chemicals, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 26, 1984.

On February 2, 1984, Air Products and Chemicals, Inc. (Applicant) of P.O. Box 538, Allentown, Pennsylvania 18105, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at 14700 Intracoastal Drive, New Orleans, Louisiana. The facility will consist of a combustion turbine generator, a connecting steam generator, and a waste heat recovery boiler. The primary energy source of the facility will be natural gas. The useful thermal energy output, which is in the form of steam, will be utilized in chemical production processes. The electric power production capacity of the facility will be 23 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–8458 Filed 3–28–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP81–67–005]

Black Marlin Pipeline Co.; Tariff Filing

March 26, 1984

Take notice that on March 16, 1984, Black Marlin Pipeline Company (Black Marlin) tendered for filing First Revised Sheet No. 1 and Original Sheet Nos. 24 through 61 to Original Volume No. 2 of its FERC Gas Tariff to be effective September 1, 1982.

Black Marlin states that the filing is in compliance with a rate investigation settlement approved by the Commission on August 27, 1982 *(Black Marlin Pipeline Company,* Docket No. RP81–67–000; 20 FERC ¶ 61,297), and is for the purpose of including in Volume No. 2 of its FERC Gas Tariff a special contract for the sale of gas produced in Southeast Pescadito Field, Webb County, Texas, to Transcontinental Gas Pipe Line Corporation. This special contract was inadvertently overlooked in Black Marlin's earlier compliance filing. Black Marlin states that a copy of this filing is available for public inspection at its general office at Two Greenway Plaza East, Houston, Texas, and that copies have been served on all parties in Docket No. 81–67–000.

Any person desiring to be heard or to protest said filing should file a petition to invervene or protest with the Federal Energy Regulatory Commission 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 FERC 385.211 and 385.214). All such petitions or protests should be filed on or before April 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–8459 Filed 3–28–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–104–001]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

March 23, 1984.

Take notice that on March 19, 1984, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP84–104–001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia Transmission proposes to continue to transport natural gas on behalf of GTE Products Corporation (GTE) under the authorization issued in Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

By notice issued December 27, 1983, pursuant to the prior notice and protest procedure set forth in 18 CFR 157.205, Columbia Transmission received authorization to transport up to 3.7 billion Btu equivalent of natural gas per day through May 9, 1984, to GTE's Versailles, Kentucky, plant.

Columbia Transmission proposes to continue the above-described transportation through June 30, 1985, on the same terms and conditions as the existing transportation authority.

Any person or the Commission's staff may, within 45 days after issuance of

the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8451 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-271-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

March 23, 1984.

Take notice that on March 1, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-271-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of Lancaster Colony Corporation (Lancaster) under the authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport up to 150 million Btu of natural gas per day for Lancaster for a term of one year. Columbia states that the gas to be transported would be purchased from John C. Mason (Mason) by Lancaster and would be used for boiler fuel in Lancaster's plant in Leesburg, Ohio.

Columbia states that it has released certain gas supplies which Lancaster has purchased from Mason and that these supplies are subject to the ceiling price provisions of sections 103, 107 and 108 of the Natural Gas Policy Act of 1978. It is indicated that Columbia would receive up to 150 million Btu of natural gas per day delivered into its pipeline system at existing interconnections in Holmes and Coshocton Counties, Ohio, and would redeliver such gas to Pike Natural Gas Company, the distribution company serving Lancaster.

Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either (1) its average system-wide storage and transmission charge, currently 40.11 cents per dt equivalent of gas, exclusive of company-use and unaccounted-for gas, or (2) its average system-wide storage, transmission and gathering charge, currently 44.93 cents per dt, exclusive of company-use and unaccounted-for gas. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. Columbia also states that it is charging the Gas Research Institute Funding Unit.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8452 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS84-49-000, et al.]

H L T Energy Inc., et al.; Applications for "Small Producer" Certificates [1]

March 23, 1984.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before April 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No.	Date filed	Applicant
CS84-49-000	3/5/84	H L T Energy Inc., 9631 Wickenburg, Houston, Tex. 77031.
CS84-50-000	3/5/84	Baytech, Inc., P.O. Box 10158, Midland, Tex. 79702.
CS84-51-000	5/6/84	Danny R. Edwards, Trustee, 2800 N. Loop West, Suite 416, Houston, Tex. 77092.
CS84-52-000	3/6/84	Clark Exploration Co., Box 245, Hardtner, Kans. 67057.
CS84-53-000	3/7/84	Howell Spear, Box 206, Perkinston, Miss. 39573.
CS84-50-001	3/12/84	Baytech, Inc., Operator, et al., P.O. Box 10158, Midland, Tex. 79702.
CS84-54-000	3/15/84	Santo Resources Inc., Box 31, Waynoka, Okla. 73860.
CS84-55-000	3/15/84	Zoroco Petroleum Incorporated, 604 Maple, Waynoka, Okla. 73860.
CS84-56-000	3/15/84	L. S. Thompson, Jr., M.D., 6161 Harry Hines, Suite 100, Dallas, Tex. 75235.
CS84-57-000	3/14/84	B & N Petroleum, Inc., P.O. Box 2547, Longview, Tex. 75601.

[FR Doc. 84-8454 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP84-25-000]

JM Resources; Request for Relief of Refund Obligation

Issued: March 23, 1984.

On October 24, 1983, J M Resources (JM) filed a request for relief of refunds and interest with the Federal Energy Regulatory Commission (Commission) arising from certain actions taken by the National Fuel Supply Company (National Fuel). JM claimed that National Fuel overpaid JM amounts due under their gas purchase contract and that National Fuel wrongful withheld amounts owed to JM to recoup their overpayments with interest.

JM sells gas produced from its Lepp No. 4 and Newbury No. 6 wells to

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

National Fuel. JM states that both of these wells produce gas qualifying under section 107 of the National Gas Policy Act of 1978 (NGPA) 15 U.S.C. 3301–3432 (1982) as tight formation gas. The terms of the subject contract provided for a price limitation of either the lesser of: (1) Ninety percent of the average posted price of No. 6 fuel oil per MMBtu or (2) one hundred and fifty percent of the maximum lawful price specified in section 103(b) of the NGPA. On December 27, 1982, the parties amended the contract to provide, commencing January 1, 1983, the price of $4.00 per Mcf plus escalation by the amount of increase per month in the price of NGPA section 103 gas.[1] JM states that National Fuel disregarded the contract price limitation and paid the full section 107(c)(5) price.

On April 15, 1983, National Fuel notified JM that during an internal audit it discovered that it overpaid JM Resources for a fifteen month period between February 1982 and April 1983. National Fuel requested that JM refund the overpayments with interest. The amount of the overpayments equals $11,506.13, plus interest, for gas purchased from the subject wells.

JM states that when it received payments from National Fuel at the tight formation gas ceiling rates, it assumed National Fuel decided to treat this gas in conformity with its other section 107 contracts and pay the full section 107 price. JM states that it did not feel that it was unusual, illegal, or immoral for it to accept payment of the full section 107 price despite the contractual price limitation. JM attributes this situation to the inaction and negligence on the part of National Fuel.

JM requests that the Commission take jurisdiction of this matter and grant relief from National Fuel's assessment of the overpayments plus interest against JM.

Any person desiring to be heard or to make any protest to this petition should file a motion to intervene or a protest in accordance with the requirements of Rules 211 or 214 of the Commission's Rules of Practice and Procedure. The motion should be filed within 30 days after notice is published in the Federal Register, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington D.C. 20426. The Commission will consider all protests filed, but the filing of a protest will not make the protestants parties to the proceedings.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–8455 Filed 3–28–84; 8:45 am]

BILLING CODE 6717–01–M

[1] The original contract price and the renegotiated contract price are below the ceiling rate for section 107(c)(5) tight formation gas as set forth in § 271.703(a).

[Docket No. G–5716–013, et al.]

Mobil Oil Corp. & Mobil Producing Texas & New Mexico Inc. (Successor to Northern Natural Gas Producing Co.); Petition To Amend Certificates of Public Convenience and Necessity, Redesignate Rate Schedules, and Substitute Mobil Oil Corp. & Mobil Producing Texas & New Mexico Inc. as a Party

March 23, 1984.

Take notice that on January 19, 1984, Mobil Oil Corporation (Mobil) and Mobil Producing Texas & New Mexico Inc. (Mobil Producing) of Nine Greenway Plaza, Suite 2700, Houston, Texas 70046, filed an application for Certificates of Public Convenience and Necessity to render service previously authorized by the Commission under Certificates of Public Convenience and Necessity heretofore issued to Northern Natural Gas Producing Company (Northern) and for substitution of Mobil and Mobil Producing for Northern in any other related proceedings as listed in the attched appendix.

Effective December 31, 1983, Northern Natural Gas Producing Company was merged into Mobil Oil Corporation and by General Conveyance entered into and make effective from December 31, 1983, Mobil assigned to Mobil Producing certain properties located in the States of New Mexico and Texas. Mobil and Mobil Producing hereby adopts, ratifies and makes its own in every respect the Rate Schedules as listed in the attached appendix heretofore filed with the Commission by Northern.

Any person desiring to be heard or to make any protests with reference to said applications should on or before April 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

APPENDIX

Old: Northern Natural Gas Producing Co. rate schedule No.	Proposed: Mobile Oil Corp. rate schedule No.	Proposed Mobile Producing Texas & New Mexico Inc. rate schedule No.	Certificate docket No.	Purchaser
1		181	G–5716	Northern Natural Gas Co.
2	582		G–5716	Do
2	582		G–8589	Do
2	582		G–9011	Do
2	582		G–9863	Do
2	582		G–10053	Do
2	582		G–10217	Do
2	582		G–10299	Do
2	582		G–10712	Do
2	582		G–10900	Do
2	582		G–10940	Do
2	582		G–11088	Do
2	582		G–12742	Do
2	582		G–13012	Do
5	583		G–8589	Do
11	584		G–10001	Do
15	585		G–16752	Do
16	586		G–18134	Do
23		182	CI61–1722	Do
25		183	CI63–1049	El Paso Natural Gas Company
26		184	CI63–1051	Do
27		185	CI63–1050	Do
29		186	CI63–1250	Northern Natural Gas Co.
30		187	CI63–1397	El Paso Natural Gas Co.
31		587	CI64–588	Panhandle Eastern Pipe Line Co.
32		188	CI64–860	Southern Union Gathering Co.
33		189	CI65–1160	Michigan Wisconsin Pipe Line Co.
34		190	CI67–466	Natural Gas Pipeline Co. of America
35		191	CI65–1160	Michigan Wisconsin Pipe Line Co.
36		192	CI76–750	El Paso Natural Gas Co.

APPENDIX—Continued

Old: Northern Natural Gas Producing Co. rate schedule No.	Proposed: Mobile Oil Corp. rate schedule No.	Proposed Mobile Producing Texas & New Mexico Inc. rate schedule No.	Certificate docket No.	Purchaser
37	588		CI78-307	Northwest Pipeline Corp.

[FR Doc. 84-8456 Filed 3-28-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA84-2-47-001]

MIGC, Inc.; Proposed Purchased Gas Adjustment Rate Change

March 26, 1984.

Take notice that on March 16, 1984, MIGC, Inc. tendered for filing copies of Twenty-Ninth Revised Sheet No. 32 and Fifth Revised Sheet No. 32-A to its FERC Gas Tariff Original Volume No. 1, as required by the Commission's Rules and Regulations under the Natural Gas Act.

MIGC's Twenty-Ninth Revised Sheet No. 32 and Fifth Revised Sheet No. 32-A provide for a Purchased Gas Adjustment rate decrease of 19.12¢ per MMBtu effective May 1, 1984 in order (1) to provide for a current gas cost adjustment to permit MIGC to reflect the lower cost of gas purchases which it is currently incurring (Table II); (2) to provide for an adjustment to MIGC's unrecovered Purchased Gas Cost Account as of January 31, 1983 and January 31, 1984 (Table III); (3) to recover carrying charges as permitted under FERC Order No. 47 (Table VI) as set forth in MIGC's First Revised Sheet No. 31-A, (4) to set forth projected incremental pricing surcharges to become effective May 1, 1984 (Fifth Revised Sheet No. 32-A)[1]; and (5) to reflect a surcharge to permit MIGC to recover production related charges pursuant to FERC Order No. 94-A. 18 CFR 271.1100, *et seq.*

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before April 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for the public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8460 Filed 3-28-84; 8:45 am]
BILLING CODE 6717-01-M

[1] None of MIGC's sale-for-resale customers has reported a MSAC for any prior month determined in the manner prescribed by § 282.504(d)(2) of the Commission's Regulations.

[Docket No. RP81-49-021]

Natural Gas Pipeline Company of America; Change in FERC Gas Tariff

March 26, 1984.

Take notice that on March 20, 1984, Natural Gas Pipeline Company of America (Natural) submitted to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets to be effective May 1, 1984.

Fifty-fifth Revised Sheet No. 5
Twenty-second Revised Sheet No. 5A
Tenth Revised Sheet No. 5B
Fifth Revised Sheet No. 8
Second Revised Sheet No. 13
Seventh Revised Sheet No. 14
Seventh Revised Sheet No. 116
Fourth Revised Sheet No. 117
Sixth Revised Sheet No. 121

Natural states that the purpose of this filing is to implement the cost allocation and rate design procedures in compliance with (1) Commission Order Affirming in Part and Modifying in Part Initial Decision, issued November 4, 1983, and (2) Article II of the Stipulation and Agreement approved May 13, 1982, at Docket No. RP81-49.

Natural states that a copy of the filing was mailed to Natural's jurisdictional customers, interested sate commisions, and all parties listed on the official service list in Docket No. RP81-49.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commision, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the requirements of Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before April 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8461 Filed 3-28-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA84-2-37-002]

Northwest Pipeline Corp.; Change in Rates

March 23, 1984.

Take notice that on March 21, 1984, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance as part of its F.E.R.C. Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Substitute Thirteenth Revised Sheet No. 10
Fourteenth Revised Sheet No. 10

The tendered tariff sheets provide for a change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, "Purchased Gas Cost Adjustment Provision" ("PGA"). Such change in rates is for the purpose of implementing a reduction in purchased gas costs which will result from Commission approval of Northwest's certificate application in Docket No. CP84-294-000 authorizing the sale and delivery of incentive priced Canadian gas to certain distribution customers of Northwest for resale to designated end users who would otherwise switch to alternate fuels.

Both Substitute Thirteenth Revised and Fourteenth Revised Sheet No. 10 contain the rate reduction referred to above. Thirteenth Revised Sheet No. 10 is provided in the event Commission authorization in Docket CP84-294-000 is received prior to April 1, 1984. An effective date of April 1, 1984 is requested for this sheet. Fourteenth Revised Sheet No. 10 is provided in the event Commission approval in Docket No. CP84-294-000 is not received prior to April 1, 1984. An effective date concurrent with the Commission approval of the above referenced docket is requested for this sheet.

A copy of this filing has been served on all parties of record in Docket No. RP72-154 and on all jurisdictional customers and affected state regulatory commissions.

Any persons desiring to be heard or protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington D.C. 20426, in accordance with Rules 211 or 214 of the Commission's rules of Practice and Procedure. All such petitions or protests should be filed on or before March 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8457 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-202-000]

Onsite Energy—San Juan Creek Athletic Club; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 26, 1984.

On March 8, 1984, Onsite Energy (Applicant), of 10951 Sorrento Valley Road, Suite II-S, San Diego, California 92121, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the San Juan Creek Athletic Club, 33061 Camino Capistrano, San Juan Capistrano, California. The facility will consist of a reciprocating engine generator unit with waste heat recovery equipment. The primary energy source for the facility will be natural gas. The useful thermal energy output will be used for swimming pool heating, jacuzzi heating, and/or pre-heating of domestic hot water. The electric power production capacity of the facility will be 60 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8462 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-198-000]

Tenneco Oil Company—Oxford Lease; Application for Commission Certification of Qualifying Status of a Congeneration Facility

March 26, 1984.

On March 5, 1984, Tenneco Oil Company, (Applicant) of P.O. Box 9909 Bakersfield, California 93389, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on the Oxford Lease (Federal Serial #SAC-019392) in the Midway-Sunset field, Kern County, California. The facility will consist of two separate cogneration units. Each unit will consist of a combustion turbine generator, a duct system, and a waste heat recovery boiler. The primary energy source for the facility will be natural gas. The useful thermal energy output, which is in the form of steam, will be used in enhanced oil recovery. Each unit will have an electric power production capacity of 2600 kilowatts. The total electric power production capacity of the facility will be 5200 kilowats.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8463 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2801-003, et al.]

Getty Oil Company, et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates[1]

March 23, 1984.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	price per 1,000 ft.³	Pressure base
G-2801-003, D, Mar. 15, 1984	Getty Oil Company, P.O. Box 1404, Houston, Texas 77001.	Columbia Gas Transmission, Erath Field, Vermilion Parish, Louisiana.	(1)	
CI84-248-000, E, Mar. 14, 1984	Phillips Oil Company (Successor In Interest To Phillips Petroleum Company), 336 HS&L Building, Bartlesville, Oklahoma 74004.	Florida Gas Transmission Company, Nueces Bay Field, Neuces County, Texas.	(2)	
CI67-808-001, D, Mar. 14, 1984	Shell Offshore Inc., P.O. Box 4480, Houston, Texas 77210.	Southern Natural Gas Company, West Delta Block 133 Field, Offshore Louisiana.	(3)	
CI83-249-003, C, Mar. 19, 1984	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Louisiana Industrial Gas Supply System (formerly Cajun Natural Gas Company), South Timbalier Blocks 22 & 27, Offshore Louisiana.	(4)	14.73
CI84-244-000, B, Mar. 6, 1984	Lario Oil & Gas Company, 301 South Market Street, Wichita, Kansas 67202.	Cities Service Gas Company, Axline "B" Well, Watkins-Smith Well, Barber County, Kansas.	(5)	
CI84-245-000, B, Mar. 9, 1984	Grace Petroleum Corporation, 6501 North Broadway, Oklahoma City, Oklahoma 73116.	Natural Gas Pipeline Company of America, Camric Gas Area, Beaver County, Oklahoma.	(6)	
CI84-246-000, B, Mar. 12, 1984	J & J Enterprises, Inc	Consolidated Gas Transmission Corporation, McCalmont Field, Jefferson County, Pennsylvania.	(7)	
CI84-329-000 (CI72-838), B, Mar. 14, 1984.	Exchange Oil & Gas Corporation, 1250 Poydras Street, 24th Floor, New Orleans, Louisiana 70112.	Texas Gas Transmission Corporation, Ship Shoal Block 23 Field, Terrebonne Parish, Louisiana.	(8)	
CI84-330-000, A, Mar. 14, 1984	Amerada Hess Corporation, P.O. Box 2040, Tulsa, Oklahoma 74102.	Texas Eastern Transmission Corporation, East Cameron Area, Block 321, Offshore Louisiana.	(9)	14.73
CI84-331-000 (CI74-512), B, Mar. 25, 1984.	Diamond Shamrock Exploration Company, successor to Diamond, Shamrock Corporation, P.O. Box 631, Amarillo, Texas 79173.	Natural Gas Pipeline Company of America, Block 176-S Field, Offshore Galveston County, State of Texas.	(10)	
CI84-333-000, A, Mar. 15, 1984	Aminoil Inc., 2800 North Loop West, Post Office Box 94193, Houston, Texas 77292.	Texas Eastern Transmission Corporation, Eat Cameron Block 321, Offshore Louisiana.	(11)	14.73
CI84-334-000, A, Mar. 18, 1984	The Louisiana Land and Exploration Company, 225 Baronne Street, Post Office Box 60350, New Orleans, Louisiana 70160.	Texas Eastern Transmission Corporation, Block 321 Field, East Cameron Area, Offshore Louisiana.	(12)	14.73
CI84-335-000, A, Mar. 19, 1984	Tenneco Oil Company, Houston Oil & Minerals Corporation, TINCO, Ltd., Tenneco Exploration Ltd., and Tenneco Exploration II, Ltd., P.O. Box 2511, Houston, Texas 77001.	Eastern Shore Natural Gas Company, Eugene Island 215 D, Offshore Louisiana, South Marsh Island 116 A, Offshore Louisiana, Vermilion Block 50, Offshore Louisiana, High Island A-270-B, Offshore Texas, West Cameron 838 B, Offshore Louisiana.	(13)	14.73

[1] Acreage in the assignment dedicated to this contract has been assigned to J. P. Oil Company.
[2] Effective September 1, 1983, Phillips Petroleum Company assigned to Phillips Oil Company its interest in the Call and Sand leases, both located in Nueces County, Texas.
[3] By assignments dated March 25, 1982, and April 29, 1983, certain leases were assigned to Kirby Exploration Company et al. and to Taylor Energy Company, respectively.
[4] Applicant is filing under Gas Sales Contract dated May 26, 1983, amended by Supplemental Gas Purchase Agreement dated March 8, 1984.
[5] The referenced wells have now been depleted and are not capable of commercial production. Lario has now plugged these wells, which were the last two producing wells dedicated under the referenced contract.
[6] Collapsed casing: Uneconomical.
[7] It has become uneconomical to maintain this facility given the low volume of production received.
[8] Depletion of reserves and expiration of leases.
[9] Applicant is filing under Gas Purchase Contract dated February 13, 1984.
[10] Reserves depleted, all wells plugged and abandoned, contract terminated.
[11] Applicant is filing under Gas Purchase Contract dated February 17, 1984.
[12] Applicant is filing under Gas Purchase Contract dated January 23, 1984.
[13] Applicant is filing under Gas Purchase and Sales Agreement dated February 20, 1984.
Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 84-8453 Filed 3-28-84; 8:45 am]
BILLING CODE 6717-01-M

Determination Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

March 12, 1984.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under Section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the new procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. This determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On February 28, 1984, the Commission received notice from MMS, Pacific OCS Region, that on November 30, 1983, MMS conducted a lease offering for the Pacific Outer Continental Shelf region. Included in this offering were lease numbers OCS-P-0503 through OCS-P-0510. The legal description for these leases is:

Lease No.	Legal description	Effective date
OCS-P-0503	NI 10-3 Blk 949	2-1-84
OCS-P-0504	NI 10-3 Blk 992	2-1-84
OCS-P-0505	NI 10-3 Blk 023	2-1-84
OCS-P-0506	NI 10-3 Blk 112	2-1-84
OCS-P-0507	NI 10-3 Blk 239	2-1-84
OCS-P-0508	NI 10-3 Blk 283	2-1-84
OCS-P-0509	NI 10-3 Blk 373	2-1-84
OCS-P-0510	NI 10-3 Blk 375	2-1-84

Pursuant to Order No. 336, these leases have been determined to qualify under NGPA Section 102(c)(1)(A), as new OCS leases granted on or after April 20, 1977. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-8489 Filed 3-28-84; 8:45 am]
BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM

Matewan Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 20, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *Matewan Bancshares, Inc.*, Matewan, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Matewan National Bank, Matewan, West Virginia.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *CNB Financial Corporation, Inc.*, Taylor, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The City National Bank of Taylor, Taylor, Texas.

2. *SoBank, Inc.*, Tyler, Texas; to acquire 100 percent of the voting shares of South Broadway Bank, Tyler, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 23, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8381 Filed 3-28-84; 8:45 am]

BILLING CODE 6210-01-M

Pacific Western Bancshares; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views of writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 19, 1984.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Pracific Western Bancshares*, San Jose, California; to engage *de novo* through its subsidiary Western Capital Management Corporation, San Jose, California, in the provision of investment advisory services to financial institutions, public agencies, corportations and individuals, including portfolio investment advice, general economic information and studies, and the development of investment policies, procedures and recommendations.

Board of Governors of the Federal Reserve System, March 23, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8382 Filed 3-28-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Public Workshop; Anesthetic Management of the Pediatric Dental Patient

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming public workshop on appropriate use of drugs and methods for managing the pediatric patient requiring dental procedures.

DATE: The workshop will be held on May 22, 8:30 a.m. to 5 p.m. and on May 23, 8:30 a.m. to 12 m.

ADDRESS: The meeting will be held at the National Institutes of Health (NIH), Bldg. 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: James Hannan, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN-160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3500.

SUPPLEMENTARY INFORMATION: Managing pediatric patients needing extensive dental treatment who are occasionally uncooperative is a persistent problem in dental therapy. Pediatric patients may respond erratically to sedative type drugs, and administering nitrous oxide is often difficult, if not impossible. Various psychological and physical management techniques have been developed and used with varying degrees of success. Pharmacologic management using narcotic analgesics has remained a popular method among some dentists in dealing with the pediatric patient. However, potential life threatening adverse reactions have been reported when narcotics are administered for sedation. The meeting will provide a forum to discuss: (1) The various management techniques for the pediatric dental patient; (2) possible guidelines for the use of conscious sedation, deep sedation, and general anesthesia in the pediatric dental patient; and (3) monitoring for possible problems when drugs are administered to the pediatric

patient and the proper preparation for managing emergency situations.

Requests for information on the meeting should be directed to James Hannan (address above).

Dated: March 23, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-8367 Filed 3-28-84; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of Disapproval of a Pennsylvania State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on May 1, 1984, in Philadelphia, Pennsylvania, to reconsider our decision to disapprove Pennsylvania State Plan Amendment 83-11.

DATE: Requests to participate in the hearing as a party must be received by April 13, 1984.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearings Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland, 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a Pennsylvania State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Pennsylvania's request to place restrictions on payment to skilled nursing facilities (SNFs) for services furnished to Medicare-eligible recipients violates Section 1902(a)(23) and 1902(a)(13)(A) of the Social Security Act and Medicaid regulations at 42 CFR 431.51 and 42 CFR 440.240. Under the State's proposed plan amendment, the State would deny payment for the first 100 days that Medicaid eligible recipient receives services in a SNF that does not participate in medicare. For SNFs that are Medicare-participating, no payment would be made for the first 20 days and only the Medicare SNF coinsurance amount would be paid for days 21 through 100; if care is furnished in a non-Medicare certified bed in such a facility, no payment would be made for the first 100 days.

Section 1902(a)(23) and Medicaid regulations at 42 CFR 431.51 require a State plan to ensure that recipients may obtain services from any qualified provider that undertakes to provide the services. HCFA has determined that the proposed amendment would violate section 1902(a)(23) in that recipients eligible for both Medicare and Medicaid would be denied admission to certain qualified facilities of their choice as a result of the State's policy of not providing full reimbursement.

Regulations at 42 CFR 440.240 require that the services available to a categorically needy recipient cannot be less in amount, duration, or scope than those available to a medically needy recipient, and that the services available to either the categorically needy group or to a covered medically needy group must be available equally in amount, duration, and scope for all recipients within the group. The proposed amendment would result in Medicare-eligible recipients receiving less coverage for SNF services than would other recipients. Therefore, HCFA has determined that the proposed amendment would be in violation of the comparability of services requirement, in regulations at 42 CFR 440.240.

Finally, section 1902(a)(13)(A) requires that States make payment for long-term care facility services through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers to provide services in conformity with applicable State and Federal laws, regulations, and quality and safety standards. HCFA has determined that the proposed amendment is in violation of section 1902(a)(13)(A) of the Act because, by denying payment for the first 100 days that a Medicare-eligible Medicaid recipient receives services in a SNF that does not participate in Medicare, it would preclude reimbursement of reasonable and adequate payment rates as required by the statute governing payments to medicaid providers.

The notice to Pennsylvania announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. Gerald F. Radke,

Deputy Secretary for Medical Assistance, Department of Public Welfare

Harrisburg, Pennsylvania 17120

Dear Mr. Radke:

This is to advise you that your request for reconsideration of the decision to disapprove Pennsylvania State Plan Amendment 83-11 was received on February 23, 1984. You have requested a reconsideration of whether this plan amendment, which would place restrictions on payment to skilled nursing facilities for services furnished to Medicare-eligible recipients, conforms to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on May 1, 1984, at 10 a.m., in the Third Floor Conference Room, 3535 Market Street, Philadelphia, Pennsylvania 19104. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk be reached at (301) 594-8261.

Sincerely yours,

Carolyne K. Davis, Ph.D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: March 21 1984.

Carolyne K. Davis,

Administrator; Health Care Financing Administration.

[FR Doc. 84-8474 Filed 3-28-84; 8:45 am]

BILLING CODE 4120-03-M

Social Security Administration

Transitional-Employment Training Demonstration Program: Announcement of the Availability of Grant Funds

The Acting Commissioner of Social Security announces that applications will be accepted for grants to support the development and operation of programs providing transitional-employment training services to mentally retarded recipients of Supplemental Security Income (SSI). These grants are authorized under section 1110(a) of the Social Security Act, as amended. This announcement describes the nature of the grant activities and grantee (grant recipient) requirements, and gives notice of the anticipated availability of Fiscal Year 1984 funds in support of the proposed activities.

Program Purpose

The grants announced here are intended to promote development of transitional-employment training. The grants form part of a demonstration and research program that will provide experience with transitional-employment training programs for mentally retarded SSI recipients and information about the effects of such programs on long-term employment and the receipt of SSI benefits.

These objectives will be pursued through the combined efforts of the grantees and an independent research contractor who has already been selected by the Social Security Administration (SSA). Grantees will be reponsible for planning their transitional-employment training programs, providing a range of services, collecting research data from and about participating individuals, and maintaining data on program operations. The research contractor will document the services provided by grantees, evaluate the impact of services on participants, and analyze the cost-effectiveness of service.

Transitional Employment and Training Model

Grantees under this demonstration must offer programs which serve a specific population, provide a range of services conforming to a general intervention model specified in the detailed guidelines for applicants, and offer certain organizational strengths.

Population to be Served. The population to be served by the transitional-employment training program operators consists of mentally retarded SSI recipients between the ages of 18 and 40. Grantees will conduct outreach activities with referral agencies and/or individual potential participants to encourage participation.

Grantees will be expected to (1) screen individuals and evaluate their potential to be trained and placed in competitive employment; and (2) determine the appropriate services to be provided to the individuals. The sample of individuals actually enrolled in demonstration programs will therefore be drawn from a subset of the full population of mentally retarded SSI recipients between the ages of 18 and 40.

Service Model. The demonstration is intended to test the effects of transitional services to help retarded individuals obtain and retain permanent employment in the competitive job market. Under the service model to be tested in this demonstration, the grantee will:

1. Provide participants with training in specific vocational skills (for example, attendence, time management, production, social interaction, and following directions). Grantees must provide such training at least primarily, if not entirely, in ordinary work environments among non-retarded co-workers.

2. Place participants in competitive jobs with the potential for permanent employment.

3. Provide post-placement support and follow-up as needed to promote job retention.

Grant guidelines contained in the application kit explain the component services that the grantees must provide to conform to the service model and the latitude that is left to the grantees for designing their own particular programs.

The demonstration focuses on a *transitional* service model, rather than a model which implies a permanent or long-term support role to maintain employment of retarded individuals. Grantees will be expected to ensure that all the services described above are provided to each participant as necessary. The total intervention for each participant under the demonstration project is expected to vary from a few months to a year.

Demonstration Scale and Duration. Grant awards are expected to be issued in the spring of 1984 and will be for a maximum period of two-and-a-half years. The grant period will include an initial planning period of up to five months, the period of full program operation, and a period for orderly phase-out of program operations supported by grant funds. It is anticipated that demonstration participants would be enrolled over the first six to nine months of operations, beginning in October 1984.

Given the research requirements for adequate sample size aggregated across all demonstration grant programs, each grantee will be expected to provide services for a substantial number of participants. It is presently anticipated that each grantee will enroll and provide services to between 30 and 100 participants over the course of the demonstration, and that the grantees will conduct outreach activities to generate the desired level of volunteers from among the population potentially eligible for participation.

Organizational Eligibility Requirements. Grants may be awarded to State or local governments and public or private nonprofit organizations or agencies. Applications will also be considered which include cooperative arrangements with other service operators in order to meet the enrollment target of 30 to 100 participants. Grant applicants should be able to demonstrate substantial experience in providing employment-related services to the mentally retarded. They should also be able to demonstrate the financial stability and organizational resources necessary to develop and manage the type of project described here. One condition of being awarded a grant will be a commitment on the part of the grant applicants to cooperate with the research contractor in conducting the demonstration programs. The applicants must also collect and provide data to the research contractor in accordance with specifications set forth in the guidelines provided to grant applicants and in subsequently developed data collection procedures.

Research-Related Requirements

Although grants are intended to assist grantees in providing services, each grantee will also be expected to accommodate the research objectives of the overall project activity and to cooperate fully with the research contractor in achieving evaluation objectives. Grantees will be expected to: (1) adhere to their proposed service plans as approved by SSA; (2) maintain detailed data on resource use and costs, programs services and placements provided to participants, and intake screenings and assessments of demonstration participants; (3) provide the resulting data to the research contractor through an established reporting procedure; (4) adhere to the policies and procedures established for assessing the abilities of participants and selecting participants; (5) adhere to

the policies and procedures established for data collection; and (6) participate in periodic meetings and interviews with the research contractor's staff and representatives of the other demonstration grantees.

Availability and Duration of Funding

SSA anticipates allocating a total of $2.1 million for the transitional-employment training demonstration grants among 5 to 9 grantees. These figures are intended to provide some guidance as to the magnitude of grantee programs which will be feasible, but they are subject to change. Grant awards will be issued for the full period including the planning, operation, and phase-out of the project. Actual award of grants is contingent on availability of funds.

The Application Process

1. *Availability of application forms.* Application kits which contain the prescribed application forms and detailed program guidelines are available upon request. Requests for application kits should be directed by mail or telephone to Social Security Administration, Division of Contracts and Grants Management, OMBP, Grants Management Branch, Dogwood West Building, First Floor, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207. Telephone (301) 594–0284, Lawrence H. Pullen, Chief, Grants Management Branch.

When requesting an application kit, the applicant should request a kit for grants under section 1110 of the Social Security Act and refer to this announcement to ensure receipt of the proper application.

2. *Additional Information.* For questions concerning project development, please contact Dr. Aaron J. Prero, Office of Research, Statistics, and International Policy, OP, SSA, Room 2–0–5 Annex Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–6594 or 594–6591.

3. *Additional Submission.* To be considered for these section 1110 grants, all applications must be submitted on the standard forms provided by the Division of contracts and Grants Management. The application shall be executed by an individual authorized to act for the applicant agency and to assume for the agency the obligations imposed by the terms and conditions of the grant.

4. *Grantees Share of the Project Costs.* Grant recipients receiving assistance to conduct section 1110(a) projects are expected to contribute towards the project costs. Generally, contributing 25 percent of the total cost of the activity is considered acceptable. No grant will be awarded that covers 100 percent of the project's costs.

5. *Application Consideration.* Applications are initially screened for their relevance to this announcement. If judged irrelevant, the applications are returned to the applicants. Relevant applications are reviewed and evaluated by a review panel of not less than three experts. A written assessment of each application is made.

6. *Application Approval.* Following the approval of the applications selected for funding, grant awards will be issued within the limits of Federal Funds available. The grant awards will be issued in August 1984. The official award document is the "Notice of Grant Award." It will provide the amount of funds awarded, the purpose of the award, the budget period for which support is given, the total project period for which support is comtemplated, and the total grantee participation.

Criteria for Review and Evaluation of Application

Competing applications will be reviewed and evaluated against the following criteria:

1. Do the qualifications of the project personnel indicate they are capable of competently performing their assigned tasks? Are the assignments of responsibility for portions of the project and the lines of authority within the organization appropriate for the proposed work? (25 points)

2. Do the applicant's current organization and organizational plan provide adequate facilities, resources, and experience to plan, conduct, and complete the project? Does the organizational plan indicate sufficient experience in serving the target population or clearly related experience? (15 points)

3. Does the design of the applicant's project promise to provide an adequate test of the service model? Have plans been presented to deal with all required aspects of the demonstration project? Are details of the planned services realistic elaborations of the basic service model? Do plans for collection of data adhere to program objectives? (40 points)

4. Is the budget detailed with justifications and explanations for the requested amounts? Are the costs reasonable and adequately described? (10 points)

5. Do project plans clearly define the work to be undertaken in each of the project phases: planning, operations, and phase-out? Is adequate detail presented concerning how the work in each of these major phases will be scheduled and performed? (10 points)

Closing Dates

The closing date for receipt of applications in response to this announcement will be (insert date 60 days following the date of this notice).

Applications may be mailed or personally delivered to: Social Security Administration, OMBP, Division of Contracts and Grants Management, Grants Management Branch, Dogwood West Building, First Floor, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207.

In order to be considered applications must be received by the Division of Contracts and Grants Management, Grants Management Branch, by the closing date. Personally delivered applications are accepted during normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday. An application will be considered to be received on time if mailed no later than the closing date, as evidenced by a legible U.S Postal Service postmark. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than by mailing through the U.S. Postal Service shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date. Applications which are not received on time will not be considered for funding.

Executive Order 12372 "Intergovernmental Review of Federal Programs"

These grant activities are not covered by the requirements of Executive Order 12372 relating to the Federal policy for consulting with State and local elected officials on proposed Federal financial assistance.

(Catalog of Federal Domestic Assistance Program No. 13.812—Assistance Payment—Research)

Dated: March 26, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

[FR Doc. 84–8516 Filed 3–28–84; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-84-1361; FR-1943]

Voluntary Affirmative Marketing Agreements

AGENCY: Office of Assistant Secretary for Fair Housing and Equal Opportunity (HUD).

ACTION: Notice and request for comments.

SUMMARY: HUD requests public comments to assist it in developing improvements in the Voluntary Affirmative Marketing Agreements that HUD enters into with organizations in the housing industry for further the objectives of the Fair Housing Act. HUD is particularly interested in comments concerning the stated objective of the affirmative marketing agreements and the role of Community Housing Resource Boards.

DATE: Comment due date: May 29, 1984.

ADDRESS: Interested persons are invited to submit written comments regarding this notice to the Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Ubgan Development, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should refer to the docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Nathaniel K. Smith, Director, Division of Housing and Community Development, or Deborah Seaborn-Dickens, Equal Opportunity Specialist, Office of Voluntary Compliance, Fair Housing and Equal Opportunity; Room 5242, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone: (202) 755-5992 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This Notice requests comments from the public to assist the Department of Housing and Urban Development in developing and considering improvements to voluntary agreements executed with organizations in the housing industry in furtherance of the objectives of Title VIII of the Civil Rights Act of 1968 (the "Fair Housing Act").

The Fair Housing Act provides: "It is the policy of the United States to provide, within constitutional limits, for fair housing throughout the United States". 42 U.S.C. 3601. The authority and responsibility for administering the Act is vested in the Secretary of Housing and Urban Development. Section 809 of the Act directs the Secretary, among other things, to:

> * * * call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this [Act] and his suggested means of implementing it, and [to] endeavor with their advice to work out programs of voluntary compliance and of enforcement. 42 U.S.C. 3609.

One means by which the Secretary has discharged this responsibility is by negotiating and executing voluntary affirmative marketing agreements with national associations representing major components of the housing industry, such as real estate brokers, homebuilders and real estate license commissions. Each agreement is designed to carry out a broad equal opportunity program including outreach advertising, affirmative action in employment, safeguards against racial steering, and other actions designed to ensure that housing will be marketed on an equal opportunity basis.

The national association party to an agreement commends its adoption by member affiliates at the State or local level. Upon adoption of the agreement at the local level, HUD field offices provide technical assistance, monitor progress under the agreement, and organize a citizen participation component.

There is a two-fold policy objective to HUD's voluntary compliance programs: (1) Cooperation and assistance in aiding persons, firms, agencies, and municipalities to comply voluntarily with the Fair Housing Act and HUD equal opportunity requirements; and (2) encouragement of these same parties to exceed the minimum level of legal requirements by working affirmatively to further fair housing objectives.

Voluntary affirmative marketing agreements are intended to promote institutional change on an area-wide basis. Complete equal housing opportunity cannot be achieved until the real estate and building industries, apartment housing association members, financial institutions and local governments demonstrate their acceptance of minority applicants and affirmatively promote open communities. Industry group programs play an important role in HUD's promotion of fair housing because they apply to conventionally financed housing, representing approximately 90% of the total housing market, as well as housing assisted or insured under the Department's programs.

The first national Voluntary Affirmative Marketing Agreement (VAMA) was adopted by the Board of Directors of the National Association of Realtors (NAR) at its annual convention on November 11, 1975, and was executed by HUD and NAR on December 16, 1975. A Memorandum of Understanding executed by HUD and NAR effective November 16, 1981, renewed the VAMA until September 20, 1986. The Memorandum of Understanding amended certain provisions of the VAMA and clarified the intent of other provisions. The text of the HUD/NAR VAMA is set forth in Appendix A to this Notice, and the Memorandum of Understanding is set forth in Appendix B.

The HUD/NAR VAMA is the most broadly subscribed and prominent of the national voluntary agreements. NAR Member Boards of Realtors, State Associations, and individual realtors who subscribe to the agreement on behalf of their firms, become signatories to the agreement. As of December 1983, the NAR VAMA had been adopted by 1,018 out of the total 1,974 NAR Member Boards of Realtors across the country. In addition 50 of the 51 State Associations of Realtors (including the District of Columbia) had adopted the agreement.

A key element of the HUD/NAR VAMA is the provision for appointment by HUD of a Community Housing Resource Board (CHRB) under each agreement to assist the signatory Board of realtors with any problems that may arise in the implementation of the agreement, and to assess program progress under the agreement. HUD appoints to the CHRB representatives of community organizations through the geographic area served by the signatory Board that have a substantial interest in housing and equal opportunity. The CHRB is intended to maximize communication between the housing industry and minority and women's groups of the community, and to enhance the prospects of implementation of industry group commitments made in the VAMA. The first objective requires broad minority and fair housing group representation on the CHRB. The second objective requires the most influential community representation possible, including public officials or their representatives.

Realtor firms and individual Realtors do not become members of CHRBs in their capacities as such. The Memorandum of Understanding provides the "the prerogatives of Member Board membership on a CHRB shall be determined by NAR." NAR has advised its Member Boards that neither

members of the Board nor individual Realtors should become CHRB members as representatives of a Member Board, in order to avoid an appearance of CHRB domination by realtors as well as an appearance of Board commitment to be bound by CHRB opinions or recommendations. However, NAR encourages its Member Boards to appoint liaison representatives to CHRBs. In addition, individual realtors may beome CHRB members as representatives of community groups other than a Member Board.

HUD provides funding assistance to CHRBs pursuant to regulation located at 24 CFR Part 120. As of December 1983, 589 CHRBs had been established under VAMAs adopted by NAR Member Boards of Realtors. However, a number of the established CHRBs have not commenced any substantial activity.

A similar VAMA was executed by HUD and the National Association of Real Estate Brokers (NAREB) on May 14, 1976. NAREB was formed in 1947 as an organization of Black licensed real estate practitioners who, at that time, were excluded from membership in the major national trade association. HUD undertook negotiation of a voluntary affirmative marketing agreement with NAREB in order to promote cooperation between NAR and NAREB and to expand and extend the range of minority sales experience and responsibility. A successor VAMA was executed by HUD and NAREB on August 12, 1982, to remain in effect until August 12, 1986.

Like the HUD/NAR VAMA, the HUD/NAREB VAMA is adopted at the local level by NAREB Member Boards of Realtists. The HUD/NAREB VAMA also provides for HUD appointment of CHRBs to meet regularly with signatory Boards to assist them with problems program implementation and new initiatives designed to further the purposes of fair housing and the objectives of the agreement. In practice, HUD has designated CHRBs appointed under the NAR agreement to serve the NAREB signatory Board as well in areas where both agreements have been adopted. The HUD/NAREB VAMA also provides that HUD will affirmatively seek participation of NAREB representatives to CHRBs appointed under the NAR agreement.

As of December 1983, the HUD/NAREB VAMA had been adopted by 35 local NAREB Member Boards of Realtists.

A model VAMA for homebuilders was approved by HUD and the National Association of Homebuilders on October 22, 1976. Unlike the HUD/NAR VAMA, with respect to which NAR maintains close scrutiny over content and operation because of uniform liability insurance requirements, the HUD/NAHB model VAMA, when executed by HUD and State or local homebuilder groups, may contain deviations from the national model so long as the resulting agreement is at least as comprehensive in its commitments as the national model. Builder VAMAs are applicable to all housing developed, marketed, sold or rented by the builder, whether or not HUD-assisted or HUD-insured.

The HUD/NAHB model VAMA provides for appointment by the State or local Builder Group of a Community Housing Leadership Board composed of local community leaders having a substantial interest in housing and equal opportunity. As constituted in accordance with the model VAMA, Community Housing Leadership Boards are not eligible for HUD assistance under 24 CFR Part 120. As of December 1983, 30 local home builder groups had executed a form of VAMA with HUD.

In addition, the Home Builders Association of Alabama entered into an agreement in 1974 which continues in effect and remains to date the only State-wide home builders' agreement.

The text of the HUD/NAHB model VAMA is set out in Appendix C, and the agreement with the Home Builders Association of Alabama is set out in Appendix D. Several State builder organizations currently are considering agreements similar to the Alabama agreement.

A common feature of each of the VAMAs described above provides that signatories to association voluntary agreements executed by HUD are not required to file affirmative marketing plans for individual HUD-insured or HUD-assisted projects under HUD's Affirmative Fair Housing Marketing Regulations (24 CFR Part 200, Subpart M). While this provision is not applicable, as a practical matter, to many signatories of the NAR and NAREB agreements, it is significant to builder signatories of the NAHB model or similar agreements.

Paragraph VIII of the HUD/NAR VAMA provides that representatives of the Member Board, HUD, the CHRB and a State or local human rights enforcement agency will meet annually to evaluate the effectiveness of the local agreement. It further provides that HUD and the Board shall determine whether the agreement, or some modification thereof, should be adopted for the following year. Also, where an evaluation of the agreement at any time during its term reveals that reasonable progress is not being made toward achieving its objectives, the agreement may be modified by mutual consent of the parties; where the parties are unable to agree on terms of a modification, any party may terminate the agreement.

Although Paragraph VIII by its terms contemplates modification of the local agreement at the local level, the reality is that any significant changes would be arrived at by negotiation between HUD and NAR for incorporation in the HUD/NAR VAMA. This is reflected in paragraph 4 of the Memorandum of Understanding, which provides for annual review of the effectiveness of the agreement by a joint HUD/NAR "review team" (see Appendix). The Memorandum of Understanding provides that the review team will "develop recommendations for consideration to improve the implementation of the agreement."

It is in connection with its development of recommendations for consideration with NAR and, to the extent applicable, with other national associations with whom HUD has entered into voluntary agreements, that the Department now requests public assistance. The request appears timely, in view of eight years of experience under the agreement and the continually increasing number of local Boards of Realtors that have adopted the HUD/NAR VAMA. In addition, several questions have been raised by organizations having a demonstrated interest in fair housing regarding certain provisions of the VAMA or the Memorandum of Understanding, particularly those relating to CHRBs. Some of these questions were raised in public comments on HUD's interim rule governing the disbursement of HUD assistance to CHRBs published March 25, 1982 (47 FR 12926). However, only three public comments on the interim rule were received. The Department considers it desirable to obtain a broader range of comments before developing its final rule governing CHRBs.

Accordingly, the Department solicits comments, particularly from housing industry groups (including local Boards of Realtors and individual realtor firms) that are signatories to voluntary agreements, fair housing organizations, State and local fair housing agencies, and community organizations that have participated in activities undertaken pursuant to voluntary agreements, on the matters noted below or other subjects related to voluntary affirmative marketing agreements.

Goals of VAMA

A question on which the Department solicits comment is whether the scope of

the affirmative marketing objective of the VAMA is sufficiently comprehensive.

Paragraph III of the HUD/NAR VAMA provides:

> Based on the premise that an informed choice is a free choice, the goal of this Agreement is to provide information that will enable minority buyers to make a free choice of housing location. The object of marketing is to sell; the object of Affirmative Marketing is to sell free choice.

The emphasis of this provision is on expansion of housing opportunities for minorities. This may be compared to HUD's Affirmative Fair Housing Marketing Regulations applicable to HUD-insured or HUD-assisted housing, which state their objective as the achieving of

> * * * a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion, sex, or national origin. 24 CFR 200.610.

In their implementing provisions, the regulations require a HUD program applicant to

> carry out an affirmative program to attract buyers or tenants, regardless of sex, of all minority and majority groups to housing for initial sale or rental. * * * Such a program shall *Typically* involve publicizing to minority persons the availability of housing opportunities regardless of race, color, religion, sex or national origin, through the type of media customarily utilized by the applicant, including minority publications or other minority publications or other minority outlets which are available in the housing market area (emphasis added). 24 CFR 200.620(a).

The regulation quoted above was developed in 1972. Subsequent articulations of the objectives of affirmative marketing, influenced by experience, have referred more explicitly to the requirement, in some circumstances, of special outreach to non-minorities. Thus, more recent regulations have described the target of affirmative marketing activities as those "least likely to apply." See, e.g., 24 CFR 880.601(a) (Section 8 New Construction), 882.207(a) (Section 8 Existing Housing). The Instructions for the preparation of an Affirmative Fair Housing Marketing Plan developed under the regulation provide:

> The affirmative program * * * should assure that any group(s) of persons NOT likely to apply for the housing without special outreach efforts (because of existing neighborhood racial or ethnic patterns, location of housing in the SMS, price or other factors) know about the housing, feel welcome to apply and have the opportunity to buy or rent. Instructions for Form HUD-935.2.

The implication that in some circumstances the target group for affirmative marketing outreach may be non-minorities is made explicit in HUD's Affirmative Fair Housing Marketing Handbook, which states the following example:

> A 100 unit Section 8 New Construction project is proposed for location in an *area of minority concentration*, which is 50 percent Black and 25 percent Hispanic. The tenant population of all assisted housing, including the conventional Low Income Public Housing and the four Section 8 New Construction projects already in occupancy, is also predominantly minority. Given these facts, the non-minority segment should be selected for special outreach. Since more than one minority group, e.g., Blacks and Hispanics, lives in the area of the project, outreach should also be targeted to the minority group which does not predominate, i.e., the Hispanics. Implementation of Affirmative Fair Marketing Requirements, Handbook 8025.1 REV-1, Appendix 5.

Recognition that achievement of affirmative marketing objectives may not be accomplished exclusively through outreach to minorities also has been reflected in voluntary agreements executed by HUD. For example, under the HUD/NAREB VAMA executed in 1976, signatory firms agreed to

> * * * make special outreach efforts to inform minorities of housing opportunities available in areas of majority concentration and make similar efforts to inform the majority white population of available housing opportunities located in areas of minority concentration.

(This provision was not included in the HUD/NAREB VAMA executed in August 1982.) Similarly, the State-wide voluntary agreement entered by HUD and the Home Builders Association of Alabama provides that the State Association will—

> Show evidence of sensitivity to the need for directing the marketing activity to those groups which are not likely to apply without special outreach, i.e., to racial minority groups for housing in predominantly non-minority areas; to racial majority groups for housing in integrated areas.

In commenting on whether the scope of the affirmative marketing concept should be broadened in the VAMA, commenters should focus on the particular means by which a signatory firm could achieve a broadened objective.

HUD's Affirmative Fair Housing Marketing Regulations, referred to above, focus mainly on advertising. This is an appropriate focus for an agreement or plan regarding a housing owner or rental agent who simply advertises for and receives applicants. The functions of a real estate broker include advertising, but their more important and significant activities are qualitatively different from simply advertising. Real estate brokers show homes—or, perhaps more crucially in this context, suggest homes to be shown and, by necessary implication, fail to suggest others.

In this connection, paragraph IV D. of the HUD/NAR VAMA requires signatory Boards to disseminate to their member firms suggested principles of office management as promulgated from time to time by NAR. Such principles address, among other things, "procedures to insure that prospective purchasers are made aware of an optimum number (consistent with the resources of the member firm) of available locational choices within their price and interest ranges," as well as "means of providing prospects with complete and accurate information on availability of homes, alternative methods of financing, and other facts affecting prospects' choice of location (such as schools, employment, transportation, etc.)." The suggested principles developed and disseminated by NAR cover such matters as reporting forms to record homeseeker preferences information, such as price range, location or grographic area, size and specific features, and similar characteristics of properties shown or suggested by the salesperson. See the NAR publication Affirmative Marketing Handbook (Second Edition 1983). Adoption of the suggested principles by individual signatory firms is not mandatory.

The Department is aware that it is possible for some activities purportedly undertaken in the name of racial integration to have a limiting effect on the ability of some persons to select or apply for the housing of their choice. In housing contexts more than in other areas of affirmative action, the burden of these limitations may fall on minorities. See, e.g., *Burney* v. *Housing Authority for the County of Beaver*, 551 F. Supp. 746 (W.D. Pa. 1982). The Department does not support activities that limit the free choice of any persons, majority or minority, in selecting available housing.

Addressing a related topic, Secretary Pierce recently stated:

> Setting the goals of free choice and integration in supposed opposition to each other obscures the issue rather than clarifies it. The issue is free choice, but the unavoidable fact is that the choice is not "free" when it is limited on account of race. The primary concern of our enforcement efforts must continue to be those cases where a minority homeseeker is denied the right to live in a non-segregated community. But, it is

my strong conviction that the restriction of choice is no less real—and the denial of free choice no less unlawful—when a white homeseeker is denied the choice of an integrated community. Address to Annual Convention of Board of Directors, National Association of Realtors, November 14, 1983.

The Department recognizes that the delimiting of activities which a real estate broker or sales person may undertake in furtherance of affirmative marketing objectives is not a simple proposition. Because of the critical impact of the brokers' activities on whether housing is actually made available or—as the Fair Housing Act prohibits—"made unavailable" to a prospect, the Department has been more cautious in endorsing choice-influencing activities by brokers than when undertaken by actors having a less decisive role in the housing acquisition process, such as counselling agencies.

It also must be borne in mind that the VAMA is, and will remain, a voluntary undertaking by private firms. It does not prescribe conditions for participation in HUD-insured or assisted programs but, instead, generates voluntary undertakings exceeding legal requirements in activities that, for the most part, are not financed or regulated by HUD. "[T]he success of the Agreement depends on a 'voluntary' as opposed to a 'coerced' commitment to the spirit and intent of the concept of affirmative marketing in support of equal opportunity in housing." Affirmative Marketing Handbook 7 (Second Edition 1983).

In this context it is appropriate to refer to considerations taken into account at the time of development of the original HUD/NAR VAMA, as described by NAR:

> The initial efforts by the National Association and HUD to develop a single nationwide Affirmative Marketing Agreement involved an in-depth analysis of affirmative marketing obligations then in effect as a result of judicial decision, consent decree, or voluntary agreement. The Housing Section of the Civil Rights Division of the Department of Justice was particularly involved in this analysis, not only as legal counsel to HUD, but in its own right as an agency charged with enforcement of Title VIII.
>
> The objective of this analysis was to identify those types of affirmative marketing activities that:
>
> a. Would contribute positively and significantly to the promotion of equal opportunity in housing and compliance with Title VIII, specifically;
>
> b. Would be undertaken by Boards of Realtors and Realtors at a cost that would not place them at a competitive disadvantage with those who chose not to participate in affirmative marketing;
>
> c. Would not constitute a deterrent to membership in a Board of Realtors; and
>
> d. Would not jeopardize the independent contractor status of real estate salespersons affiliated with Realtors.
>
> Particularly, the analysis was designed to assure that the affirmative marketing activities to be included in the Agreement did not involve commitments or obligations which might expose Realtors and Member Boards to serious legal liability under the antitrust laws or real estate license laws, or even under the civil rights laws themselves.
>
> Thus, as a result of this analysis, it was determined that certain provisions sometimes appearing in affirmative marketing agreements, judgments and consent decrees should be excluded, such as:
>
> a. Those requiring brokers to ignore allegedly restrictive covenants even though not declared unenforceable by the courts;
>
> b. Those requiring brokers to "refuse to deal" with financial institutions accused of "red lining" when such accusation has not been proved;
>
> c. Those requiring brokers to "refuse to cooperate" with any other broker who has not agreed to participate in an affirmative marketing program or who violates the civil rights laws;
>
> d. Those requiring brokers to engage in "affirmative steering" where the legality of such affirmative steering has not been established;
>
> e. Those requiring brokers to establish integration goals and quotas when the legality of such goals and quotas has not been determined;
>
> f. Those requiring brokers to agree on the level of their sales activities in changing neighborhoods;
>
> g. Those requiring brokers to advertise in specified media in specified amounts regardless of the advertising value of the media. Affirmative Marketing Handbook 6-7 (Second Edition 1983).

With the foregoing background and considerations in mind, the Department invites comments on whether consideration should be given to re-defining the affirmative marketing objectives of its voluntary agreements and, if so, on particular recommended means by which such objectives may be furthered by parties to the agreements.

Rental Coverage

Paragraph 11(B) of the HUD/NAR VAMA defines "Buyer" to "include, to the extent applicable, a person seeking to rent, as well as buy, residential property." However, the focus of the balance of the agreement clearly concentrates on the homeownership rather than rental market.

The HUD/NAHB model VAMA covers rental as well as sale properties developed by its signatories. In fact, many signatories of home builder agreements are developers and owners of rental properties. However, the HUD/NAHB agreement's coverage of rental properties is principally directed to initial rent-up and not to continuing rental activity.

HUD's Voluntary Affirmative Marketing Handbook (8021.1) recommends development of voluntary plans with local apartment housing councils, and Appendix J of the Handbook contains a model plan. The model plan contemplates, among other things, development of a code of fair housing practices relevant to apartment house rental standards and procedures, and development of standard rental application forms for adoption by members. Only one or two of these plans are currently active, however.

Comment is solicited as to whether more direct focus on rental markets is appropriate in voluntary agreements, and on particular ways in which such increased focus can be implemented.

Educational Programs

An important feature of the HUD/NAR VAMA is its provision for Board development of educational materials and training courses for members and for new applicants for broker membership in duties and obligations under the fair housing laws and the goals and programs of the VAMA. Historically, HUD has cooperated with NAR in the development of educational and training materials. The VAMA, accordingly, provides an institutional framework for the dissemination throughout the industry of a uniform understanding of compilance requirements and acceptable practices. It also provides a framework for continuing consultation and dialogue on these subjects between industry groups and the Department.

The Department solicits comments on means by which this aspect of the HUD/NAR relationship may be improved, and on ways in which similar functions may be implemented in other voluntary agreements.

Publication of Signatories

Section 1 of the Memorandum of Understanding describes the methods by which individual Realtor members of a signatory Board who subscribe on behalf of their real estate firms may become parties to the VAMA. That section also places strict limitations on access by anyone other than HUD to the Member Board's list of realtor subscribers, although an individual subscriber or the Member Board may volunteer the information.

This provision of the Memorandum of Understanding confirmed HUD/NAR practice since inception of the VAMA. It is based on HUD's understanding that many Realtors are concerned over possible harassment by groups opposed to the voluntary approach.

Nevertheless, this provision permitting a Member Board to prevent disclosure of names of signatory firms was criticized by commenters on the interim rule regarding CHRBs. Points made by these commenters are:

—Identification of Realtors who have made known their adherence to the principles of fair housing by subscribing to the VAMA would enhance the efforts of fair housing centers who could focus their counseling and referral services on such Realtors.

—CHRBs will have little enthusiasm for promoting the VAMA on a community-wide basis if they are not told of the level of support that real estate firms in their communities have demonstrated for the agreement by signing it.

—Inability to know which, or how many, firms in the community have subscribed to the agreement negates a CHRB's ability to exercise one of its principal prescribed functions, viz., to assess the effectiveness of the VAMA (24 CFR 120.25(a)(3); VAMA paragraph V(A)(4)).

The Department lacks information on which to judge whether the withholding of the names of firms who have become signatories to the VAMA has impeded achievement of the objectives of the VAMA, or as to whether local Boards in fact have found it desirable to withhold publication or to permit it. Accordingly, the Department solicits comments on these points, based particularly upon the experience of signatory Boards and CHRBs.

CHRB Activities

The three explicit responsibilities of a CHRB, as described in the NAR VAMA and reiterated in the "Official Commentary to the Memorandum of Understanding," are to assist the signatory Board with problems that arise in implementation of the VAMA, to assess program progress with representatives of HUD and the member Board, and to meet annually with representatives of the Department and the Member Board to evaluate the effectiveness of the Agreement. Other activities HUD has identified as appropriate for CHRBs are:

1. Making information public regarding the goals of fair housing and the VAMA.
2. Assessing community fair housing needs.
3. Expanding minority involvement in the housing industry professions.
4. Expanding public awareness of housing opportunities in the community.
5. Assisting Board representatives to negotiate with local newspapers for inclusion of a HUD-prescribed publisher's notice regarding refusal to accept real estate advertising that violates Title VIII, and the availability, on an equal opportunity basis, of all advertised dwellings.
6. Assisting the Board to negotiate with television and radio stations for public service time to promote fair housing.
7. Persuading the press to carry articles on the VAMA and the role of the CHRB.
8. Seeking air time community television and radio talk shows to discuss the VAMA and fair housing issues.
9. Providing commuinity officials with a set of recommendations to improve fair housing conditions.
10. Reviewing land use and zoning practices to determine whether they perpetuate discriminatory housing practices.
11. HUD is currently developing a base line description of the various activities conducted by a CHRB. The next step in evaluation of CHRBs is developing indicators of these activities and performance standards by which to evaluate the extent of effectiveness of a CHRB. The Department would appreciate any suggestions that would assist in the preparation of such indicators and standards.

It should be noted that CHRBs were not established with the expectation or intention that their functions would overlap those of non-profit housing centers (although such organizations are an important source of membership on CHRBs). Some commenters criticized the prohibition in HUD's interim rule on the use of HUD funds for testing activities (24 CFR 120.25(b)). The Memorandum of Understanding provides that CHRBs "will not sponsor, conduct or fund programs of real estate testing."

Responding to criticism of these limitations, Secretary Pierce wrote:

> With respect to testing and the use of testers, I believe you are aware that I am supportive of the use of testers and have so publicly testified. I also am aware that the courts have generally approved of testing as admissible evidence to prove pattern and practice of discrimination. I strongly feel, however, that CHRB activity should be viewed as a voluntary compliance effort and not as an enforcement effort. The issue is not testing, but where the activity can best take place. I believe that if CHRBs were to undertake testing programs, the cooperative nature of the Agreement would be undermined. We are promoting a voluntary agreement between the public and private sectors, and we must make every effort to increase communication and trust. I should point out, however, that the Agreement contains no prohibition which excludes from CHRB membership representatives of organizations that engage in testing or auditing; it simply states that the CHRB itself cannot undertake testing. We feel that position best serves the objectives of the Agreement. Letter of Executive Director, National Committee on Discrimination Against Housing, July 9, 1981.

A related but different question is raised by the provision of the Memorandum of Understanding which requires that if an organization becomes a party to litigation or an administrative complaint alleging violation of the Fair Housing Act or the Realtor Code of Ethics, as complainant or respondent, that organization or its representative should withdraw from the Equal Opportunity Committee of the Board or from the CHRB during tendency of the litigation or other proceeding.

Criticism of this provision has been stated as follows:

> Fair Housing centers perform a number of services for minority homeseekers to help them obtain desirable housing short of litigation. Litigation, in many cases, however, is unavoidable. It is a consequence of their work and the continuing level of housing discrimination.
>
> Fair Housing center directors and representatives of other civil rights organizations who decide to become members of Resource Boards will be "chilled" in the exercise of their duties to fully represent persons who have been discriminated against. Because we foresee no situations in which a center director would forgo filing a lawsuit or a complaint in order to stay on a Resource Board, this provision assures that few, if any, center directors will become involved in VAMA activities.

The loss of fair housing center representatives as CHRB members would seriously impair the usefulness of CHRBs. The Department solicits comments as to whether this provision of the Memorandum of Understanding has impeded CHRB participation by fair housing organizations, and as to whether Boards or CHRB members have found that CHRB participation by representatives of organizations engaged in litigation has hampered the effectiveness of CHRBs.

Paragraph VIII of the NAR VAMA agreement provides that representatives of the signatory Board, HUD, the CHRB and the State or local human rights enforcement agency will meet annually to review the effectiveness of the VAMA. However, there is no provision for CHRBs to help develop reporting forms or receive copies of the annual

evaluation reports required to be filed by the Board with HUD and NAR. Suggestions are solicited as to means through which CHRB participation in the review and evaluation process can be enhanced.

Certain CHRBs have indicated an interest in undertaking lobbying activities. HUD's position has been that in view of the status of CHRBs as essentially an instrumentality of the Department, their engaging in lobbying activities would be inappropriate. (Use of HUD-furnished funds to support lobbying activities might be particularly inappropriate. See proposed revision to OMB Circular A–122, "Cost Principles for Nonprofit Organizations," making unallowable any costs associated with lobbying and related activities, published at 48 FR 50860 (November 3, 1983). HUD's position, based on the nature of a CHRB as an entity established by the Department, extends also to activities funded from other sources.) The Department solicites comment on this question.

Multi-Board CHRBs

Questions arise regarding the utility and desirability of CHRBs which serve more than one Board of Realtors. Numerous such multi-Board CHRBs exist. However, under the Memorandum of Understanding, appointment of a multi-Board CHRB under the NAR VAMA requires the consent of NAR.

HUD believes that within geographically proximate areas, multi-Board CHRBs can be useful and advantageous. For example, a single CHRB in Dade County, Florida, serves five separate Boards. On the other hand, the Department doubts the utility of a single CHRB intended to serve an entire State. However, a State-wide association of CHRBs, whose purpose would be to share innovative programs and information and provide training on a State-wide basis in cooperation with a State-wide real estate organization, could have a separate usefulness.

The Department solicits comments on the desirability and advantages of multi-Board CHRBs.

Other Matters

The Department invites comments on other matters relating to voluntary agreements or CHRBs, including additional areas of the housing industry in which voluntary agreements in furtherance of the objectives of the Fair Housing Act should be developed and promoted.

Dated: March 23, 1984.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity.

Appendix A—Affirmative Marketing Agreement: Board of Realtors®

I. Parties

A. The undersigned officers of the ———— Board of REALTORS® (hereinafter referred to as the Board) and its individual members whose names and signatures appear in Part IX of this Agreement.

B. The U.S. Department of Housing and Urban Development (HUD) through the authorized representatives whose names and signatures appear in Part X of this Agreement.

C. The adoption of the Affirmative Marketing Agreement by REALTOR® members of a Board may be accomplished in one of two ways as is deemed most convenient by the Board from time to time.

1. The Agreement may be signed by the Board and the REALTOR® on behalf of this firm with a copy retained by each. Such Agreement would be effective without the signature of HUD.

2. The REALTOR® may notify the Board in writing that he subscribes to the Agreement on behalf of himself and his firm. In such case the Agreement would be effective without execution by either HUD or the Board.

II. Definitions

A. Affirmative marketing is defined as a program to inform the minority community of the homes listed for sale or rent by REALTORS®, of the services offered by REALTORS® in selecting a home for purchase, and of the availability of these homes and services to all buyers without regard to race, color, religion, sex or national origin.

B. Buyer is defined to include, to the extent applicable, a person seeking to rent, as well as buy, residential property.

C. Member is defined as a REALTOR® who is a signatory of this Agreement.

D. Associate is defined to mean a sales employee or a salesperson associated with a REALTOR® in an independent-contractor status.

E. Fair Housing Laws include both the 1866 Civil Rights Act, interpreted by the United States Supreme Court in Jones v. Mayer to prohibit discrimination in the acquisition or disposition of all real property, and the 1968 Fair Housing Act.

F. This Voluntary Agreement is intended to implement the congressional directive set forth in Section 809 of the 1968 Fair Housing Act: "(The Secretary of the Department of Housing and Urban Development) shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this title and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement." 42 U.S.C. 3609.

III. Goal

The goal of HUD, the Board, and the REALTOR® signatories to the Agreement is to implement through local voluntary action the policy expressed by Congress in the first sentence of the 1968 Public Housing Act: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."

Based on the premise that an informed choice is a free choice, the goal of this Agreement is to provide information that will enable minority buyers to make a free choice of housing location. The object of marketing is to sell; the object of Affirmative Marketing is to sell free choice.

IV. Program

The ———— Board of REALTORS® and the member REALTORS® who are signatories of this Agreement agree to adopt and undertake the following affirmative steps designed to implement the purposes of this Agreement.

A. Advertising

1. The Board shall, within 60 days of the date of this Agreement, and quarterly thereafter, place in a newspaper of greneral circulation in ———— one of the Affirmative Marketing Advertisements mutually agreed upon by HUD and the NATIONAL ASSOCIATION OF REALTORS®.

2. The Board shall negotiate with local newspapers and television stations for the donation of space and time for the presentation of the Board's Affirmative Marketing Advertising to the public and the publication of the recommended "Publisher's Notice," as set forth in HUD's Advertising Guidelines.

3. Each member shall include the official Fair Housing and Equal Opportunity slogan or logo in all classified advertising of six column inches or larger and in all other advertising (including billboards) where its inclusion does not significantly increase the cost of advertising. Alternatively, inclusion of the slogan or logo is not necessary in any classified advertisement where the "Publisher's Notice" referred to in the previous paragraph appears on the page containing the advertisement.

4. Each member shall display the equal housing opportunity slogan or logo in a prominent place in all brochures.

5. As requested by the Board, HUD shall provide technical assistance to the Board and to members in developing advertising techniques consistent with the objectives of this provision.

B. Posting of Signs

Each member shall display the Fair Housing Poster, which was developed jointly by HUD and the NATIONAL ASSOCIATION OF REALTORS® and which includes the Code for Equal Opportunity in Housing of the NATIONAL ASSOCIATION OF REALTORS® promulgated in May, 1982.

C. Development of Educational Materials and Training Courses

1. The Board shall develop educational materials and training courses for members.

their associates, and new applicants for broker or associate membership in the following areas:

(a) The duties, obligations and rights of REALTORS® under the Fair Housing Laws;

(b) The goals and programs of this Affirmative Marketing Agreement.

2. The Board shall have available for its members copies of the booklet entitled "Affirmative Marketing Handbook" published by the NATIONAL ASSOCIATION OF REALTORS®; the Board shall have available sufficient copies to enable each member to use the booklet in its training and orientation programs and to maintain copies in all of its offices for reference by associates as well as customers.

3. Each member shall make the booklet available to all associates, encourage them to become familiar with it, and urge them to attend and participate in the Board's Training Courses.

4. Each member shall within 60 days after the effective date of this Agreement conduct an informational program for its-sales personnel, agents and employees to inform the same of their responsibilities under this Agreement and under the Fair Housing Laws. Each member shall strongly encourage his sales personnel, agents and employees to comply with this Agreement and with the Fair Housing Laws.

D. Development of Office Procedures and Techniques to Carry Out the Purposes of this Agreement

1. Within 30 days after receipt, the Board shall disseminate to members suggested principles of office management as promulgated from time to time by the NATIONAL ASSOCIATION OF REALTORS®. Such principles shall be designed to achieve the goal set forth in Part III of the Agreement and shall address the following areas of concern:

(a) Procedures to insure that prospective purchasers are made aware of an optimum number (consistent with the resources of the member firm) of available locational choices within their price and interest ranges;

(b) A means of providing prospects with complete and accurate information on availability of homes, alternative methods of financing, and other facts affecting prospects' choice of location (such as schools, employment, transportation, etc.);

(c) Methods of eliciting opinions of minority buyers (e.g., by suggestion box, questionnaire, etc.) on ways in which real estate services to minority buyers can be improved or altered to increase Board and member responsiveness to their needs;

(d) A system of recording the names of prospects and the addresses of homes shown to prospects to enable management to monitor the performance of associates in carrying out the purposes of the Agreement.

2. Each member is encouraged to advise the Board periodically as to whether adherence to the suggested office management procedures is achieving its intended purposes and inform the Board as to any changes or innovations deemed necessary or advisable.

3. HUD shall provide technical assistance as requested by the Board in developing or in measuring the effectiveness of the above office procedures.

E. Minority Brokers, Associates and Employees

1. In order to promote equal housing opportunity within the Board and each signatory firm, and to project that image to both the general public and to the minority brokers homeseeker, the Board shall encourage minority to apply for membership through letters of invitation, accompanied by an application form, and through personal visits and telephone calls;

2. In order to promote the recruitment of minority brokers, the Board shall review its present membership policies and practices, and where necessary adopt and implement affirmative procedures, standards and criteria for the selection and admission of members which shall be nondiscriminatory and nonexclusionary in terms of race, color, religion, sex or national origin.

3. Each member shall affirmatively recruit minority salaried employees through advertising directed specifically at the minority community or through those sources likely to produce minority candidates for employment.

4. The board shall sponsor outreach and training programs to attract members of minority groups into the real estate industry as licensed real estate brokers and salespersons.

5. HUD shall assist the Board and individual members in identifying potential minority applicants and sources of recruitment for minority associates and employees.

F. Fair Housing Practices Code

The Board shall adopt the Code for Equal Opportunity in Housing promulgated by the NATIONAL ASSOCIATION OF REALTORS® in May 1972.

G. Affirmative Marketing for Homesellers

In order to promote awareness by homesellers of the requirements of the Fair Housing Laws and the equal housing opportunity policy of those signing this Agreement, each member shall encourage all associates to distribute copies of the flyer entitled "What Everyone Should Know about Equal Opportunity in Housing" to all clients at the time the listing contract is signed.

H. Authorization of Expenses

The Board shall authorize reasonable expenditures as needed to appropriately carry out the Basic Program as set forth herein above.

V. Implementation

A. The Board, with the cooperation of the REALTORS® who are signatories to this Agreement, will establish an Equal Opportunity Committee which will have the following responsibilities.

1. To explain and publicize the purposes and provisions of this Agreement to all member REALTORS® (and through them to their associates) in order to achieve the broadest possible participation in this Agreement by members.

2. To implement and monitor the progress of the Program set out in Part IV of the Agreement.

3. To receive and investigate complaints of violations of Article 10 of the Code of Ethics and Points 1 through 4 of the Code for Equal Opportunity of the NATIONAL ASSOCIATION OF REALTORS® (see Part IV, B) and to refer such complaints to the Professional Standards Committee.

4. To meet at least semi-annually with representatives of HUD, the State or local human rights agency, and representatives of the Community Housing Resources Board (see below) to assess progress.

B. Each member will be responsible for implementing and monitoring the progress of his firm's affirmative marketing procedures as described in the Program in Part IV of this Agreement.

C. HUD will designate specific Regional or Area office personnel who will provide the Board, members, and the Board's Equal Opportunity Committee with technical assistance, information, and advice necessary to implement this Agreement.

D. HUD, in conjunction with State and/or local human rights agencies, will organize a Community Housing Resources Board consisting of representatives of community organizations throughout the metropolitan area that have a substantial interest in housing and equal opportunity. The Community Housing Resources Board will meet regularly with the Board to assist it with any problems which may arise in the implementation of this Agreement.

VI. Authorization of Expenditures

The Board shall authorize expenditures as needed to appropriately carry out the program set forth in this Agreement.

VII. Acceptance of Agreement by HUD in lieu of Individual Affirmative Fair Housing Marketing Plans

Where any signatory to this Agreement hereafter is an applicant for participation in FHA programs and is subject to the requirements of the HUD Affirmnative Fair Housing Marketing Regulations or the Joint HUD–VA Nondiscrimination Certification, said signatory shall, in lieu of submitting an individual affirmative marketing plan or executing the Nondiscrimination Certification, reference his participation in the program described in the Agreement.

VIII. Duration

This Agreement shall be effective for five years upon approval by the Assistant Secretary for Fair Housing and Equal Opportunity of HUD. During the sixty days prior to the expiration of each year, representation of the Board, the State or local human rights enforcement agency, the Community Housing Resources Board and HUD will meet to evaluate the effectiveness of the Agreement. HUD and the Board shall determine whether the Agreement, or some modification thereof, should be adopted for the following year. However, where an evaluation of the Agreement at any time during its term reveals that reasonable progress is not being made toward achieving its objectives, the Agreement may be modified upon mutual consent of the parties. Where the parties are unable to agree upon

the terms of a modification, any party may terminate the Agreement.

IX. Adoption and REALTOR® Signatories

Adopted by the Board of Directors of the _____ Board of REALTORS® _____ at a special meeting held on _____, _____ (year), at _____ and certified as true and correct copy.

For the _____ Board of REALTORS®:

_____

Executive Secretary

_____

President

For Member Firms:

Firm Name

_____

Firm Representative

_____

X. HUD Signatories

This Agreement has been approved by the Area or Insuring Office Director by _____, on _____, _____ (year), at _____ by the Regional Administrator, by _____ on _____, _____ (year), at _____: and by the Assistant Secretary for Fair Housing and Equal Opportunity, by _____ on _____, _____ (year), at _____.

This Affirmative Marketing Agreement was jointly approved by Representatives of the Department of Housing and Urban Development and the NATIONAL ASSOCIATION OF REALTORS® at Washington, D.C. on December 16, 1975.

This document is supplemented by a Memorandum of Understanding signed jointly by Representatives of the Department of Housing and Urban Development and the NATIONAL ASSOCIATION OF REALTORS® at Miami Beach on November 16, 1981.

Appendix B—Memorandum of Understanding

The purpose of this memorandum of understanding between the Department of Housing and Urban Development and the NATIONAL ASSOCIATION OF REALTORS® is to renew the REALTORS® voluntary Affirmative Marketing Agreement and to clarify the meaning and intent of certain specified provisions of said Agreement, as amended by mutual agreement of May 7, 1978.

It is hereby understood and agreed by and between the Department of Housing and Urban Development and the NATIONAL ASSOCIATION OF REALTORS® that existing and future Affirmative Marketing Agreements adopted by them and by their Members, State Associations and Member Boards shall be constructed as follows:

1. Signatories

Paragraph 1. A of the Agreement provides that REALTORS® who subscribe on behalf of their real estate firms are parties to the Agreement. It is understood that the responsibilities of a member Board with respect to voluntary subscription are as follows:

A. A Member Board which has adopted the Affirmative Marketing Agreement will maintain a current list of all REALTORS® who have subscribed to the Agreement on behalf of their real estate firms. This list shall be made available for review by the HUD Assistant Secretary for Fair Housing and Equal Opportunity or his designated representative upon request, provided, however, that the list of Agreement signatories shall not be reproduced or disseminated by HUD without written approval of the Member Board and the NATIONAL ASSOCIATION OF REALTORS®. Access to the list shall be made available to parties other than HUD only on such terms and conditions as are mutually agreed upon by HUD and the Board.

B. A Member Board shall explain and publicize the purposes and provisions of this Agreement to all REALTORS® and through them to their sales associates, in order to achieve broad participation in this Agreement by Members and to encourage member firms to sign the agreement.

C. Designated officials of HUD shall have the right, in person or in writing, to verify names of REALTORS® asking waiver under Article VII from HUD program participation requirements, and the Board shall respond to such requests for verification.

D. Article I, Paragraph C of the Agreement is deleted and the following procedure approved by the NATIONAL ASSOCIATION OF REALTORS® Board of Directors on May 7, 1978 and approved by HUD and submitted in lieu thereof:

"The adoption of the Affirmative Marketing Agreement by REALTOR Members of a Board may be accomplished in one of two ways as is deemed most convenient by the Board from time to time.

a. The Agreement may be signed by the Board and the REALTOR® on behalf of his firm with a copy retained by each. Such Agreement would be effective without the signature of HUD.

b. The REALTOR® may notify the Board in writing that he subscribes to the Agreement on behalf of himself and his firm. In such case the Agreement would be effective without execution by either HUD or the Board.

2. Outreach and Training

Paragraph IV. E of the Agreement defines responsibility for outreach and training programs to attract minority groups into the real estate industry as licensed real estate brokers and salespersons. To this end, the National Association will participate in such national "Fair Housing Conference" as may be convened by HUD to discuss programs designed to promote the concepts and objectives of this Agreement.

3. Review Meetings

The HUD Secretary and the National Association President, or their respective designated representatives, will meet at least quarterly for the purposes of continuing dialogue and prompt resolution of problems or concerns in application or interpretation of the Agreement.

4. Annual Reviews

Paragraph VIII of the Agreement provides that representatives of the Member Board, HUD, the Community Housing Resource Board and the state or local human rights enforcement agency will meet annually to review effectiveness of the Agreement. In this regard, HUD and the NATIONAL ASSOCIATION OF REALTORS® will work jointly to develop a mutually acceptable "annual evaluation of effectiveness report" form to be used to evaluate effectiveness of the Agreement. All signatory Member Boards will annually complete and submit said "annual evaluation of effectiveness report" form to both HUD and the NATIONAL ASSOCIATION OF REALTORS®. In addition, HUD and the NATIONAL ASSOCIATION OF REALTORS® will also review effectiveness of a representative sample of Agreements through procedures defined below, but not necessarily through on-site visits. Therefore, it is understood:

A. That a review team of three members designated by the HUD Secretary and three members designated by the National Association President would be responsible for conducting the annual review of effectiveness of the Affirmative Marketing Agreement;

B. That the review team, taking into consideration current market conditions and fiscal considerations, will annually review a minimum of 25% of the Agreement in force at that time as an indicator of nationwide progress, based on a percentage of small Boards and large Boards which have voluntarily adopted the Agreement and based on a sampling of geographic locations and length of time since adoption.

C. That the review team determine the intervals at which such evaluations will be done and issue joint advance notification of intent to evaluate selected Member Boards;

D. That the review team will receive and analyze results of the evaluations and prepare at least annually a summary report for the HUD Secretary and the President of the NATIONAL ASSOCIATION OF REALTORS®.

E. That the review team will develop recommendations for consideration to improve the implementation of the Agreement.

5. State Association Adoption

Although the Agreement is designed for adoption by Member Boards, many State Associations have also adopted the Agreement as part of their leadership role within the state. It is understood that the responsibilities listed below define responsibilities of a State Association upon adoption:

A. The State Assocation shall establish an Equal Opportunity Committee to explain and publicize the purposes of the Agreement to Member Boards, promote adoption by nonsignatory Boards and make the Agreement available to REALTORS® in unassigned territory.

B. The State Association shall disseminate and encourage the use of the suggested principles of office management and other education and promotional materials by REALTORS® in unassigned territory as provided by the NATIONAL ASSOCIATION

OF REALTORS®, pursuant to Paragraph IV, D of the Agreement.

C. The State Association shall conduct at least two educational seminars annually on Fair Housing Laws and implementation of the Affirmative Marketing Agreement pursuant to Paragraph IV, C of the Agreement.

D. The State Associations shall collect data on program implementation within the state and provide an annual report, identifying successes and examples of innovative implementation and/or areas where assistance is required, to the NATIONAL ASSOCIATION OF REALTORS®, through the State Association Equal Opportunity Chairman to the Enlarged Equal Opportunity Committee.

E. The State Association shall adopt the Code for Equal Opportunity in Housing, and secure and disseminate Fair Housing posters for display in the offices of REALTORS® in unassigned territory.

F. Pursuant to Paragraph IV, A the State Association is not expected to place advertising in every general-circulation newspaper in the state to fulfill its advertising responsibilities. Rather, the State Association shall place one of the approved Affirmative Marketing Advertisements in either the largest general-circulation newspaper in the state or the genral-circulation newspaper serving the city in which the State Association Headquarters is located.

6. Community Housing Resource Boards

As provided in Paragraph V, D, the major purpose and responsibility of a Community Housing Resource Board is to assist the Member Board with any problems which arise in implementation of the Affirmative Marketing Agreement. HUD is responsible for organizing the Community Housing Resource Board, for appointment of members and for insuring that its responsibilities are fulfilled. The prerogatives of Member Board membership on a Community Housing Resource Board shall be determined by the NATIONAL ASSOCIATION OF REALTORS®. In any event, the Member Board shall have the right to be present at all Community Housing Resource Board meetings for the purposes of facilitating liaision. It is contemplated that Member Boards will make reasonable efforts to assist the Community Housing Resource Board in identifying meeting facilities and providing clerical support; however, the Member Board is under no obligation to provide other monetary support to the Community Housing Resource Board.

It is HUD's responsibility to insure a balanced respresentation on the Community Housing Resource Board, which provides equal voice of all of the groups and interests involved in it, such as representatives of state and local agencies of government, civil rights and fair housing groups, and civil organizations which have a substantial interest in housing and equal opportunity.

A multi-Board Community Housing Resource Board, shall be encouraged where practical and economical, but shall not be established without mutual agreement of HUD and the NATIONAL ASSOCIATION OF REALTORS®.

The Community Housing Resource Board will not sponsor, conduct or fund programs of real estate testing.

Any party to litigation or complaints alleging violation of the Federal Fair Housing Law or the REALTORS® Code of Ethics, as from time to time amended, shall immediately withdraw as a member of the Member Board Equal Opportunity Committee or as a member of the Community Housing Resource Board. When the litigation or complaint is resolved, appointment and service on the Equal Opportunity Committee or Community Housing Resource Board may be reinstated.

In support of Paragraph IV, A HUD and members of the Community Housing Resource Board shall assist the Member Board in negotiations with local newspapers for publication of the recommended Publisher's Notice as set forth in HUD's Advertising Guidelines. HUD and representatives of the Community Housing Resource Board shall assist the Member Board in Negotiations with television and radio stations for donations of time to present public service announcements on fair housing and equal opportunity.

7. Community Housing Resource Board Document

HUD and the NATIONAL ASSOCIATION OF REALTORS® will work jointly to develop a mutually acceptable and jointly published document as a reference source and guidebook on organization, appointment and operation of a Community Housing Resource Board.

8. Public Awareness

The words "REALTORS® Guide to Practice Equal Opportunity in Housing" will be deleted from Paragraph IV, G. Said wording was removed from the Agreement through action of the NATIONAL ASSOCIATION OF REALTORS® Board of Directors on May 7, 1978, and approved by HUD. A brochure entitled "What Everyone Should Know about Equal Opportunity in Housing" is available from the National Association for use in fulfilling this responsibility.

Agreement Renewal

The Voluntary Affirmative Marketing Agreement approved by the NATIONAL ASSOCIATION OF REALTORS® Board of Directors on November 11, 1975, and jointly approved by representatives of the Department of Housing and Urban Development and the NATIONAL ASSOCIATION OF REALTORS® on December 16, 1975, will remain in full force and effect, including revisions in Paragraphs I, C and IV, G specified herein, until September 20, 1986, in accordance with provisions of Paragraph VIII as clarified in this document. The Memorandum of Understanding will be attached to Agreements voluntarily adopted by Member Boards and State Associations.

Signed at ——, this —— day of October, 1981, effective September 20, 1981.

For the NATIONAL ASSOCIATION OF REALTORS®

John R. Wood,
President.

Jack Carlson,
Executive Vice President.

For the U.S. Department of Housing and Urban Development

Samuel R. Pierce,
Secretary.

Antonio Monroig,
Assistant Secretary.

Appendix C—Voluntary Affirmative Fair Housing Marketing Agreement

(For Voluntary Use by Members of The National Association of Home Builders)

This Agreement, effective as to the parties hereto respectively on the date executed by said party, by and between the United States Department of Housing and Urban Development (hereinafter referred to as "HUD"); any signatory to the original or a counterpart of this Agreement (hereinafter referred to as "Builder") all of whom shall constitute the Builder Group known as ———— (hereinafter referred to as the "Builder Group").

Witnesseth

WHEREAS, Title VIII of the Civil Rights Act of 1968 (hereinafter referred to as the "Act") declares that: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States," and Section 808 thereof vests authority and responsibility for its administration in the Secretary of Housing and Urban Development; and

WHEREAS, voluntary compliance activities are mandated by Sections 808 and 809 of the Act, and in particular Section 808 requires the Secretary of Housing and Urban Development to "cooperate with and render technical assistance to federal, state, local, and other public and private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices."; and

WHEREAS, Section 808 of the Act states: "The Secretary of the Department of Housing and Urban Development shall call conferences of persons in the housing industry and other interested parties . . . and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement.";

WHEREAS, it is the belief of HUD and the National Association of Home Builders (NAHB) that ". . . the policy of the United States to provide, within constitutional limitations for fair housing throughout the United States, . . ." can best be carried out with ". . . programs of voluntary compliance and of enforcement . . .;" therefore, HUD and the NAHB have developed this form of Agreement and have agreed that parties hereto who comply with the provisions of this Agreement are and shall be in compliance with the Act.

NOW THEREFORE, in consideration of the premises and mutual promises and convenants hereinafter set forth, the parties hereto agree as follows:

Section One—Definition

For the purpose of this Agreement the term "Affirmative Marketing" means, a program to inform the community of the availability of housing and services rendered by Builders, to all prospective home buyers and renters, without regard to race, color, religion, sex or national origin, as vested in the Secretary of the Department of Housing and Urban Development by Section 808 of the Act. The purpose of this Agreement is to implement a "Voluntary Affirmative Fair Housing Marketing Program" as provided for and in compliance with the Act (hereinafter referred to as the "Program").

Section Two—Application

The provisions of this Agreement shall apply to all residential housing constructed, marketed, sold, or rented by Builder except that nothing in this Agreement shall apply to any residential housing constructed, marketed, sold, or rented by Builder prior to the effective date of this Agreement. Such effective date shall be the latest date of execution by the Builder or HUD.

Section Three—Voluntary Affirmative Fair Housing Marketing Program

A. Advertising and Public Information

1. Builder Group shall develop and maintain a program of public information to inform the entire community of the Voluntary Affirmative Fair Housing Marketing Program.

2. Builder shall include the official Fair Housing and Equal Opportunity logo, slogan, or statement in all brochures, pamphlets, posters, billboards, and classified advertising of four column inches or larger, as suggested in HUD's Advertising Guidelines for Fair Housing. Alternatively, inclusion of the slogan or logo is not necessary in any classified advertisement where there exists a "Publishers Notice."

3. Whenever human models are depicted in display advertising campaigns, Builder shall attempt to reasonably represent both majority and minority groups so as to indicate receptivity to racial inclusiveness in the housing marketing area(s).

4. When requested, HUD shall provide technical assistance to Builder Group and to Builder in developing advertising and public information tecniques, in accordance with HUD's Advertising Guidelines for Fair Housing.

5. Builder shall maintain a record of advertising that will demonstrate efforts to comply with this Agreement.

B. Fair Housing Posters

Builder will display and maintain the HUD Fair Housing Poster at any place of business where a dwelling is offered for sale or rental, including model houses. Builder will prominently display the Fair Housing Poster so that it is readily apparent to all persons seeking housing accommodations or other services rendered by Builder. For purposes hereof "Fair Housing Poster" means the poster prescribed by HUD for display by persons subject to Section 804–806 of the Fair Housing Act of 1968.

C. Housing Market Area(s) Analysis

1. The HUD Area or Insuring Office shall supply Builder Group an identification of the minority groups whose housing opportunities the parties seek to increase, by cost and kind of housing.

2. Builder shall provide for each project development quarterly reports to the Builder Group or the HUD Area or Insuring Office, at Builder's option, containing a breakdown, by the categories supplied by HUD as set forth in paragraph C.1. hereof, in accordance with HUD procedures for the gathering of necessary data and on model forms established by HUD.

D. Builder Group shall develop a monitoring system in order to receive information from Builder.

E. Builder Group shall submit a report to HUD on a quarterly basis to determine progress in achieving the purpose of this Agreement, including the following:

1. The sales and rental totals of all properties reported to it by members by the group categories identified in paragraph C hereof.

2. A description of all actions in furtherance of this Agreement taken by the local Builder Group during the reporting period.

Section Four—Implementation of the Program

A. Undertakings by Builder Group

Builder Group shall establish an Equal Opportunity Committee consisting of Builders who are signatories to this Agreement which shall have the following responsibilities:

1. To administer and implement the Program as set forth in Section Three of this Agreement as required by the Builder Group.

2. To explain and publicize the purpose and provisions of this Agreement to all Builders who have executed this form of Agreement, in order to achieve broad-based informed participation in the Program contemplated by this Agreement.

3. To meet not less than semi-annually with representatives of HUD and the Community Housing Leadership Board, hereinafter provided for, to determine progress in achieving the purpose of this Agreement.

B. Undertakings by Builder

1. Builder shall inform and train all employees regarding the Affirmative Fair Housing Marketing Program.

2. Builder shall inform the Builder Group in writing of all housing to be constructed, developed, and marketed, at least sixty (60) days prior to such housing becoming available, and shall provide adequate information for distribution by the Community Housing Leadership Board.

C. Undertaking by HUD

1. HUD shall provide to Builder Group and to Builder technical assistance on a continuing basis to aid in the compliance with this Agreement upon request by Builder Group and/or Builder.

Section Five—Community Housing Leadership Board

Builder Group shall appoint _____ individuals with the approval of HUD, which individuals shall constitute the Community Housing Leadership Board for the purpose of this Agreement.

The Community Housing Leadership Board shall be composed of local community leaders having a substantial interest in housing and equal opportunity, from industry, and the financial community and local elected and appointed officials, and other interested parties. The purpose of the Board shall be to assist Builder Group, the Builder, and HUD in carrying out the purpose of this Agreement.

Section Six—Compliance and Enforcement

A. If there is reasonable cause to believe that Builder Group is not in compliance with the basic provisions of this Agreement, the Secretary of HUD (hereinafter referred to as "Secretary"), or the Secretary's designee, may, after providing an opportunity for a fair hearing and determination of the facts, terminate the Agreement.

B. The Secretary shall provide timely notice of the hearing to Builder Group and said hearing shall be conducted in compliance with the Act and Administrative Procedure Act (5 U.S.C., Section 554 et seq.). The decision of the hearing officer shall be subject to judicial review.

C. In the event of termination of the Agreement, the obligations of Builder hereunder shall remain in full force and effect, but only to the extent that said obligations would be required by HUD's Affirmative Fair Housing Marketing Regulations. If Builder has previously applied for HUD assistance and has not yet marketed the housing applied for, Builder must, within ten (10) days from receipt of notice of termination of the Agreement, file with HUD a fully executed Affirmative Fair Housing Market Plan for such housing.

Section Seven—Conference and Conciliation on Alleged Builder Violations

Whenever there is reasonable cause to believe that Builder has failed to make good-faith efforts to fulfill its responsibilities under this Agreement, the following procedures shall be employed prior to the commencement of any action or proceedings against a Builder for any alleged violation within the scope of this Agreement occurring after its effective date:

1. The Equal Opportunity Committee of the Builder Group shall notify Builder of the area(s) of non-compliance and request appropriate corrective action.

2. The Equal Opportunity Committee shall document, in writing, the Builder's non-compliance with the Agreement and provide Builder with copies of such written documentation.

3. Builder shall have fifteen (15) business days from receipt of the written documentation of non-compliance to effectuate the corrective action and to provide written notice to the Equal Opportunity Committee shall arrange for a joint meeting with representatives of the Equal Opportunity Committee, HUD, and Builder, to discuss the steps necessary for compliance with the Agreement.

5. Following the joint meeting referred to in paragraph 4 above, the Equal Opportunity Committee shall provide Builder, in writing, a "Second Notice of Non-Compliance," stating that the Builder has fifteen (15) business days

to take appropriate action, or face termination as party to this Agreement.

6. If compliance with the Agreement is not secured within the allotted time of the "Second Notice of Non-Compliance," the Equal Opportunity Committee and HUD will jointly notify Builder, in writing, that he is terminated as a party to this Agreement, suspended as a member of the Builder Group, an no longer eligible for participation in the Voluntary Affirmative Fair Housing Marketing Program. Thereupon Builder will have ten (10) business days to present an approvable individual Affirmative Fair Housing Marketing Plan for all HUD-assisted projects.

7. By its execution hereof, Builder consents to the notification by HUD of Builder Group that a complaint has been filed against it.

Section Eight—Acceptance of Agreement in Lieu of Individual Affirmative Fair Housing Marketing Plan

When at any future time Builder is an applicant for participation in an FHA or HUD program and is subject to the requirements of the HUD Affirmative Fair Housing Marketing Regulations or the Joint HUD-VA Non-Discrimination Certification, in lieu of submitting an individual Affirmative Fair Housing Marketing Plan or executing the Non-Discrimination Certification, Builder may reference his participation in this Program, which participation shall be accepted by FHA and/or HUD in lieu of an individual Affirmative Fair Housing Marketing Plan.

Section Nine—Term

The original term of this Agreement shall expire on September 30, 1980, and shall automatically be extended for successive one-year terms thereafter unless previously terminated.

Section Ten—Termination

HUD may terminate this Agreement at any time with written notice for noncompliance herewith. Builder and/or Builder Group may terminate this Agreement at any time with or without cause by giving HUD 90 days written notice of its intent to terminate.

Section Eleven—Amendments

This Agreement may be amended only by written consent of all the parties hereto.

Section Twelve—Delegation by Secretary

Wherever the term Secretary of HUD is used herein, it shall be deemed to include and mean his designate for the administration of the Voluntary Affirmative Fair Housing Marketing Program.

Section Thirteen—Adoption and Home Builder Signatories

Adopted by the Builder Group of _____ at a special meeting held on _____, 19—, at _____, and certified as a true and correct copy.

For the _____ Builders Group.

Title _____

Date _____

By appending their signatures hereto, the following hereby become signatories to the above agreement, as of the date indicated next to their respective names, and constitute the Builder Group referred to therein.

Date	Builder

(Additional names may be added on plain paper and attached to this Agreement.)

Section Fourteen—HUD Signatories

This Agreement has been accepted by the Area or Insuring Office Director by _____, on _____, 19—, at _____; by the Regional Administrator, by _____ on _____, 19—), at _____; and by the Assistant Secretary for Fair Housing and Equal Opportunity, by _____, on _____, 19—, at _____.

Appendix D—Affirmative Fair Housing Marketing Plan

1. Parties

a. The Home Builders Association of Alabama (HBAA) and their members whose names appear in Appendix A to this Agreement.

b. The Department of Housing and Urban Development through the authorized signatures appearing in Appendix B.

2. Definitions

Members of the HBAA are residential home and apartment builders, renters, and sellers doing business in the State of Alabama. Substantial portions of their units are developed and marketed under one or more of the FHA Housing Programs. These industry members are subject to the Federal Fair Housing Act of 1968.

a. The Department of Housing and Urban Development has the responsibility under the National Housing Act, as amended, for administering FHA housing programs; and, under the Civil Rights Act of 1968, for developing programs of voluntary compliance with companies in the housing industry.

b. Non-member companies, agencies and individuals may, at any time during the life of this Agreement, become members. These companies, agencies and individuals shall advise the HBAA in writing of their intention.

3. Objectives

To establish an industry and area-wide approach to the Affirmative Fair Housing Marketing Program. Effective February 25, 1972, HUD regulations (HUD Handbook 8030.2, Revised 6–30–73) required the marketing of sale and rental units covered by an FHA housing program to be carried out pursuant to a written Affirmative Fair Housing Marketing Plan. In order to develop compliance with the spirit and letter of these regulations and guidelines, and in order to fully implement the Code of Fair Housing Practices adopted by the HBAA (Appendix C), the following plan of voluntary action will be applicable to all sales and rentals of housing marketed by the member-signatories to this Agreement.

The objectives of this Affirmative Marketing Agreement are:

a. To increase substantially the number of minority residents in neighborhoods outside areas of predominantly minority concentration through advertising and other methods intended to inform minority and majority residents in the State of Alabama that all housing developed, rented and sold by Group members is available to them on an equal opportunity basis.

b. To inform the general public that, in terms of equal opportunity in housing, the State of Alabama is an open community, and to explain and promote the benefits of the Agreement to State residents.

4. Scope

The Agreement covers all residential housing developed, sold and rented by members of the HBAA or their agents, including conventionally financed housing as well as housing developed and marketed under an FHA housing program.

5. Builder Group Responsibilities

In order to carry out effectively the objectives of the Agreement, the HBAA will:

a. Delineate 23 sub-market areas for the State, and

1. The minimum goals for minority and majority sales in the State: 15%.

2. Minority and majority rental goals in the State: 15%.

b. Maintain a current list of community organizations and persons concerned with open housing to be used as referral sources in each market area. (See list of community contacts in Appendix D.)

c. Prominently display the HUD Equal Opportunity logo or slogan on all advertisements for the sale or rental of housing units.

d. Develop, sponsor and underwrite a sustained advertising campaign in the most effective media to promote the principles and meet the goals of this Agreement, and develop awareness among the State homeseeker market of the meaning of equal housing opportunity. Radio, television, billboards, and newspapers, particularly the real estate pages, will be used to reach the specific homeseeker market. Provide all media with information explaining the Agreement and the opportunities for housing in the market area on a regularly scheduled basis. Show evidence of sensitivity to the need for directing the marketing activity to those groups which are not likely to apply without special outreach, i.e., to racial minority groups for housing in predominantly non-minority areas; to racial majority groups for housing in integrated areas.

e. Sponsor an initial comprehensive advertising and public relations campaign promoting the principles and goals of this Agreement.

f. Develop advertising and publicity campaigns of the group through the twenty-five local associations.

g. Encourage the press to publish the recommended "Publisher's Notice" set forth in HUD Advertising Guidelines for Fair Housing, in their respective real estate sections.

h. Solicit and generate substantial public service advertising with mass media in furtherance of the objectives of the Agreement. News and feature stories concerning equal housing opportunities will be prepared on a regularly scheduled basis. Newspapers, including minority newspapers, will be urged to publish these stories as frequently as possible.

i. Media execution: Encourage current advertisers such as utility companies and financial institutions to use the appropriate fair housing opportunity logo and/or slogan on billboards, newspapers and other media.

j. Monitoring. A system of monitoring advertising and publicity will be developed in order to provide HUD with an evaluation of the media campaign.

k. Establish a Community Housing Resource Board in each market area composed of representatives from the minority and majority populations and other whose participation would serve to implement the goals of the Agreement. The HBAA will meet with the Resource Boards on a regular basis to (1) inform the Boards of efforts of the HBAA to implement the Agreement, and (2) draw upon the experience of the Boards to assist in accomplishing the goals of the Agreement and in solving problems as they arise. The Boards may also be called upon to provide housing counseling assistance.

l. Designate an Equal Opportunity Officer to assist in carrying out the goals of the Agreement. The Officer will train employees of member companies in the objectives and implementation of the Agreement.

m. Establish a recruitment pool and training program for minority employees of the members. Continued employment of trainees will be dependent upon successful on-the-job performance during a six-month period.

n. Authorize expenditures as needed to reasonably and appropriately carry out the programs of this Agreement, within the budget of the HBAA.

6. Individual Member Responsibilities

a. Designate a qualified official of the company as Equal Opportunity Officer.

b. Work to achieve the occupancy goals, as set forth in this Agreement for each sub-market area.

c. Inform the appropriate Community Housing Resource Board in a timely fashion of upcoming projects within its area. Provide an adequate supply of printed materials concerning the projects for distribution to the Board's constituency.

d. Insure that all newspaper advertisements will comply with HUD advertising guidelines for fair housing.

e. Insure that radio advertisements will use the "Equal Housing Opportunity" slogan. Television advertisements will use the logo or the slogan.

f. Insure that all billboards will have the logo of such size as to be clearly visible by passing motorists.

g. Insure that all site signs will have the logo of a size as to be readily seen by all visitors to the site.

h. Display the Fair Housing Poster as required by the HUD Fair Housing Poster regulation.

i. Insure that all brochures will display the logo or slogan in a prominent place.

j. Make a special outreach to encourage the majority white population to move into any developments located in racially mixed or transitional areas. The goal of this effort is to achieve a racially balanced community.

k. Maintain a nondiscrimination policy in company employment practices as required by Federal laws. Establish affirmative action numerical goals based on the minority population in the market area as well as such factors as the minimum qualifications for real estate sales personnel and brokers, the existing number of trained minority persons in the area, and the fact that training will be provided by the HBAA.

l. Solicit eligible buyers or renters referred by Community Housing Resource Boards or by the HUD Area Office.

m. Institute formal and informal training programs for all employees, in order to: 1. sensitize employees to the needs of prospective minority clients, 2. positively delineate management's policy of open housing for all persons, and 3. educate employees concerning the specific provisions and goals of this Agreement.

n. In any instance where an individual member firm uses sales personnel other than its own to sell, rent or market its units, the sales and marketing personnel will be required, as a condition of employment, to adopt and be bound by the terms of this Agreement, including the advertising guidelines set forth herein.

o. Maintain a record of advertising and outreach action taken that will demonstrate efforts employed in behalf of increasing minority group employment and housing options.

7. Community Housing Resource Board Responsibilities

a. Assist the HBAA in accomplishing the goals of this Agreement.

b. Receive and disseminate information concerning location, price, and type of housing in the area available to the community.

c. Provide housing counseling assistance as needed.

8. Reports

Each member will file with the Equal Opportunity Officer of the Builder Group, monthly sales and/or rental reports for all housing covered by this Agreement, providing a racial breakdown for sales and/or rentals, starting at the end of the first month, which will then be filed with Director, Equal Opportunity, HUD Area Office.

9. Affirmative Fair Housing Marketing Plan

This Agreement shall constitute, for a member, compliance with the Affirmative Fair Housing Marketing Plan as required by 24 CFR Part 200, Subpart M. Where such a company hereafter is an applicant for participation in FHA housing program to which 24 CFR Part 200, Subpart M applies, said company shall, in lieu of submitting an individual plan, reference its participation in the program described in the Agreement on HUD Form 935.2. Compliance with the terms of this Agreement with respect to the obligations of individual builders shall be governed by 24 CFR 200.635.

10. Duration

This Agreement shall be effective when approved by the Assistant Secretary for Equal Opportunity, HUD, and shall remain in effect for one year. However, where an evaluation of the Agreement at any time during its term reveals that reasonable progress is not being made towards achieving its objectives, the Agreement may be modified upon consent of the parties. Where the parties are unable to agree upon the terms of a modification, HUD in its discretion, may terminate the Agreement, and the obligations set forth in Paragraph 6 of the individual member shall remain in effect as to units marketed under an FHA housing program and covered by this Agreement to the same extent as if said obligations had been embodied in an individual plan filed pursuant to 24 CFR Part 200, Subpart M. Sixty (60) days prior to the date of its scheduled expiration, representatives of the HBAA and of HUD will meet to evaluate the effectiveness of the Agreement and to determine whether this Agreement, or some modification thereof, should be adopted for the following year.

[FR Doc. 84-8492 Filed 3-28-84; 8:45 am]
BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pyramid Lake Indian Irrigation Project, Nevada

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The purpose of this public notice is to change the per acre assessment rates for the operation and maintenance of the irrigation facilities on the Pyramid Lake Indian Irrigation Project, to properly reflect the actual costs for labor, material, equipment, and services. The change is from $29.00 to $30.52 per irrigable acre for non-Indian owned land and Indian owned land leased to non-Indians, and from $16.50 to $3.00 per irrigable acre for Indian owned land farmed and operated by Indians.

EFFECTIVE DATE: This notice will become effective April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Robert L. Hunter, Superintendent, Western Nevada Agency, 5533 Mark Twain Avenue, Carson City, Nevada 89701, telephone number (702) 887-3500.

SUPPLEMENTARY INFORMATION: This notice is issued under authority delegated to the Assistant Secretary for Indians Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by

Deputy Assistant Secretary for Indian Affairs (Operations) to the Area Directors in 10 BIAM 3. On November 16, 1983, the Pyramid Lake Tribal Chairman requested that the Indian assessment rate of $16.50 per acre be reviewed and changed to $3.00 per irrigable acre for the 1984 irrigation season. In 1983, the Pyramid Lake Paiute Tribe under Pub. L. 93-638 contracted with the Bureau of Indian Affairs to operate and maintain the Pyramid Lake Irrigation Project. After review and evaluation of the contract, the Bureau of Indian Affairs determined that: (1) the Indian assessment rate for the operation and maintenance of the irrigation facilities could be reduced to adequately reflect the ability of the Indians as a whole to pay; and (2) to increase the full assessment rate to reflect the full cost of operation and maintenance of the irrigation facilities. Public meetings were held on November 29, 1983, and December 13, 1983, with the Land Resource Committee of the Tribe, Tribal Council and the waterusers. A notice for the meetings was published in the local newspaper. Comments and recommendations were requested on the proposed rate change and none were received.

The notice shall read as follows:

Annual Operation and Maintenance Charges

Annual Per Acre Assessment—The annual assessment against land to which water can be delivered under the Pyramid Lake Indian Irrigation Project in Nevada for operation and maintenance of the Project, is hereby fixed at $30.52 per irrigable acre for non-Indian owned land and Indian owned land leased to non-Indians, and $3.00 per irrigable acre for Indian owned land farmed and operated by Indians.

Payment—The annual operation and maintenance assessment shall be due and payable on April 1 of each year and continued in effect thereafter until further notice. Water will not be delivered to the land until the assessment has been paid or arrangements have been made under 25 CFR Part 171.17 Delivery of Water.

Duty of Water—All water of the project is deemed a common water supply in which all irrigable lands of the project are entitled to share equally and such water will be distributed to the lands of the project as equitable as physical conditions will permit.

Walter R. Mills,

Assistant Area Director (Programs).

[FR Doc. 84-8390 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-02-M

Flathead Irrigation & Power Project, Montana; Revision of Power Rate Schedules

This notice of power rate schedule change is published under the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in 109 DM 8 and redelegated by the Assistant Secretary to the Area Director in 10 BIAM 3.

Pursuant to the provision in 25 CFR 176.59 authorizing the Area Director to pass increased power costs of the Flathead Irrigation and Power Project to the customer, the following changes are made:

A. The new rates are:

1. *Rate Schedule No. 1:*

(a) Monthly rate. 3.5 cents per kilowatt hour for all kilowatt hours;

(b) Basic Charge. $5.00 per month rural, $3.00 per month within incorporated municipalities. All kilowatt hour charges to be in addition to basic charges;

2. *Rate Scheduled No. 4:*

(a) Energy—3.5 cents per kilowatt hour for first 18,000 kilowatt hours, 2.5 cents for additional kilowatt hours;

(b) Demand—$3.50 per kilowatt.

3. *Rate per season or fraction thereof:*

(a) $10.00 per horsepower connected; 2.5 cents per kilowatt hour for all kilowatt hours used; the minimum connected horsepower charge will be $50.00

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 84-8444 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Federal Minerals Exchange, Maricopa, Pima, Pinal, and Yavapai Counties, Arizona; Realty Action

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action exchange, Federal Minerals in Maricopa, Pima, Pinal, and Yavapai Counties, Arizona.

SUMMARY: The following described Federal mineral estate may be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716;

Gila and Salt River Meridian , Arizona

T.8 N., 10 W.,
Sec. 33: All;Q02
Sec. 34: All;
Sec. 35: All;
T. 8 N., R. 8 W.,
Sec. 1: Lots 1-4, S½;
Sec. 3: Lots 1-4, SW¼;
Sec. 4: Lot 1-4, S½;
Sec. 6: Lots 1-6, E½SW¼, SE¼;
Sec. 9: All;
Sec. 10: W½, S½SE¼;
Sec. 11: All;
Sec. 12: All;
Sec. 13: All;
Sec. 14: All;
Sec. 15: All;
Sec. 21: All;
Sec. 22: E½, W½W½, NE¼NW¼;
Sec. 23: All;
Sec. 24: All;
Sec. 25: All;
Sec. 26: All;
Sec. 27: All;
Sec. 28: All;
Sec. 33: All;
Sec. 34: All;
Sec. 35: All.
T. 8 N., R. 7 W.,
Sec. 4: Lots 1-4, S½;
Sec. 5: :Lots 1-4, S½;
Sec. 6: Lots 1-7, E½SW¼, SE¼;
Sec. 7: Lots 1-4, E½W½, E½;
Sec. 8: All;
Sec. 9: All;
Sec. 18: Lots 1-4, E½W½, E½;
Sec. 30: Lots 1-4 E½W½;
Sec. 31: Lots 1-4, E½W½, S½NE¼, SE¼.
T. 8 N., R 6 W.,
Sec. 35: All.
T. 7 N., R. 10 W.,
Sec. 1: Lots 1-4, S½N½, SW¼;
Sec. 3: Lots 1-4, S½N½, S½;
Sec. 4: Lots 1-4, S½N½, S½;
Sec. 9: N½, SW¼;
Sec. 10: N½;
Sec. 11: N½;
Sec. 12: NW¼;
Sec. 17: N½;
Sec. 20: S½N½, S½;
Sec. 21: S½N½, S½;
Sec. 22: All;
Sec. 23: All;
Sec. 24: All;
Sec. 25: E½, NW¼, E½SW¼, E½W½SW¼;
Sec. 26: All
Sec. 27: All
Sec. 28: N½, SW¼, S½SE¼, NW¼SE¼;
Sec. 29: All;
Sec. 35: All.
T. 7 N., R. 9 W.,
Sec. 1: Lots 1-4, S½N½, S½;
Sec. 13: N½;
Sec. 19: Lots 1-4, E½W½, NE¼;
Sec. 20: N½;
Sec. 29: All;
Sec. 30: Lots 1-4, E½W½, E½;
Sec. 33: W½.
T. 7 N., R. 8 W.,
Sec. 3: Lots 1-4, S½N½, S½;
Sec. 4: Lots 1-4, S½N½, S½;
Sec. 5: Lots 1-4, S½N½, S½;
Sec. 7: Lots 1-4, E½W½, E½;
Sec. 8: N½;
Sec. 9: W½, SE¼;
Sec. 10: E½, SW¼;
Sec. 11: W½SW¼;
Sec. 14: S½;
Sec. 15: N½;
Sec. 22: All;
Sec. 23: E½;
Sec. 24: E½, S½NW¼, SW¼;

Sec. 25: All.
T. 7 N., R. 7 W.,
Sec. 17: N½NE¼, NW¼, W½SW¼;
Sec. 18: Lots 1–4, E½W½, E½;
Sec. 19: Lots 1–4, E½W½, E½;
Sec. 20: SW¼NE¼, SE¼NW¼, W½NW¼, S½;
Sec. 25: NE¼, S½;
Sec. 26: All;
Sec. 27: All;
Sec. 30: Lots 1–4, E½W½, E½;
Sec. 31: Lots 1–4, E½W½, E½;
Sec. 34: All;
Sec. 35: All.
T. 7 N., R. 6 W.,
Sec. 1: Lots 3, 4, S½NW¼, SW¼;
Sec. 3: Lots 1–4, S½N½, S½;
Sec. 8: SE¼;
Sec. 10: All;
Sec. 13: N½, SW¼, N½SE¼, SE¼SE¼;
Sec. 14: All;
Sec. 19: Lots 1, 2, E½NW¼, W½NE¼, NW¼SE¼;
Sec. 20: E½;
Sec. 21: All;
Sec. 28: N½, W½SW¼, NE¼SE¼;
Sec. 29: SE¼;
Sec. 30: Lots 1–4, W½NE¼, NE¼NW¼, E½SW¼;
Sec. 31: Lots 1–4, E½W½, E½;
Sec. 33: S½NE¼, W½, SE¼.
T. 7 N., R. 5 W.,
Sec. 7: Lots 3, 4, E½SW¼, SE¼;
Sec. 8: SW¼, S½SE¼;
Sec. 14: W½E½, W½;
Sec. 22: All;
Sec. 23: All;
Sec. 24: All;
Sec. 27: N½N½;
Sec. 34: All;
Sec. 35: NW¼.
T. 6 N., R. 7 W.,
Sec. 3: Lot 4, SW¼NW¼, W½SW¼;
Sec. 4: Lots 1–4, S½N½, S½;
Sec. 5: Lots 1–4, S½N½, S½.
T. 6 S., R. 10 E.,
Sec. 13: E½, NW¼;
Sec. 20: N½;
Sec. 21: N½;
Sec. 22: S½;
Sec. 23: S½;
Sec. 24: NE¼, S½;
Sec. 25: All;
Sec. 26: All;
Sec. 27: E½, NE¼NW¼, S½NW¼, SW¼;
Sec. 28: All;
Sec. 29: All;
Sec. 34: All;
Sec. 35: All.
T. 6 S., R. 11 E.,
Sec. 13: All;
Sec. 17: All;
Sec. 18: Lots 1–4, E½W½, E½, less M.S. 4540 (103.305 ac.);
Sec. 19: Lots 1–4, E½W½, E½;
Sec. 22: N½, E½SW¼, SE¼.
T. 6 S., R. 12 E.,
Sec. 4: SW¼NW¼, SE¼SE¼;
Sec. 9: All;
Sec. 10: E½NE¼, NW¼NW¼, S½NW¼, SW¼, S½SE¼;
Sec. 11: N½, SE¼;
Sec. 12: All;
Sec. 14: N½, S½S½;
Sec. 15: E½NE¼;
Sec. 17: All;
Sec. 18: Lots 1–8, E½W½, E½;
Sec. 19: Lots 1–8, E½W½, E½;
Sec. 20: All;
Sec. 21: All;
Sec. 23: N½, N½SW¼, SE¼SW¼, W½SE¼;
Sec. 27: W½NW¼, SW¼;
Sec. 28: All;
Sec. 29: All;
Sec. 30: Lots 1–8, E½W½, E½;
Sec. 31: Lots 1–8, E½W½, E½;
Sec. 33: N½, N½S½.
T. 6 S., R. 13 E.,
Sec. 3: Lots 1–4, S½N½, S½;
Sec. 4: Lots 1–4, S½N½, S½
Sec. 9: All;
Sec. 10: All;
Sec. 11: All;
Sec. 12: S½;
Sec. 13: All;
Sec. 14: All;
Sec. 15: All;
Sec. 22: All;
Sec. 23: All;
Sec. 26: All;
Sec. 27: All;
Sec. 33: S½;
Sec. 34: N½, N½SW¼;
Sec. 35: All.
T. 6 S., R. 14 E.,
Sec. 4: Lots 1–3, S½;
Sec. 5: S½S½;
Sec. 7: Lots 1–4, E½W½, E½;
Sec. 9: All;
Sec. 13: All;
Sec. 17: All;
Sec. 18: Lots 1–4, E½W½, E½;
Sec. 20: All;
Sec. 22: All;
Sec. 23: S½;
Sec. 26: N½;
Sec. 27: All;
Sec. 28: All;
Sec. 29: All;
Sec. 31: Lots 1–4, NE¼, E½NW¼, E½SW¼, N½SE¼ SW¼SE¼;
Sec. 33: N½, N½SW¼;
Sec. 34: E½, N½NW¼, S½SW¼;
Sec. 35: All.
T. 9 S., R. 9 E.,
Sec. 26: N½;
Sec. 27: N½.
T. 10 S., R. 6 E.,
Sec. 15: SW¼;
Sec. 17: All;
Sec. 18: Lots 1–4, E½W½, E½;
Sec. 19: Lots 1–4, E½W½, E½;
Sec. 20: All;
Sec. 21: S½;
Sec. 22: W½;
Sec. 23: S½;
Sec. 24: All;
Sec. 25: All;
Sec. 26: All;
Sec. 27: W½, SE¼;
Sec. 28: All;
Sec. 29: E½;
Sec. 33: All;
Sec. 34: All;
Sec. 35: All.
T. 10 S., R. 7 E.,
Sec. 4: S½;
Sec. 9: N½, SW¼;
Sec. 10: W½;
Sec. 14: S½;
Sec. 15: All;
Sec. 17: All;
Sec. 18: All;
Sec. 20: W½NE¼, SE¼NE¼, NW¼, S½;
Sec. 21: NE¼, S½NW¼, S½;
Sec. 22: All;
Sec. 23: All;
Sec. 24: Lots 1–4, 9–16, 21–24, S½SW¼;
Sec. 25: Lots 1–4, 9–24, SW¼;
Sec. 26: NE¼, S½;
Sec. 28: All;
Sec. 29: All;
Sec. 35: All.
T. 10 S., R. 8 E.,
Sec. 1: Lots 2–4, S½N½, N½S½;
Sec. 14: S½;
Sec. 15: All;
Sec. 18: Lots 1–4, E½W½, E½;
Sec. 19: Lots 1–4, E½W½, E½;
Sec. 21: All;
Sec. 23: All;
Sec. 24: N½;
Sec. 26: N½;
Sec. 27: N½.
T. 10 S., R. 9 E.,
Sec. 21: S½SE¼;
Sec. 22: NE¼SW¼, S½SW¼, W½SE¼;
Sec. 26: W½SW¼, SE¼SW¼;
Sec. 27: NW¼NE¼, S½NE¼, W½, SE¼;
Sec. 28: E½, E½NW¼, SW¼NW¼, SW¼;
Sec. 33: All.
T. 11 S., R. 6 E.,
Sec. 1: Lots 1–4, S½N½, S½;
Sec. 3: Lots 3, 4, S½–NW¼;
Sec. 4: Lots 1–4, S½N½, S½;
Sec. 11: All;
Sec. 12: All;
Sec. 13: All;
Sec. 14: All;
Sec. 15: All;
Sec. 18: Lots 1–4;
Sec. 19: Lots 1–4, E½W½, E½;
Sec. 20: NE¼, W½SW¼, E½SE¼;
Sec. 22: All;
Sec. 23: All;
Sec. 24: All;
Sec. 28: All;
Sec. 29: E½NE¼, W½NW¼, SW¼;
Sec. 30: Lots 1–4, E½W½, E½;
Sec. 31: Lots 1–4, E½W½, E½;
Sec. 33: All;
Sec. 34: All;
Sec. 35: All.

Comprising 137,344.595 acres, more or less.

In exchange for this federal mineral estate, the United States has selected 130,367.45 acres of State-owned minerals within Mohave County, Arizona.

The purpose of the exchange is to unite State and Federal split estates, thereby eliminating surface management difficulties and providing for the consolidation of surface/mineral ownership.

The purpose of this Notice of Realty Action is two-fold. First, this action will provide a response period of forty-five (45) days during which public comments will be accepted. Secondly, this action, as provided in 43 CFR 2201.1(b), shall segregate the federal minerals, as described in this Notice, to the extent

that they will not be subject to appropriaton under the mining laws, subject to any prior valid rights. The segregative effect shall terminate either upon publication in the Federal Register of a termination of the segregation or two years from the date of this publication, whichever comes first. This action is necessary to avoid the occurrence of nuisance mining claims that could encumber the federal minerals while the preparation of an environmental assessment and mineral report are ongoing.

Upon completion of the environmental assessment, a final Notice of Realty Action will be published. The Notice will provide a final description of the Federal and State minerals to be transferred, including reservations.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including a listing of the selected State-owned minerals, may be obtained from the Area Manager, Phoenix Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: March 23, 1984.

Marlyn V. Jones,

District Manager.

[FR Doc. 84-8445 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-32-M

[Group 153]

California; Filing of Plat of Survey

March 22, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, 45 days after the date of the Federal Register publication:

Humboldt Meridian, Humboldt County

T. 11 N., R. 4 E.

2. This plat, representing the dependent resurvey of the west boundary, T. 11 N., R. 4 E., Humboldt Meridian and the survey of Section 37, under Group No. 153, California, was accepted February 28, 1984.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of the Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 84-8483 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-40-M

[Group 153]

California; Filing of Plat of Survey

March 22, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Humboldt Meridian, Humboldt County

T. 11 N., R. 3 E.,
T. 11 ½ N., R. 3 E.

2. These plats, representing the (1) dependent resurvey of the east boundary, T. 11 N., R. 3 E., Humboldt Meridian, (2) the dependent resurvey of the east boundary T. 11½ N., R. 3 E. Humboldt Meridian, California, under Group No. 153, California, were accepted February 28, 1984.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only

4. This survey was executed to meet certain administrative needs of the Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 84-8484 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-40-M

[Int DEIS 84-7]

Availability; Northeast Resource Area, Colorado, Resource Management Plan, Environmental Impact Statement

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the draft environmental impact statement (DEIS) and of the public hearings.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM has prepared a DEIS on alternative resource management plans for the Northeast Resource Area in Colorado.

DATE: Comments will be accepted until July 23, 1984.

ADDRESS: Comments should be sent to: Area Manager, Northeast Resource Area, 10200 West 44th Avenue, #222, Wheatridge, Colorado 80033.

FOR FURTHER INFORMATION CONTACT: Frank Young, Area Manager, Bureau of Land Management, Northeast Resource Area, 10200 West 44th Avenue, #222, Wheatridge, Colorado 80033, (303) 234-4988.

SUPPLEMENTARY INFORMATION: The BLM has prepared a DEIS on 5 alternative resource management plans for the Northeast Resource Area. Included are multiple use allocations and management prescriptions for 40,030 public land acres and minerals management decisions (i.e., coal, oil and gas, salable and locatable minerals) for approximately 615,000 acres of federal subsurface estate where the surface is non-federal. The DEIS displays the management decisions and analyzes the land and resource allocations for environmental, productivity, economic, and social impacts by alternative for comparison purposes. The preferred alternative plan would result in no BLM retention of public land but continue minerals management on all subsurface mineral estate.

Availability

Single copies of the DEIS may be obtained at the above adddress. Public Reading copies are also available at the following locations:

Elbert County Library, Kiowa, CO 80117
Fort Morgan Public Library, 414 Main Street, Fort Morgan, CO 80701
Forth Collins Public Library, 200 Mathews, Fort Collins, CO 80524Penrose Public Library, 20 North Cascade Avenue, Colorado Springs, CO 80903
Limon Memorial Library, 590 "E" Avenue, Limon, CO 80828
Sterling Public Library, Sterling, CO 80751
Boulder Public Library, 1000 Canyon, Boulder, CO 80302

Public Hearings

Public hearings to receive oral and/or written comments will be held at 7 p.m. at the following locations and dates:

Elbert County Courthouse Annex, Commissioners Hearing Room, 221 Comanche, Kiowa, Colorado—7:00 p.m., Monday, June 4, 1984
Larimer County Courthouse, Commissioners Hearing Room, 200 West Oak, Ft. Collins, Colorado—7:00 p.m., Tuesday, June 5, 1984

Gilpin County Courthouse, Court Room, 203 Eureka, Central City, Colorado—7:00 p.m., Wednesday, June 5, 1984

Ramada Foothills, 11595 West 6th Avenue, (6th and Simms), Lakewood, Colorado—7:00 p.m., Thursday, June 7, 1984.

Oral comments may be limited in length to allow all participants equal opportunity.

Dated: March 22, 1984.

Ralph Smith,

Bureau of Land Management, Acting State Director.

[FR Doc. 84-8482 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-JB-M

[OR-22454]

Oregon; Proposed Continuation of Withdrawal

The Bureau of Reclamation proposes that the existing land withdrawal made by the Secretarial Order of September 11, 1936, be continued in its entirety for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714.

The land involved is located at the Unity Reservoir approximately twenty-five miles southwest of Baker and contains 480 acres within Sections 8, 21 and 28, T. 12 S., R. 37 E., Willamette Meridian, Baker County, Oregon.

The purpose of the withdrawal is to protect the Unity Dam and the Burnt River Reclamation Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal continuation. All interested persons who desire a public meeting for the purpose of being heard must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. If the State Director, Bureau of Land Management, determines that a public meeting will be held, the time and place will be announced.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

All communications in connection with the proposed withdrawal continuation should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: March 23, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-8401 Filed 3-28-84; 8:45 am]

BILLING DATE 4310-33-M

Salt Lake District, Utah; Proposed Amendment to Grouse Creek Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Amendment of Grouse Creek Management Framework Plan.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Salt Lake District, intends to amend the lands portion of the Management Framework Plan (MFP) for the Grouse Creek Planning Unit; Box Elder County, Utah.

Recommendations and decisions in the Grouse Creek MFP designated utility corridors and specified that future power transmission lines should be kept within these corridors, where possible. BLM has determined that the designated corridors may not be adequate to meet the need for proposed transmission lines in the area and that other suitable corridors may be identified. A proposal has recently been received from Raft River Electric Cooperative, Inc. and Wells Rural Electric Company to construct a 138 KV power transmission line from Grouse Creek to Wendover, Utah.

Approximately 30 miles of the line would be located in the Grouse Creek Planning Unit along Highway 30 from the Grouse Creek Road intersection to the Utah-Nevada border.

BLM will consider the environmental consequences of the proposed project and several alternatives prior to amending the Grouse Creek MFP. An environmental assessment will be available for public review approximately 30 days following publication of this notice. Issues to be considered in the assessment and proposed plan amendment include: wildlife habitat, visual resources, watershed, water resources, recreation opportunities, and socioeconomics.

Address and date: Comments, including issues to be considered in the proposed MFP amendment, should be sent by May 7 to Wayne Richards, Area Manager, Bear River Resource Area, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

Dated: March 23, 1984.

Frank W. Snell,

Salt Lake District Manager.

[FR Doc. 84-8394 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-84-M

Eugene District Advisory Council; Meeting

Notice is hereby given in accordance with Section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on May 1, 1984, at 9:00 a.m. Pacific Standard Time in Room 227 in the Federal Building at 211 E. 7th, Eugene, Oregon.

The agenda for the meeting will include: (1) A review of illegal activities taking place on public lands; (2) a summary of other current issues faced by the District; and (3) an update on the O&C timber harvest.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11:30 a.m. and 11:45 a.m. or file written statements for the Council's consideration. Anyone wanting to make an oral statement must notify the District Manager, Bureau of Land Management, 1255 Pearl Street, Eugene, Oregon 97401, by April 27. Depending on the number of persons wanting to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: March 8, 1984.

Melvin D. Clausen,

District Manager.

[FR Doc. 84-8395 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-84-M

California Desert District; Off-Road Vehicle Designation Decisions in Northern and Eastern Imperial County

AGENCY: Bureau of Land Management, Interior.

ACTION: Off-road vehicle designation decisions to open, close, or limit use of routes of travel on public lands in the northern and eastern portions of Imperial County, California.

SUMMARY: Off-road vehicle designation decisions have been made to protect the resources of the area, to promote safe use of the lands and to minimize conflicts among users. The designations were prepared following the criteria defined in 43 CFR 8342.1 and with the authority of 43 CFR 8000.0–6, 8340, 8341, 8342, and 8364. The California Desert Conservation Area had previously been mapped using a series of 21 maps called the Motorized Vehicle Interim Access Guides. These guides provided the interim vehicle designations made by the California Desert Conservation Area Plan until such a time as vehicle routes in each map area could be more carefully inventoried. This notice serves to inform the public that designation decisions have been completed on the Imperial County portions of the following two map areas:

1. Midway Well map area, located in eastern Imperial County. This area encompasses approximately 500,000 acres of BLM-administered public land and includes such well-known locations as Milpitas Wash, Hauser Geode Beds, Vinagre Wash, Black Mountain, Indian Pass, Picacho Peak, and the Cargo Muchacho Mountains.

2. Cahuilla map area, located in northwestern and northcentral Imperial County. This area encompasses approximate 150,000 acres of BLM-administered public land and includes such well-known locations as the Fish Creek Mountains, Arroyo Salada, San Felipe Creek, and Sebastian Marsh.

These designations supersede the Interim Critical Management Plan (ICMP) designations for these areas. The designation decisions were prepared with extensive public involvement. Work maps for the areas were sent to more than 600 individuals and groups who had previously indicated an interest in being involved in the route approval process. Using route information provided by the public as well as aerial photographs and field surveys, BLM inventoried travel routes and made preliminary route approval decisions. These proposed decisions were sent to all persons on the mailing list and publicized in the local news media. Following a 45-day comment period, the final decisions were made. An ad hoc citizen group composed of interested persons representing the spectrum of public concerns reviewed the decisions.

DATES: These designations are effective upon publication and will remain in effect until rescinded or modified by the authorized officer. Enforcement of these route designations will be implemented as routes are signed or as maps are printed and become available to the public.

ADDRESSES: Send inquiries to District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507 or the Area Manager, El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243. Route designation decision records and maps showing vehicle designations will be available for public review at the above addresses from 7:45 a.m. to 4:30 p.m. on regular work days.

FOR FURTHER INFORMATION CONTACT: Dave Mensing (714) 351–6402; Steve Nelson (619) 352–5842.

SUPPLEMENTARY INFORMATION: Under the authority provided in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Endangered Species Act (16 U.S.C. 1531 et seq.), EO 11644 (Use of Off-Road Vehicles on the Public Lands), and 3 CFR 74.332 as amended by EO 11989, 42 FR 26959 (May 25, 1977). Any person who violates or fails to comply with the vehicle route designations as governed by 43 CFR Part 8341 is subject to arrest, conviction and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1000 or imprisonment for not longer than 12 months, or both.

Dated: March 21, 1984.

Wesley T. Chambers,

Acting District Manager.

[FR Doc. 84–8398 Filed 3–28–84; 8:45 am]

BILLING CODE 4310–40–M

Final Wilderness Inventory Decision for BLM-Administered Islands in Alabama, Florida, and Louisiana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final wilderness inventory decision for BLM-administered islands in Alabama, Florida, and Louisiana.

SUMMARY: This notice is to announce the final wilderness decision on public islands administered by the Bureau of Land Management in Alabama, Florida, and Louisiana, under the authority of Section 603 of the Federal Land Policy and Management Act, and in accordance with guidelines in the September 27, 1978 Bureau of Land Management *Wilderness Inventory Handbook*, Organic Act Directive No. 78–61, Change 3; and the Bureau of Land Management Washington Office memorandum dated July 22, 1981.

The following units proposed to be dropped from further study in the October 14, 1983, **Federal Register**, are no longer subject to wilderness review because they were found to lack wilderness characteristics:

State	No. of islands	Total acres
Alabama	13	54.52
Florida	3	1.67
Louisiana	2	4.39
Total	18	60.58

During the initial 90-day comment period, two written comments were received. One comment was submitted by a representative of a state governor's office. The second comment was submitted by a representative of the oil and gas industry. Both comments agreed with BLM's wilderness proposal to drop all islands from further wilderness study.

DATE: Comments/Protests should be submitted by April 30, 1984. Any person adversely affected by this decision may appeal such decision under the provisions of 43 CFR Part 4. Protests must be in writing and received at the Jackson District Office on or before the above date.

ADDRESS: Comments/Protests should be sent to: District Manager, Jackson District Office, Bureau of Land Management, P.O. Box 11348, Delta Station, Jackson, MS 39213.

FOR FURTHER INFORMATION CONTACT: Caroline Albright, Jackson District Office, (601) 960–4405.

SUPPLEMENTARY INFORMATION: The October 14, 1983 **Federal Register** (48 FR 46857) announced a 90-day public comment period on 18 island inventory units in Alabama, Florida, and Louisiana, encompassing approximately 60.58 acres. The public comment period ended January 12, 1983. During the comment period, press releases were issued to encourage response; and wilderness review summaries were distributed to county officials in all counties where the islands are located, as well as state officials, interest groups and individuals expressing interest in the public islands. Copies of this three-page summary of the Wilderness Review, along with the situation evaluations and maps, were available

upon request from the District Manager, Jackson District Office, at the above address.

Donald L. Libbey,

District Manager.

[FR Doc. 84-8400 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-84-M

Off-Road Vehicle Designation

AGENCY: Bureau of Land Management.

ACTION: Notice of Off-Road Vehicle Designations in the Mackay Planning Unit of the Salmon, Idaho District.

Pursuant to 43 CFR 8340 (Management of Off-Road Vehicle Use on Public Lands). The Salmon, Idaho District of the Bureau of Land Management announces that tis Mackay Planning Unit ORV Management Plan is now completed. The plan designates lands within the planning unit as either limited or open to ORV use. Designations include:

1. Limited areas:

a. Jerry Peak WSA 46-14 (8,790 acres)—ORVs limited to existing roads and trails;

b. Wilow Creek Summit elk crucial winter range (1,088 acres)—closed to all vehicles from December 1 to April 30;

c. Mule deer and elk crucial winter range (11,785 acres)—closed to all organized ORV events from December 1 to April 30;

d. Antelope crucial winter range (24,757 acres)—closed to all organized ORV events from November 15 to April 15.

2. Open areas: All other lands in the Mackay Planning Unit (88,508 actres) subject to regulations as listed in 43 CFR 8340.

Note that there are 132,460 acres of BLM Land in the Mackay Planning Unit. Except for the Jerry Peak WSA and the Willow Creek Summit area (a total of 9,878 acres), the entire planning unit is open to yearlong casual ORV use (122,582 acres). Ther is also an overlap of 2,468 acres between antelope and mule deer crucial winter range. Therefore, of the area open to casual ORV use, only 34,074 acres aare additionally closed to organized OrV events diring the winter months.

Copies of the final plan can be obtained by writing or calling the Salmon District Manger, P.O. Box 430, Salmon, Idaho 83467, (208) 756-2201.

Kenneth G. Walker,

District Manager.

[FR Doc. 84-8397 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-GG-M

Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease M 55518, Madison County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination, October 1, 1983.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in Sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Cynthia L. Embretson,

Chief, Fluids Adjudication Section.

[FR Doc. 84-8398 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-84-M

[Sale of Public Lands in Summit County, Utah, U-51478, U-51479]

Salt Lake District; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Sale of Public Lands, U-51478, U-51479.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value shown:

Legal description	Acreage	Value
U-51478, T. 5 N., R. 7 E., SLB+M., section 10, NE¼NE¼	40.0	$14,000
U-51479, T. 6 N., R. 8 E., SLB+M., section 20, NW¼NW¼	40.0	2,000

The sale parcels are small isolated remnants with no significant public value. The sales will enhance land use compatibility with adjoining private lands. The action is consistent with the Bureau's planning system, and the public interest will be served by offering these lands for sale.

The lands will be sold through competitive bidding with no preference right given to the many adjoining private landowners. Bids may be made by a principal or duly qualified agent. Qualified bidders include: citizens of the United States, 18 years of age or over; a corporation subject to the laws of any state or of the United States; a state, state instrumentality or political subdivision authorized to hold property; and any entities capable of holding lands or interests therein under the laws of the state within which the lands to be conveyed are located. Entities include but are not limted to associations, partnerships, and other legal entities.

The lands will be sold by sealed bids. Sealed bids shall be considered only if received at the place of sale, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119, prior to 9 a.m., May 30, 1984, and for at least the appraised value. Each bid shall be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Bureau of Land Management for not less than one-fifth of the amount bid and shall be enclosed in a sealed envelope clearly marked "Bid for Public Land Sale U-51478 or U-51479, Summit County." Each parcel of land will be sold separately. If two or more bids for the same amount are received, the apparent high bidder shall be determined by drawing pursuant to 43 CFR 2711.3-1(c). The person making the final high bid will be declared the apparent higher bidder on that tract. The acceptance or rejection of any offer to purchase shall be in writing no later than 30 days after the date of the sale.

The terms and conditions applicable to the sale are:

(1) The apparent high bidder shall submit the remainder of the full bid price within 30 days from the notification of acceptance of the offer to purchase. Failure to submit the full bid price prior to, but not including the 30th day following the notification, shall result in cancellation of the sale of the above described lands and the deposit shall be forfeited.

(2) The authorized offer may reject the highest qualified bid and release the bidder from his obligation and withdraw the tract for sale, if he determines the consummation of the sale would be inconsistent with the provisions of any existing law or collusive or other activities have hindered or restrained free and open bidding or consummation of the sale would encourage or promote speculation in public lands.

(3) The patent will contain a reservation for ditches and canals and

be subject to all valid existing rights including the right of any prior mineral permittee or lessee to occupy so much of the surface of the lands as may be reasonably required for mineral leasing operations, without liability to the patentee or successors in interest for improvement damage resulting from such mineral activity.

(4) All minerals will be reserved to the United States.

(5) The United States does not, by the terms of this sale, guarantee to any party physical or legal access to the tract of land being sold.

Detailed information concerning the sale including the valid existing rights, land report and environmental assessment report are available for review at the Salt Lake District Office at the address below.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

John H. Stephenson,

Associate District Manager.

[FR Doc. 84-8399 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

Development Operations Coordination Document; Union Oil Co. of California

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Union Oil Company of California has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3382, Block 279, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 22, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Joseph, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0867.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: March 23, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-8446 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Park System Advisory Board; History Areas Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, as amended, that a meeting of the History Areas Committee of the National Park System Advisory Board will be held on April 9, 1984, commencing at 9:30 a.m. in Room 7000A-B, Department of the Interior, 18th and C Streets, NW., Washington, D.C.

At this meeting the History Areas Committee will meet to consider potential National Historic Landmarks as follows:

1. Aquatic Park Historic District, San Francisco, CA
2. Bishop Hill Historic District, Henry County, IL
3. Whitney M. Young, Jr., Residence, Atlanta, GA
4. Whitney M. Young, Jr., Birthplace, Shelby County, KY
5. Whitney M. Young, Jr., Home, New Rochelle, NY
6. Ball's Bluff Battlefield and National Cemetery, near Leesburg, VA
7. Seattle Electric Company Georgetown Steam Plant, Seattle, WA

The formal recommendations of the Committee will be made to the National Park System Advisory Board at its meeting on April 11, 1984, in Washington, D.C. No formal action of the Secretary of the Interior will be sought until after the Advisory Board has considered the recommendations of its History Areas Committee and acted thereon.

The meeting will be open to the public. However, facilities and space to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file with the committee a written statement concerning the matters to be considered. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Mr. Benjamin Levy, History Division, National Park Service, Washington, D.C., at (202) 343-8164.

Summary minutes of the meeting will be available for public inspection 4 to 6 weeks after the meeting in room 4209, 1100 L Street NW., Washington, D.C.

David G. Wright,

Associate Director, Planning and Development, National Park Service.

[FR Doc. 84-8322 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-70-M

National Park System Advisory Board; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the National Park System Advisory Board will be held at the Department of the Interior, Rooms 7000-AB, 18th and C Streets, NW., Washington, D.C., April 11 and 12, 1984.

In its general business sessions starting at 9:00 a.m. the Advisory Board will consider administrative matters pertaining to the Board; receive and discuss the report of the History Areas Committee; make recommendations on proposed national historic landmark designations; and review and discuss policy and management issues affecting the National Park System. The meetings will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come-first-served basis. Any member of the public may file with the Advisory Board a written statement concerning matters to be discussed. Persons wishing further information concerning this meeting or who wish to submit written statements may contact Shirley Luikens, Advisory Boards and Commissions, National Park

Service, Department of the Interior, Washington, D.C. (202–343–2012).

Summary minutes of the meeting will be available for public inspection 10 to 12 weeks after the meeting in Room 3328, Interior Building, 18th and C Streets, NW., Washington, D.C.

David G. Wright,

Associate Director, Planning and Development, National Park Service.

[FR Doc. 84–8442 Filed 3–28–84; 8:45 am]

BILLING CODE 4310–70–M

Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Alaska Region, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming organizational meeting of the Aniakchak National Monument Subsistence Resource Commission. The following agenda items will be discussed:

(1) Authorities, responsibilities, and operating requirements of the Commission and the National Park Service.

(2) National monument statement for management, general management plan, fish and game regulations, subsistence issues, and data availability.

(3) Commission organization/administration, objectives, guidelines, and chairperson selection.

DATE: The meeting will begin at 9:00 a.m. on April 18, 1984, and conclude the afternoon of April 19, 1984.

ADDRESS: The meeting will be held in King Salmon, Alaska.

FOR FURTHER INFORMATION CONTACT:

David Morris, Superintendent, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613, Phone (907) 246–3305

or

Lou Waller, Subsistence Coordinator, Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892, Phone (907) 271–4638

SUPPLEMENTARY INFORMATION: The Aniakchak National Monument Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96–487.

Robert L. Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84–8441 Filed 3–28–84; 8:45 am]

BILLING CODE 4310–70–M

Sleeping Bear Dunes National Lakeshore Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission will be held at 8:30 a.m. (EST), May 11, 1984, at the Leland Lodge, 565 Pearl Street, Leland, Michigan.

The Commission was established by the Act of October 21, 1970, 84 Stat. 1076, 16 U.S.C. 460x–3, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Sleeping Bear Dunes National Lakeshore.

The members of the Commission are as follows:

Mr. John B. Daugherty (Chairman)
Mr. Sidney Evans
Dr. T. Cline
Mr. George T. Schilling
Mr. William B. Bolton
Mr. Lawrence J. Verdier
Dr. Michael Chubb
Mr. Robert Athey
Ms. Sylvia B. Kruger
Mr. Geroge Weeks

The agenda for the meeting will include discussion of the docking location assessment for the Manitou Islands' ferry; Federal funding for county roads and law enforcement; current planning projects; and Land Protection Plan implementation.

The meeting will be open to the public. Any member of the public may file with the Commission prior to the meeting a written statment concerning the matters to be discussed. Persons wishing further information concerning the meeting, or who wish to sumbit written statements, may contact Richard R. Peterson, Superindentent, Sleeping Bear Dunes National Lakeshore, Frankfort, Michigan 49635, telephone (616) 352-9611.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the office of Sleeping Bear Dunes National Lakeshore, Frankfort, Michigan.

Dated: March 20, 1984.

Charles H. Odegaard,

Regional Director, Midwest Region.

[FR Doc. 84–8416 Filed 3–28–84; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 28640 (Sub-9), et al.]

Rail Carriers; Chicago, Milwaukee, St. Paul and Pacific Railroad Co.—Reorganization—Acquisition by Grand Trunk Corporation

AGENCY: Interstate Commerce Commission.

ACTION: Acceptance of acquisition proposals and scheduling of proceedings.

SUMMARY: The Commission accepts applications filed under section 5(b) of the Milwaukee Railroad Restructuring Act (MRR), 45 U.S.C. 904(b), by Soo Line Railroad Company (Soo), Chicago and North Western Transportation Company (CNW), Grand Trunk Corporation (GTC) and Chicago Milwaukee Corporation (CMC) to acquire and operate the core assets of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW), transmitted to the Commission on March 14, 1984 by MILW's Reorganization Court in Order No. 736, subject to conditions, and sets a procedural schedule for consideration of these proposals with various pending inconsistent plans for reorganization of MILW.

DATES: The final date for amendment to the MRR applications, as well as related pending applications is April 6, 1984. Verified statements in support of the acquisition proposals of Soo, CNW, GTC and CMC are also due April 6, 1984. Opposition statements are due May 7, 1984. The complete procedural schedule is contained in the Commission's decision.

ADDRESSES: An original and 20 copies of all pleadings referring to Finance Docket No. 28640 (Sub-No. 9) should be sent to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

Copies should also be served on parties of record in Finance Docket No. 28640 (Sub-No. 9). A list of parties of record is available from the Secretary's Office at (202) 275–7999.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275–7245.

or

Joseph C. Levin, (202) 275–7936.

SUPPLEMENTARY INFORMATION: The complete procedural schedule for consideration of the acquisition applications of Soo, CNW, GTC, and

CMC and further information are contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Parties are admonished that no extensions can be granted because MILW Reorganization Court's Order No. 736 requires the Commission to arrive at a decision in these consolidated proceedings and transmit that decision to the court by September 10, 1984.

Soo's proposal consists of an Alternate Plan of Reorganization, identified as Finance Docket No. 28640 (Sub-No. 9M), and Acquisition Application, identified as Finance Docket No. 28640 (Sub-No. 9N). The proposal contemplates that Soo's wholly-owned subsidiary Newco, Inc., would acquire and operate MILW's core assets. Soo also filed two directly-related exemption requests. In Finance Docket No. 28640 (Sub-No. 9P), Soo seeks an exemption from 49 U.S.C. 10901 to construct and operate connections between Soo and MILW track at Duplainville and South Superior, WI. In Docket No. MC–F–15231 (Sub-No. 2), Soo seeks an exemption to acquire control of the Milwaukee Motor Transportation Company.

CNW's Acquistion Application, identified as Finance Docket No. 28640 (Sub-No. 9Q), is a modification of its previously-filed Inconsistent Plan of Reorganization in Finance Docket No. 28640 (Sub-No. 9C) (*See* Notice published August 26, 1983 at 48 FR 38911.) CNW's acquisition proposal does not include the request in Finance Docket No. 28640 (Sub-No. 9F) for exemption to abandon approximately 1,000 miles of rail line in Illinois, Iowa, Minnesota, Missouri, and Wisconsin.

GTC's acquisition proposal, indentified as Finance Docket No. 28640 (Sub-No. 9R), modifies the Stock Acquisition Agreement that is the basis of the MILW Trustee's Amended Plan of Reorganization (*See* Notice published May 2, 1983 at 48 FR 19792.)

CMC's Alternate Plan of Reorganization, identified as Finance Docket No. 28640 (Sub-No. 9K) proposes that MILW be reorganized as an independent carrier (*See* Notice published August 26, 1983 at 48 FR 38911.)

Decided: March 22, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor concurred in part and dissented in part with a separate expression. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–8424 Filed 3–28–84; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30406]

Rail Carriers; Spokane International Railroad Co. and Union Pacific Railroad Co.—Abandonment and Discontinuance Exemption—Spokane County, WA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903 *et seq.* the physical abandonment by Spokane International Railroad Company of, and the discontinuance of service by Union Pacific Railroad Company over, 0.62 mile of railroad extending from milepost −0.04 to milepost 0.58, in Spokane County, WA, subject to standard labor protective conditions.

DATES: This exemption will be effective on April 30, 1984. Petitions to stay must be filed by April 9, 1984, and petitions for reconsideration must be filed by April 18, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30406 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423

(2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge St., Omaha, NE 68179

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: March 22, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–8425 Filed 3–28–84; 8:45 am]

BILLING CODE 7035–01–M

[I.C.C. Order No. P–72]

Passenger Train Operation; Union Pacific Railroad Co.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Chicago, Illinois, and San Francisco, California. The operation of these trains requires the use of the tracks and other facilities of Denver and Rio Grande Western Railroad Company (DRGW). A portion of the DRGW tracks at Allen and Glenwood Springs, Colorado, are temporarily out of service because of a snow slide. An alternate route is available via the Union Pacific Railroad Company between Denver, Colorado, and Salt Lake City, Utah.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in may be order of the Commission decided April 29, 1982, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), the Union Pacific Railroad Company (UP), is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Denver, Colorado, and a connection with DRGW at Salt Lake City, Utah.

(b) In executing the provisions of this order, the common carrier involved shall proceed even though no agreements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 11:49 p.m., EST, March 15, 1984.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., m.s.t., March 18, 1984, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Union Pacific Railroad Company and upon National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., March 15, 1984.

Interstate Commerce Commission.

John H. O'Brien,

Agent.

[FR Doc. 84-8426 Filed 3-28-84; 8:45 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

[NUREG-0800]

"Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants"; Issuance and Availability Revised SRP Section 7.1 and Appendix A To SRP Section 7.1, Section 7.5 and Section 7.7

The U.S. Nuclear Regulatory Commission (NRC) has published a revision to Section 7.1, Rev. 1, "Instrumentation and Controls—Introduction" and Appendix A to SRP Section 7.1, "Acceptance Criteria and Guidelines for Instrumentation and Control Systems Important to Safety"; Section 7.5, "Information Systems Important to Safety"; and Section 7.7, "Control Systems" of NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," LWR Edition (SRP).

The revision consists of SRP Section 7.1, Rev. 3; an appendix to this Section, Appendix A, Rev. 1; Section 7.5, Rev. 3; and Section 7.7, Rev. 3. The revised SRP Sections incorporates the resolution of Generic Issues 45, "Inoperability of Instrumentation Due to Extreme Cold Weather." The guidelines incorporated are not new requirements, they are a formalization of existing criteria that were previously reviewed and approved in Regulatory Guide 1.151, "Instrument Sensing Lines" (which incorporates ANSI/ISA–S67.02. All changes to the SRP Sections resulting from the resolution of this generic issue and a few editorial changes are identified by a line in the margin of the revise SRP section.

The revised SRP sections are effective immediately. A copy is expected to be available in the Public Document Room within 2 weeks. Copies of the revised SRP Sections or of the complete Standard Review Plan, NUREG–0800, Accession No. PD–81–920199, are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487–4650.

Dated at Bethesda, Maryland this 23rd. day of March, 1984.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-8435 Filed 3-28-84; 8:45 am]

BILLING CODE 7590-01-M

NRC Response to Accidents Occurring During the Transportation of Radioactive Material; General Statement of Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: General Statement of Policy.

SUMMARY: The Nuclear Regulatory Commission (NRC) has defined in a general policy statement its role in responding to accidents and incidents related to the transportation of nuclear materials. The purpose of the policy statement is to state clearly the extent of the NRC's participation and involvement in responding to such a transportation accident or incident.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Justin T. Long, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 427–4135

SUPPLEMENARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC), under the Atomic Energy Act of 1954, as amended (42 U.S.C. Chapter 23) and section 201 of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5841), is authorized to license and regulate the receipt, possession, use, and transfer of "byproduct material," "source material," and "special nuclear material" (as defined in 42 U.S.C. 2014). The NRC authority to license air shipment of plotonium is further governed by Pub. L. 94–79. Pertinent NRC regulations are contained in 10 CFR Parts 30, 40, 70, 71, and 73.

The U.S. Department of Transportation (DOT), under the Dangerous Cargo Act (R. S. 4472, as amended, 46 U.S.C. 170), Title VI and 902(h) of the Federal Aviation Act of 1958 (49 U.S.C. 1421–1430 and 1472(h)), the Department of Transportation Act (49 U.S.C. 101, *et seq.*) and the Hazardous Materials Transportation Act (49 U.S.C. 1801–1812), is required to regulate safety in the transportation of hazardous materials, including radioactive materials. Pertinent DOT regulations are contained in 49 CFR Part 100 to 178.

The roles in regulatory responsibility of NRC and DOT have been delineated in a Memorandum of Understanding (MOU) between the two agencies dated June 8, 1979 (44 FR 38690). The MOU does not define the specific responsibilities of each agency in responding to transportation accidents or incidents. However, in all accidents, incidents, and instances of actual or suspended leakage involving packages of radioactive material regulated by the NRC, the MOU assigns to NRC the responsibility to act as lead agency for investigating the cause of the leakage and preparing a report of the investigation.

The Federal Emergency Management Agency (FEMA) is responsible for preparing a Federal Radiological Emergency Response Plan (FRERP). On December 23, 1980, FEMA published a "Master Plan" for commercial nuclear power plant accidents (45 FR 84910). Development of the FRERP, which is scheduled for completion in 1984, entals revision of the "Master Plan," including its expansion to incorporate provisions for responding to all types of peacetime radiological emergencies including transportation accidents. Availability of planning guidance for developing the FRERP was noticed in the **Federal Register** on April 28, 1983 (48 FR 19229). The FRERP will be based on the planning guidance and on the results of a Full Field Exercise conducted in the vicinity of the St. Lucie nuclear power plant in March 1984.

The response to transportation accidents is less structured than the radiological emergency response to accidents at licensed sites because of the uncertainties surrounding (1) the location where the accident occurs, (2) the diversity of authority of those who will be responding, and (3) the likely limited radiation knowledge of the first-on-scene responders (who are usually local officials). The states have the primary responsibility for protecting the health and safety of the citizens from public hazards. Recognition of the responsibilities for radiation hazards is reflected by the existence of an appropriately designated state agency chartered with the responsibility of responding to radiological emergencies.

The existing Memorandum of Understanding between the DOT and the NRC (mentioned above) assigns NRC the responsibility for the regulation and certification of shipping containers for fissile materials and for other radioactive materials (other than low specific activity materials) in quantities exceeding Type A limits as defined in 10 CFR Part 71. The MOU assigns DOT the responsibility for regulation of most other aspects of nuclear transportation activities. DOT operates a National Response Center which serves to relay information concerning transportation incidents involving hazardous materials. DOT regulations require a carrier, at the earliest practicable moment, to give notice to the National Response Center after an incident occurs during the course of transportation in which, among other things, fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material. Each notification of a transportation incident of any kind is relayed by the National Response Center to the Regional Office of the Environmental Protection Agency (EPA) for incidents on land or to the U.S. Coast Guard Captain of the Port for incidents in navigable waters. When a reported incident is known to involve radioactive material, notification is also made to the Regional Coordinating Office for Radiological Assistance of the U.S. Department of Energy (DOE) and to the Regional Office of the Nuclear Regulatory Commission. NRC my also become aware of a transportation incident through other channels, such as the shipper, the carrier, or the police or highway patrol.

DOE has stated that DOE's involvement is the maintenance, at about 30 sites, of teams of technically trained nuclear and transportation specialists available to assist states, upon request, by providing desired advice and counsel in areas where states may need assistance. Such teams are highly professional and are equipped to provide analytical and diagnostic support, but not to become involved in cleanup activities. Such teams operate under the DOE Radiological Assistance Program or the Federal Radiological Monitoring and Assessment Plan (DOE coordinated).

The Commission invites all interested persons who desire to submit written comments or suggestions on this general statement of policy to send them to the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch by July 27, 1984.

Consideration will be given to such submissions in connection with possible future revision of the stated policy. Copies of comments received may be examined at the Commission's Public Document Room, 1717 H Street N.W., Washington, D.C.

Statement of NRC Policy

In any accident or incident occurring in connection with the transportation of radioactive material in which a report is required to be sent to the National Response Center by DOT regulations in 49 CFR 171.15, NRC radiation safety assessment actions will consist of the following.

—Call the agency designated by the affected State to respond to transportation accidents involving radioactive materials as soon as practicable to ensure that agency has been informed of the incident. (The State government is responsible for assuming control of the accident scene to protect the health and safety of the public.)
—Offer NRC technical assistance in the form of information, advice, and evaluations to the State at the time the initial notification is made to the appropriate State agency.
—Assure awareness of the incident by the DOE and other affected agencies, including any agencies specifically designated by the Federal Emergency Management Agency.
—Maintain awareness of the situation until normal conditions are restored at the scene of the accident.
—Provide information on packaging characteristics in response to any query regarding NRC-approved packages.
—Respond to requests for information on NRC activities in connection with the event. Requests for specific information on an accident normally will be referred to the appropriate State agency, or to the DOE if the situation relates to DOE activities.
—If the shipper is an NRC licensee, ensure that the shipper provides complete and accurate information concerning the radioactive material and details of the shipment to emergency response personnel.
—In accordance with the NRC–DOT Memorandum of Understanding, act as lead agency for investigating all accidents, incidents, and instances of actual or suspected leakage involving packages of radioactive material regulated by the NRC. Any NRC personnel at the scene of a transportation accident will notify the on-scene coordinator of his or her presence and make clear that, unless NRC assistance is requested by the on-scene coordinator, NRC activities will be primarily limited to information collection.
—Provide recommendations to emergency response personnel on radiological issues if NRC assistance should be requested by the on-scene coordinator or if a need is recognized by NRC personnel.

The policy here set forth relates solely to radiological concerns. Responding to any attempt to steal or sabotage a shipment of nuclear material is a responsibility of the Federal Bureau of Investigation (FBI) as delineated in the NRC/FBI Memorandum of Understanding dated April 27, 1979, and published December 20, 1979, at 44 FR 75535.

Dated at Washington, D.C., this 23rd day of March 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-8134 Filed 3-28-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-352-OL and 50-353-OL; ASLBP No. 84-501-02 OL]

Philadelphia Electric Co.; Establishment of Atomic Safety and Licensing Board To Rule on Petitions

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Philadelphia Electric Company

Limerick Generating Station, Unit Nos. 1 and 2

This Board is being established to rule on the admissibility of Part 70 issues raised in this proceeding.

The Board is comprised of the following Administrative Judges:

Lawrence Brenner, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Peter A. Morris, Atomic Safety and Licensing Board Panel, U.S. Nuclear

Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 16th day of March 1984.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 84-8436 Filed 3-28-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-390 and 50-391]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Order Extending Construction Completion Dates

Tennessee Valley Authority is the current holder of Construction Permit Nos. CPPR-91 and CPPR-92, issued by the Atomic Energy Commission [1] on January 23, 1973, for construction of the Watts Bar Nuclear Plant, Units 1 and 2. These facilities are presently under construction at the applicant's site on the west branch of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

On October 11, 1983, the Tennessee Valley Authority (the applicant) filed a request for an extension of the completion dates. The extension has been requested because construction has been delayed by the following events:

1. Piping analysis and hanger/support design, installation, and documentation due to numerous nonconforming conditions identified in the construction and design efforts.
2. Closure of licensing items as a result of NRC-identified violations and TVA-identified conditions adverse to quality (i.e., 50.55e items).
3. Quality assurance documentation, ASME Section III N-5 Data Form, and the "as-constructed" drawings program.
4. Completion of conduit, cable, and instrumentation installation.
5. Application of protective coatings inside the Reactor Building.
6. Completion of the piping, hanger, and support verification program required by NRC-OIE Bulletin 79-14.
7. TVA has also requested that allowance for further contingencies be made in granting the extension of the completion dates.

This action involves no significant hazards consideration, good cause has been shown for the delays; several of the causes were beyond the control of the applicant; and the extension is for a reasonable period, the bases for which are set forth in the staff's evaluation of the request for extension.

The Commission has determined that this action will not result in any significant environmental impact, and pursuant to 10 CFR 51.5(d)(4), an environmental impact statement, or negative declaration and environmental impact appraisal, need not be prepared in connection with this action.

The NRC staff safety evaluation of the request for extension of the construction permits is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555 and the Chattanooga Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

It is hereby ordered that the latest completion date for Construction Permit No. CPPR-91 is extended from March 1, 1984 to January 1, 1985, and the latest completion date for Construction Permit No. CPPR-92 is extended from August 1, 1985 to July 1, 1986.

Date of Issuance: March 26, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-8437 Filed 3-28-84; 8:45 am]

BILLING CODE 7590-01-M

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[1] Effective January 19, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

OFFICE OF MANAGEMENT AND BUDGET

Proposed Revision of OMB Circular No. A-76; "Performance of Commercial Activies"

AGENCY: Office of Management and Budget.

ACTION: Request for comments on proposed revision of OMB Circular No. A-76, "Performance of Commercial Activities."

SUMMARY: OMB Circular No. A-76 (Revised August 4, 1983) establishes Federal policy regarding the performance of commercial activities. The Supplement to the Circular sets forth procedures for determining whether it is more economical to continue in-house operations of commercial activities or to perform them under contract.

When a decision is made that it is more cost effective to convert an in-house function to contract, Federal employees who are separated or adversely affected by the decision to contract receive the right of first refusal to contractor employment openings for a period of up to 90 days after the beginning of contractor performance.

When the Circular was published for comment in 1983, many commenters requested guidance on the administeration of the right of first refusal. OMB developed this proposed contract clause after consultation with Federal agencies and business representatives.

The propsed right of first refusal contract clause builds upon current policies contained in the Circular. The proposals provide additional guidance concerning:

(1) Employment openings subject to the clause;

(2) Contractor reporting requirements;

(3) Information provided to the contractor;

(4) Qualifications determinations;

(5) Relationship to other statutes, regulations and employment policies; and

(6) Penalty for non-compliance.

The intended effect of the proposed change is to clarify contractor obligations and employee rights, and to collect information on the hiring of adversely affected employees for the purpose of severance pay administration.

Paperwork Reduction Act: The proposed clause establishes a reporting requirement for contractors under the Circular. Should the proposed clause be adopted, it will be submitted for inclusion into the Federal Acquisition Regulation. The current contractor reporting requirement under Federal Procurement Temporary Regulation 63, Supp. 1, (OMB Control No. 3090-0104) would be concelled.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. et seq. and 5 CFR Part 1320) the collection of information requirements contained in this proposed revision has been submitted for review to OMB's Office of Information and Regulatory Affairs.

Comments about the appropriateness of information requirements in this proposal should be addressed to Mr. Edward C. Springer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (telephone: (202) 395-4814).

DATE: Comments must be received on or before the 60th day following publication in the **Federal Register.**

ADDRESS: Comments concerning the proposed policy revision should be submitted to the Administrator, Office of Federal Procurement Policy, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Durant, Office of Federal

Procurement Policy, Office of Management and Budget, (202) 395–6810.

David A. Stockman,

Director.

Right of First Refusal

The following clause shall be inserted in all contracts which result from conversion to contract under OMB Circular No. A–76:

Right of First Refusal

1. Consistent with the Government post-employment conflict of interest regulations, the Contractor shall give adversely affected Federal employees the right of first refusal for all employment openings under this contract for which they are qualified.

2. *Definitions:* (a) An "adversely affected Federal employee" is: (1) any Federal employee who is assigned to the Government commercial activity, or (2) any employee identified for release from his or her competitive level or separated as a result of the contract.

(b) "Employment openings" are position vacancies created by this contract which the Contractor is unable to fill with personnel in the Contractor's employ at the time of the contract award, including positions within a fifty mile radius of the commercial activity which indirectly arise in the Contractor's organization as a result of the Contractor's reassignment of employees due to the award of this contract.

(c) The "contract start date" is the first day of Contractor performance.

3. *Filling Employment Openings:* (a) For a period beginning with contract award and ending 90 days after the contract start date, no person other than an adversely affected Federal employee on the current listing provided by the Contracting Officer shall be offered an employment opening until all adversely affected and qualified Federal employees identified by the Contracting Officer have been offered the job and refused it.

(b) The Contractor may select any person for an employment opening when there are no qualified, adversely affected Federal employees on the latest, current listing provided by the Contracting Officer.

4. *Contractor Reporting Requirements:* (a) No later than 5 working days after contract award, the Contractor shall furnish the Contracting Officer with the following:

(i) A list of employment openings;

(ii) Sufficient job application forms for adversely affected Federal employees.

(b) By the contract start date the Contractor shall provide the Contracting Officer with the following:

(i) The names of adversely affected Federal employees offered an employment opening;

(ii) The date the offer was made;

(iii) A brief description of the position;

(iv) The date of acceptance of the offer and the effective date of employment;

(v) The date of rejection of the offer, if applicable; the salary and benefits contained in the rejected offer; and

(vi) The names of any adversely affected Federal employees who applied but were not offered employment and the reason(s) for withholding an offer.

(c) For the first 90 days after the contract start date, the Contractor shall provide the Contracting Officer with the names of all persons hired or terminated under the contract, within 5 working days of such hiring or termination.

5. *Information Provided to the Contractor:* (a) No later than 10 working days after contract award, the Contracting Officer shall furnish the Contractor a current list of adversely affected Federal employees exercising the right of first refusal, along with their completed job application forms.

(b) Between the contract award and start dates, the Contracting Officer shall inform the Contractor of any reassignment or transfer of adversely affected employees to other Federal positions.

(c) For a period up to 90 days after contract start date, the Contracting Officer will periodically provide the Contractor with an updated listing of adversely affected Federal employees, reflecting employees recently released from their competitive level or separated as a resulted of the contract award.

6. *Qualifications Determination:* The Contractor has the right under this clause to determine the adequacy of the qualifications of adversely affected Federal employees for any employment openings. However, an adversely affected Federal employee who held a job in the Government commercial activity which directly corresponds to an employment opening shall be considered qualified for that job. Questions concerning the qualifications of adversely affected Federal employees for specific employment openings shall be referred to the Contracting Officer for determination. The Contracting Officer's determination shall be final and binding on all parties.

7. *Relation to Other Statutes, Regulations and Employment Policies:* The requirements of this clause shall not modify or alter the Contractor's responsibilities under statutes, regulations or other contract clauses pertaining to the hiring of veterans, minorities or handicapped persons.

8. *Penalty for Non-compliance:* Failure of the Contractor to comply with any provision of this clause may be grounds for termination for default.

[FR Doc. 84–8389 Filed 3–28–84; 8:45 am]

BILLING CODE 3110–01–M

Privacy Act of 1974: Revised Supplemental Guidance on Implementation of the Privacy Act of 1974

March 21, 1984.

AGENCY: Office of Management and Budget.

ACTION: Revision of guidance on the relationship between the Privacy Act of 1974 and the Freedom of Information Act.

SUMMARY: This document issues in final form a revision to OMB's Privacy Act Implementing Guidelines proposed on August 10, 1983 at 48 FR 36359. The revision is intended to clarify the relationship between the Privacy Act and the Freedom of Information Act (FOIA) and improve agency implementation of both Acts. Under the revised Guidelines, agency records exempt from disclosure under provisions of the Privacy Act are, to that extent, also exempt from disclosure under FOIA, by virtue of the Section (b)(3) exemption of FOIA. Therefore, agencies may deny access to records in exempt systems of records when access is sought under FOIA to the same extent they may do so when access is sought under the Privacy Act. However, both the Privacy Act and FOIA provide for universal venue in the District of Columbia, and the Court of Appeals for the District of Columbia Circuit, along with the Court of Appeals for the Third Circuit, have held that the Privacy Act is not a permissible FOIA (b)(3) exemption statute. Consequently, pending a dispositive ruling on the issue by the Supreme Court, agencies should not rely exclusively on this guidance unless a FOIA matter proceeds to litigation within a judicial circuit other than the D.C. or Third Circuits.

FOR FURTHER INFORMATION CONTACT: Robert N. Veeder, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 New Executive Office Building, Washington, D.C. 20503; telephone 202–395–4814.

SUPPLEMENTARY INFORMATION: Under section 6 of the Privacy Act of 1974 (Pub. L. 93–579, December 31, 1974; 5 U.S.C. 552a note), the Office of Management and Budget is responsible for developing guidelines and regulations for the use of

Federal agencies in implementing the Act's key provisions codified at 5 U.S.C. 552a. OMB's Privacy Act Guidelines were first issued in 1975 at 40 FR 28948 (July 9, 1975), and supplemental at 40 FR 56741 (December 4, 1975).

On August 10, 1983, OMB proposed to revise its Privacy Act Guidelines to provide that agency records exempt from disclosure under the Privacy Act were, to that extent, also exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552). 48 FR 36359 (August 10, 1983). OMB's earlier guidance had been that "* * * the Privacy Act should not be used to deny access to information about an individual which would otherwise have been required to be disclosed to that individual under the Freedom of Information Act." 40 FR 56741, 56742.

The Privacy Act's most important provisions relevant to this issue are as follows. First, Federal agencies must publish public notices describing the nature and uses of their "systems of records" on individuals (5 U.S.C. 552a(e)). Second, individuals may control some (though not all) disclosures of their own government records contained in systems of records (5 U.S.C. 552a(b)). Third, individuals may have direct access to their own records contained in systems of records, and may seek amendment to their records according to specified procedures (5 U.S.C. 552a(d)).

The Act also contains exemption provisions applicable to Central Intelligence Agency records and to records pertaining to criminal law enforcement, civil law enforcement, personnel, statistical, and a few other matters (5 U.S.C. 552a (j), (k)). These sections describe the types of matters covered, and permit agency heads, through specified public-notice procedures, to exempt such records from the Act's section (d) first-party access requirements (552a(d)) and from other of the Act's requirements. The exemption provisions do not permit agencies to exempt records from the Act's section (b) requirements giving individuals qualified control over the uses of their government records (552a(b)).

OMB received a total of thirty-four comments on its August 10, 1983 proposal. Twenty-six comments were submitted by Federal agencies; of these, thirteen supported the proposal, eleven were neutral, and two (from the Department of the Interior and the Federal Energy Regulatory Commission) opposed the proposal. Three Members of Congress, Representatives Glenn English, Thomas N. Kindness, and John N. Erlenborn, submitted comments, all in opposition to the proposed change. Five private groups also submitted comments, all in opposition—the Section of Administrative Law of the American Bar Association, the American Society of Newspaper Editors and the American Newspaper Publishers Association (a joint submission), the Center for National Security Studies (on behalf of the American Civil Liberties Union), the National Newspaper Association, and the Reporters Committee for Freedom of the Press.

OMB has studied all of these comments carefully, and has also studied the opinions of the United States Courts of Appeals on both sides of the issue, the most extensive of which are *Shapiro* v. *Drug Enforcement Administration*, 721 F.2d 215 (7th Cir. 1983); *Porter* v. *U.S. Department of Justice*, 717 F.2d 787 (3rd Cir. 1983); and *Greentree* v. *U.S. Customs Service*, 674 F.2d 74 (D.C. Cir. 1982). In addition, we have reviewed scholarly commentary on the issue (*see* Anthony T. Kronman, "The Privacy Exemption to the Freedom of Information Act," IX *Journal of Legal Studies* 727 (1980), and authorities cited at notes 5 and 14), and have consulted with Federal agencies concerning current practices under the Privacy and Freedom of Information Acts. We have concluded that our proposal is correct as a matter of law and policy, and are revising the OMB Privacy Act Guidelines accordingly.

In our view, the two statutes provide in straightforward and unambiguous language that agency records exempt from mandatory disclosure under the Privacy Act are, to that extent, also exempt from mandatory disclosure under FOIA. FOIA requires Federal agencies to make their records "promptly available to any person" upon appropriate request (5 U.S.C. 552(a)(3)). This requirement, however, is subject to several specified exemptions, one of which applies to matters—

> *Specifically exempted from disclosure by statute* (other than section 552b of this title), *provided that such statute* (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) *establishes particular criteria for withholding or refers to particular types of matters to be withheld.*

5 U.S.C. 552(b)(3) (emphasis supplied).

The Privacy Act unmistakably fits the FOIA (b)(3)(B) exemption. Sections (j) and (k) of the Act specifically exempt certain files from disclosure, establish particular criteria for withholding, and refer to particular types of matters to be withheld. Thus, by the terms of FOIA's (b)(3) exemption, the Privacy Act's nondisclosure provisions are recognized by FOIA and are not overridden by FOIA's own mandatory-disclosure requirements.

Some of the record comments and court opinions argue that the FOIA (b)(3) exemption does not apply to sections (j) and (k) of the Privacy Act, since these sections exempt records from the disclosure requirements of "this section"—*i.e.*, from the disclosure requirements of the Privacy Act itself, rather than the requirements of other statutes. But FOIA (b)(3) does not require that other statutes establish blanket nondisclosure requirements—only that certain matters be "*exempted*" from disclosure. Other statutes, standing alone, could, of course, exempt matters from FOIA disclosure without benefit of FOIA (b)(3) itself. Where other statutes provide exemptions from disclosure, and meet FOIA (b)(3)'s standards of specificity and particularity regarding the matters to be withheld, these exemptions must be applied to FOIA as well if the FOIA (b)(3) exemption (in particular that established by (b)(3)(B) is to be given its natural meaning.

Sections (j) and (k) of the Privacy Act provide their own demonstration of the logic of the FOIA (b)(3) exemption. The provisions of these sections make it unmistakably clear that the Congress, while wishing to assure citizens ready access to their government files and the means of correcting significant errors, realized that there were circumstances where such disclosures could be harmful. One is where first-party access could lead to physical or other retaliation against those who provided the information in the records (*e.g.*, criminal and civil investigative files). Another is where first-party access could compromise the government's ability to gather needed information in the first place by reducing the candor of that information (*e.g.*, files compiled to determine suitability for Federal employment).

Congress addressed these problems by providing fairly broad disclosure exemptions for the Central Intelligence Agency and criminal law enforcement agencies (552a(j)), and more narrow, precisely specified exemptions for several civil-investigative and administrative functions (which permit nondisclosure, for example, where disclosure would "compromise the objectivity or fairness" of tests or examinations, or would "reveal the identity" of a confidential source of information) (552a(k), (k)(2), (k)(5)–(7)). In both cases, Congress provided that the disclosure exemptions were to apply only to designated "systems of records," were to exclude only certain requirements of the Act, and were to go

into effect only upon public notice and explanation.

These policies and procedures would be rendered virtually meaningless if the FOIA (b)(3) exemption were ignored. An individual denied access to his records under sections (j) or (k) of the Privacy Act could nonetheless obtain them simply by invoking FOIA instead (except to the extent some other FOIA exemption, such as (b)(6) or (b)(7), were found to apply to the contents of those records). Agencies such as the Federal Bureau of Investigation and the Drug Enforcement Administration, having established systems of records on sensitive criminal matters and exempted them from first-party access under section (j) of the Privacy Act, would nevertheless be obliged to sort through the contents of these files in response to first-party requests and, absent successful invocation of another FOIA exemption, be obliged to reveal their contents to the subjects of their investigations.

The *Greentree* opinion argues that permitting FOIA access to records that had been exempt from disclosure under sections (j) or (k) of the Privacy Act would not render these exemptions *totally* meaningless. The exemptions could still be used to excuse systems of records from Privacy Act requirements *other than* the section (d) access requirements, and could also be used to cut back first-party access from the broad disclosure requirements of section (d) of the Privacy Act to the more narrow requirements of FOIA as qualified by the FOIA (b)(6) and (b)(7) exemptions. *See*, 674 F.2d at 80–81.

We find this argument unpersuasive. That one could ignore FOIA (b)(3) and still leave intact some aspects of sections (j) and (k) of the Privacy Act is no reason not to leave all of its provisions intact as written—especially its most important one. As explained above, the primary purpose of sections (j) and (k) is to protect certain sensitive records from access by the subjects of those records, and both sections do so in terms that meet the specifications of FOIA (b)(3) with exactitude. Moreover, as the Seventh Circuit points out in its *Shapiro* opinion, limiting the scope of Privacy Act section (j) exemptions to the scope of any applicable FOIA exemptions "is contrary to the intent of Congress * * * as shown both by the [section (j)] exemption's language, which is broader than the FOIA exemption covering law enforcement records (Exemption 7), and by the relevant legislative history of the Privacy Act" (721 F.2d at 221).

While parties on both sides of the controversy acknowledge that the legislative history of the two statutes is "ambiguous" on some points, we do not think this history is at all ambiguous on the key issue whether Congress thought that intelligence and criminal investigation records covered by the Privacy Act should be disclosed to the subjects of the investigations. The discussion and legislative citations in the *Sehapiro* opinion are lucid on this question. The *Shapiro* discussion concludes that—

> * * * The legislative history of the Privacy Act shows Congress' concern that individuals not use the Act to obtain access to their own criminal investigation files. It makes little sense to conclude that Congress would enact specific nondisclosure provisions in the Privacy Act to address this concern, while at the same time allowing individuals to bypass these exemptions by using the broader access terms of the FOIA.

721 F.2d at 222.

It is clear, moreover, that Congress has been cognizant of the sometimes complex interrelationships between the Privacy Act, FOIA, and related statutes, and where appropriate has taken direct steps to adjust the statutes' general provisions to account for these interrelationships. At one point the Privacy Act provides that first-party control over disclosure of government records shall not apply to disclosures required by FOIA (552a(b)(2)); at another point, it provides that FOIA exemptions shall not be used to deny access to records otherwise available under the Privacy Act (552a(q)). And FOIA's (b)(3) exemption was itself revised in 1976 to exclude the government in the Sunshine Act (5 U.S.C. 552b) from its incorporation of other statutory exemptions—Congress could have excluded the Privacy Act exemptions as well by adding a single term to this provision.

The record comments and court opinions contain three further arguments for permitting FOIA disclosures of exempt Privacy Act records that merit discussion here. The first is the assertion that the Privacy Act is not (or should not be, or was never intended to be) a FOIA (b)(3) statute. This assertion, taken as a legal proposition, is addressed above. In many cases, however, the assertion seems to be based on the general supposition that since the Privacy Act was intended to *expand* access to government records, it should not be applied so as to *limit* access from that provided by another disclosure statute.

In fact, however, the purpose of the Privacy Act is not disclosure but the protection of individual privacy, and toward this end it restricts disclosure of government records in as many cases as it requires disclosure. The statute provides for public disclosure of the existence, nature, and uses of government "systems of records" on individual citizens. But as to the actual disposition of these records, the Act establishes four types of requirements which are necessarily, and for the most part carefully, balanced among each other. First, the Act gives individuals control over the disclosure of information about themselves in certain government records—but second, it provides explicit limitations on such control. Third, it gives individuals access to information about themselves in certain government records (and the means of correcting erroneous information)—but fourth, it provides explicit limitations on that access. To accept the view that the Privacy Act should not be considered a FOIA (b)(3) statute would be to read the fourth policy out of the Act, although this policy is fully consistent with the other three, and protects the privacy of certain kinds of sensitive communications to the government.

The second argument is that section (b) of the Privacy Act (552a(b)) provides that the Act may not be used to limit disclosures required by FOIA. This argument is prominent in the court opinions in *Porter* (717 F.2d at 793, 797) and *Greentree* (674 F.2d at 79–80). We believe, however, that this view is wholly mistaken. Section (b) does not require agencies to disclose any information at all, but to the contrary establishes qualified limitations on disclosures. In particular, section (b) provides that a record covered by the Privacy Act may not be disclosed to any person without the written consent (or request) of the individual to whom the record pertains, except in twelve specified situations, one of which is that disclosure is required by FOIA (552a(b)(2)).

Thus, 552a(b)(2) says that disclosures from systems of record required by FOIA are not contingent on the permission of the subjects of the records involved. This provision cannot reasonably be read as an affirmative disclosure requirement. We think the conclusion of the *Shapiro* decision that "section (d) provides sole access for first party requests under the Act" (721 F.2d at 220) is inescapably correct. The Privacy Act's limitations on section (d) access set forth in sections (j) and (k), which in turn are recognized by FOIA (b)(3), are unaffected by the Act's separate "conditions of disclosure" specified by section (b)(2).

The final argument is the so-called "third party anomaly" argument,

emphasized in some of the record comments and in the *Porter* and *Greentree* opinions. The argument goes as follows:

The Privacy Act's section (j) and (k) exemptions should not recognaized by FOIA (b)(3) because if they were, there would be cases where individuals would have less access to their own records than third parties, and third parties might even gain access to such records and transmit them back to the first parties. The *Greentree* opinion says that "[s]uch as result would comport with neither logic nor common sense," which suggests that "Congress could not have intended section (j)(2) of the Privacy Act to serve as a withholding statute under FOIA Exemption 3" (674 F.2d at 79, 80).

In our view this point is of little practical importance and does not affect the fundamental legal and policy issues. In virtually all cases of agency records exempt from first-party access under sections (j) and (k), disclosure to others would also be exempt from mandatory FOIA disclosure under the "unwarranted invasion of personal privacy" provisions of sections (b)(6) and (b)(7) of FOIA. As noted previously, the exemptions of FOIA (b)(6) and (b)(7) are narrower than those of sections (j) and (k) of the Privacy Act. However, while these differences can be significant in the case of first-party access, they are small and inconsequential in the case of third-party access to the same records. At most they may result in occasional administrative difficulties and instances of partial and unintended first-party access. These are hardly reasons for ignoring the basic statutory scheme inself by permitting FOIA to nullify the first-party access restrictions of sections (j) and (k).

The text of our revised guidance is set forth below. The guidance refers not only to the Privacy Act exemptions in sections (j) and (k), but to those in sections (d)(5) and (1) as well. The latter provisions, involving information compiled in anticipation of civil actions and records of the National Archives, present FOIA issues similar to those discussed above, but which have not been subjects of significant controversy.

Finally, agencies should note that both the Privacy Act and FOIA provide for universal venue in the District of Columbia. As discussed above, the Courts of Appeals for the District of Columbia Circuit (in *Greentree)* and for the Third Circuit (in *Porter*) have held that the Privacy Act is not a permisible FOIA (b)(3) statute. The Department of Justice is presently seeking a writ of certiorari from the Supreme Court to review the Third Circuit's Decision in *Provenzano v. U.S. Department of Justice,* 717 F.2d 799 (3rd Cir. 1983), a companion case to *Porter.* Pending a dispositive ruling on the issue by the Supreme Court, agencies should not rely exclusively on the guidance on this issue set forth below unless a FOIA matter proceeds to litigation within a judical circuit other than the District of Columbia or Third Circuits.

Christopher C. DeMuth,

Administrator for Information and Regulatory Affairs.

Section (q) of the OMB Privacy Act "Implementing Guidelines" published at 40 FR 28948, July 9, 1975 and supplemented on December 4, 1975 (40 FR 5674), is revised to read as follows:

Section (q) Relationship of the Privacy Act to the Freedom of Information Act

Subsection (q) "No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section."

This provision makes it explicit that an individual may not be denied access to a record pertaining to him under subsection (d)(1), access to records, because that record is permitted to be withheld from members of the public under the Freedom of Information Act (FOIA). The only grounds for denying an individual access to a record pertaining to him are the exemptions stated in this Act, subsections (j) and (k); subsection (1), archival records; and subsection (d)(5), records compiled in reasonable anticipation of a civil action or proceeding. In addition, consideration may have to be given to other statutory provisions which may govern specific agency records.

In the converse situation, however, agencies should note that FOIA exemption (b)(3) provides that access under the FOIA is not required if the material sought is specifically barred from disclosure by statute, provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld. The Privacy Act in subsections (d)(5), (j), (k), and (l) reaches the level of specificity necessary to qualify under paragraph (b)(3)(B) of the FOIA as a withholding statute. Accordingly, should an individual make a FOIA request for his records that are contained in a system of records, agencies may rely on section (d)(5), (j), (k), or (l) of the Privacy Act, when appropriate, to deny such requests. (It should be further noted that for certain exempt systems, substantial portions of the covered records may be required to be released; see, for example, the requirements of (k)(5)).

Whether a request by an individual for access to his records is to be processed under Privacy Act or FOIA procedures involves several considerations. For example, while agencies have been encouraged to reply to requests for access under the Privacy Act within ten days whenever practical, consistent with the FOIA, the Privacy Act does not establish time limits for responding to requests (see discussion of (d)(1)). The Privacy Act also does not establish an administrative appeal on denial of access comparable to that of the FOIA, although agencies are encouraged to permit individuals to request an administrative appeal of initial denials of access to avoid, where possible, the need for unnecessary judicial action. It can also be argued that requests filed under the Privacy Act can be expected to be specific as to the systems of records to which access is sought, whereas agencies are required to respond to a FOIA request only if it "reasonably describes" the records sought. Further, the FOIA permits charging of fees for search as well as copying records, while the Privacy Act permits only for the direct cost of making a copy upon request.

It is our view that, as a matter of procedure, agencies should treat requests by individuals for information pertaining to themselves which specify either the FOIA or the Privacy Act, (but not both), under the procedural provisions established pursuant to the Act specified in the request. When the request specifies both Acts, and may be processed under both, Privacy Act procedures should be employed. When the request specifies neither Act, and could be processed under both Acts, Privacy Act procedures should also be used. However, in these two latter cases, the individual should be advised of the procedures the agency has elected to use, of the existence and general effect of the FOIA, and of the differences, if any, between the agency's procedures under the two (e.g., fees, time limits, access and appeals).

[FR Doc. 84-8440 Filed 3-28-84; 8:45 am]
BILLING CODE 3110-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) Collection title: Application and Claim for Sickness Insurance Benefits
(2) Form(s) submitted: SI-1a/1b, SI-2, SI-3, ID-11a
(3) Type of request: Revisions of a currently approved collection
(4) Frequency of use: On occasion
(5) Respondents: Individuals or households, business or other for-profit
(6) Annual responses: 648,000
(7) Annual reporting hours: 27,1338
(8) Collection description: Under section 2 of the Railroad Unemployment Insurance Act, sickness benefits are provided for qualified railroad workers. The collection obtains information needed for determining eligibility for and amount of such benefits.

(1) Collection title: Requests for Consultative Medical Examination
(2) Form(s) submitted: ID-31a
(3) Type of request: Existing collection in use without an OMB control number
(4) Frequency of use: On occasion
(5) Respondents: Business or other for-profit, small business or organizations
(6) Annual responses: 500
(7) Annual reporting hours: 500
(8) Collection description: Section 2 of the RUIA provides sickness benefits for qualified railroad employees. The collection obtains consultative evidence of inability to work when needed to supplement evidence obtained from other sources.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Milo Sunderhauf (202-395-6880), Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

William A. Oczkowski,

Director of Planning and Information Management.

[FR Doc. 84-8439 Filed 3-28-84; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 20779; (SR-CBOE-84-4]

Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

March 21, 1984.

The Chicago Board Options Exchange, Incorporated ("CBOE"), LaSalle at Van Buren, Chicago, IL 60604, submitted on January 30, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, that would permit open trading to continue until 3:00 p.m. on the Friday before expiration in all expiring series of options. Under existing rules, open trading on expiring options series, other than index options, stops at 2:00 p.m. on the Friday prior to expiration.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20644, February 10, 1984) and by publication in the **Federal Register** (49 FR 6194, February 17, 1984). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therfore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8412 Filed 3-28-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20782; (SR-CBOE-84-6)]

Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

March 22, 1984.

The Chicago Board Options Exchange, Inc. ("CBOE"), LaSalle at Jackson, Chicago, Illinois 60604, submitted on February 6, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to add CBOE Rule 2.13 to establish a Financial Planning Committee [1] which would make recommendations to the Executive Committee and the Board of Directors with respect to the fee structures, financing, capital and operating budgets, and related financial matters of the Exchange. The committee would consist of the President of the Exchange and at least seven other members, including an Exchange director as either its Chairman or Vice Chairman. Members of the committee would be appointed for three year terms staggered so that the terms of at least two members would expire each year. In addition, under the proposed rule, a quorum for the transaction of business would consist of a majority of the committee members.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20635, February 9, 1984) and by publication in the **Federal Register** (49 FR 6063, February 16, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and the regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A.Fitzsimmons,

Secretary.

[FR Doc. 84-8413 Filed 3-28-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23257; (70-6963)]

Louisiana Power & Light Co.; Proposal To Finance Pollution Control Facilities

March 23, 1984.

Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application-declaration with this Commission pursuant to Sections 6(a), 7, 9(a), 10 and

[1] The Exchange states that members of the proposed Committee must be approved by the Board of Directors of the CBOE pursuant to Section 8.3 of the Exchange's Constitution.

12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 44 and 50(a)(2) thereunder.

In order to meet certain federal and state pollution control standards, the Company has constructed and installed and is constructing and installing at Unit 3 of its Waterford Steam Electric Generating Station ("Waterford 3") in St. Charles Parish, Louisiana certain facilities solely for atmospheric, air, water and/or pollution control purposes and for solid waste disposal ("Facilities"). To finance some or all of these Facilities, the Company proposes to enter into one or more sale agreements or a sale agreement and one or more supplements and/or amendments ("Sale Agreement") with the Parish of St. Charles, Louisiana ("Parish"); the Parish is to enter into one or more trust indentures or a trust indenture and one or more supplements ("Trust-Indenture") under which the Parish is to issue and sell, in one or more series, its pollution control revenue bonds ("Bonds") in an aggregate principal amount not to exceed $120,000,000. The Bond sale proceeds (net of any underwriter's discount or other expenses payable from such proceeds) are to be deposited with the Trustee and applied to pay the costs of acquiring, constructing, installing and/or equipping the Facilities. Further under the Sale Agreement, the Company is to sell the Facilities to the Parish for cash, and is to simultaneously re-purchase the Facilities from the Parish for a purchase price, payable on an installment payment basis over a period of years, sufficient (together with any other moneys held by the Trustee under the Trust Indenture and available for the purpose for the particular series of Bonds involved) to pay the principal of, the premium, if any, and the interest on such series of Bonds as they become due and payable. The installment payments are to be made directly to the Trustee pursuant to an assignment and pledge thereof by the Parish to the Trustee.

The Company will also be obligated to pay the reasonable and necessary expenses incurred by the Parish pursuant to the Sale Agreement and the Trust Indenture and the reasonable and necessary compensation of and expenses incurred by the Trustee, any registrar or paying agent under the Trust Indenture, and all Indexing Agents, Tender Agents and/or Remarketing Agents, except as to each series of bonds, the initial compensation and expenses of the Trustee, and the legal, accounting, financial and printing expenses and fees, the fee of any underwriter or underwriters ("Underwriter") and substantially all other expenses for that series of Bonds, incurred in connection with the issuance of such series of Bonds, will be included in the "Cost" of the Facilities as defined in the Sale Agreement and therefore to be included in the purchase and re-purchase prices of the Facilities and be financed by the sale of the Bonds of that series.

As to each series of Bonds, the Trust Indenture will provide for the establishment with the Trustee of a Bond Fund and a Project Acquisition Fund; for any accrued interest and/or premium paid by the purchasers of such series of Bonds to be deposited in the Bond Fund for such series and the remainder of the sale proceeds to be deposited in the Project Acquisition Fund for such series; for the cash price payment to the Company upon the sale by the Company to the Parish of the Facilities to be paid out of such Project Acquisition Fund; for any funds remaining in such Project Acquisition Fund after the Facilities have been paid for to be deposited in such Bond Fund and/or used by the Trustee for the redemption and/or payment of principal of Bonds or to purchase Bonds of such series for cancellation or otherwise as directed by the Company with the approval of bond counsel; and for such Bond Fund to be used to pay the principal of, premium, if any, and interest on such series of Bonds. The installment payments to be made by the Company in payment of the re-purchase price are to be deposited in such Bond Fund.

The Trust Indenture will provide that, upon the occurrence of certain events relating to the construction or operation of Waterford 3 or the Facilities, the Bonds will be redeemable by the Parish, at the direction of the Company. Any series of the Bonds may be made subject to a mandatory cash sinking fund under which stated portions of the Bonds of such series are to be retired at stated times. The Bonds will be subject to mandatory redemption in certain other cases, including certain events relating to the taxability of the interest on the Bonds. The payments by the Company in such circumstances shall be sufficient (together with any other moneys held by the Trustee under the Trust Indenture and available for the purpose) to pay the principal of the outstanding Bonds to be retired or redeemed at that time, together with interest accrued or to accrue thereon to the retirement or redemption date.

The Bonds, or the several series thereof, will have a term of not less than 5 years and not more than 35 years, but be subject to earlier redemption and retirement upon the occurrence of certain events.

The Sale Agreement and the Trust Indenture may provide for a fixed interest rate for one or more series of the Bonds and/or for an adjustable interest rate for one or more series of the Bonds. As to series having an adjustable interest rate, the interest rate for the Bonds of such series during the first Rate Period (the period during which the interest rate on such Bonds of a particular series is fixed) will be determined in discussions between the Company and the purchasers of such series from the Parish and be based on the current tax-exempt market rate for comparable bonds having a maturity comparable to the length of the initial Rate Period. Thereafter, for each Rate Period, the interest rate on such Bonds: (a) Will, if no Bonds are tendered for repurchase, be determined by the appointed Indexing Agent based upon an index, chosen by the Indexing Agent, derived from the then current market level for comparable securities of maturity comparable to such Rate Period, or (b), if any of such Bonds are tendered for repurchase, will be that rate which will be sufficient to remarket all such tendered Bonds of such series at their principal amount. At the time of each adjustment, the interest rate so determined will be no greater than 120% nor less than 80% of such index, subject to a maximum rate of interest of 15%.

The initial Rate Period would commence on the date as of which interest begins to accrue on such Bonds of such series. Upon the termination of the initial Rate Period, each Rate Period thereafter, other than the period commencing on the Fixed Rate Date (the date from which the interset rate borne by Bonds of a series would be fixed until maturity), will be a one year period. If the Fixed Rate Date for the Bonds of any series shall not been fixed, the date which would have otherwise been the Anniversary Date (the first day of any Rate Period subsequent to the initial Rate Period, other than the last Rate Period if such shall begin on the Fixed Rate Date) for the Bonds of a series shall be the fixed Rate Date for the Bonds of that series.

The Sale Agreement and the Trust Indenture will provide that holders of such Bonds will have the right to tender their Bonds and have them purchased at a price equal to the principal amount thereof on each Anniversary Date and on the Fixed Rate Date. A Tender Agent will be appointed to facilitate the transfer of any Bonds delivered by holders exercising this right. Any holder

of Bonds wishing to have such Bonds purchased will be required to deliver such Bonds to the Tender Agent no earlier that thirty days preceding such purchase date and no later than fifteen days preceding such purchase date. All obligations of the Company with respect to the purchase of Bonds so tendered would be terminated following the Fixed Rate Date.

Under the Sale Agreement the Company will be obligated to pay amounts equal to the amounts to be paid by the Tender Agent pursuant to the Trust Indenture for the purchase of such Bonds so tendered, such amounts to be paid by the Company on the dates such payments by the Tender Agent are to be made; provided, however, that the obligation of the Company to make any such payment under the Sale Agreement would be reduced by the amount of any other moneys available therefor, including the proceeds of the sale of such Bonds by the Remarketing Agent.

A Remarketing Agent will be appointed who will, upon the delivery of such Bonds by holders to the Tender Agent for purchase, offer such Bonds for sale and use its best efforts to sell such Bonds. The Remarketing Agent will attempt to sell such Bonds at a price equal to the stated principal amount of such Bonds, at an annual interest rate no greater than 120% nor less than 80% of the index for the Rate Period established by the Indexing Agent. Under certain circumstances, Bonds may be remarketed at a discount (not to exceed 5% of the principal amount) or a premium.

Adjustable interest rate Bonds will be subject to optional redemption, at the direction of the Company, in whole at any time or in part from time to time, prior to and including the Fixed Rate Date, on each Anniversary Date at 100% of their principal amount or on each date six months after the Anniversary Date at 100% of their principal amount plus a premium. After the Fixed Rate Date, such Bonds will be subject to optional redemption, at the direction of the Company, in whole or in part at redemption prices for each series of such Bonds to be determined prior to the pricing of such series of Bonds.

In order to obtain a more favorable rating and improve marketability, the Company may, in connection with and in support of any one or more series of the Bonds, arrange for an irrevocable letter of credit from a bank ("Bank") in favor of the Trustee. Payments with respect to principal, premium, if any, interest and purchase obligations in connection with such series of the Bonds, coming due during the term of its supporting letter of credit, would be secured by, or payable from, funds drawn under the letter of credit. In order to induce the Bank to issue such letter of credit, the Company would enter into a reimbursement agreement ("Reimbursement Agreement") with the Bank pursuant to which the Company would agree to reimburse the Bank for all amounts drawn under its letter of credit pursuant to the terms specified in the Reimbursement Agreement.

It is anticipated that the Reimbursement Agreement would require the payment by the Company to the Bank of commitment fees and letter of credit fees, or similar fees, with respect to amounts available to be drawn under its letter of credit. Any such letter of credit may expire or be terminated prior to the maturity date of the series of Bonds which such letter of credit supports and, in connection with such expiration or termination, such series of Bonds may be made subject to mandatory redemption on or prior to the date of expiration or termination of such letter of credit. Provision may be made, as to any such series of Bonds, for extension of such letter of credit or for the replacement thereof, upon its expiration or termination, by another letter of credit from the same or a different Bank.

It is contemplated that the respective series of the Bonds will be sold by the Parish pursuant to arrangements with the Underwriter and/or by private placement in a negotiated sale or negotiated sales. The Company will not be party to such underwriting arrangement or sales; however, the Sale Agreement will provide that the terms of the Bonds, and their sale by the Parish, shall be satisfactory to the Company.

The Company has been advised that the annual interest rate on the Bonds, assuming an initial Rate Period of five years, can be expected at the time of issuance to be 6% to 7% lower than the rate on long-term (30 year) obligations of like tenor and comparable quality, interest on which is tax-exempt. Similarly, the annual interest rates on long-term tax-exempt obligations are expected at the time of issuance of the Bonds to be 1% to2% lower than the rates on obligations of like tenor and comparable quality, interest on which is fully subject to Federal income tax.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing sould submit their views in writing by April 16, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, it ordered, and will receive a copy any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8414 Filed 3-28-84; 8:45 am]

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[Release No. 13803; 812-5730]

Mutual Investment Fund of Connecticut, Inc.; Application for an Order Exempting Applicant From the Provisions

March 1, 1984.

Notice is hereby given that Mutual Investment Fund of Connecticut, Inc. ("Applicant"), One Corporate Center, 20 Church Street, Hartford, Connecticut 06103, a open-end, diversified management investment company, filed an application on December 23, 1983, and an amendment thereto on February 3, 1984, for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from the provisions of Section 30(a) of the Act and Rule 6b-16 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act and the rules thereunder for the complete text of the provisions thereof pursuant to and from which the exemption is being sought.

According to the application, Applicant was organized on August 14, 1956, under the laws of the State of Connecticut to provide a mutual fund investment medium to Connecticut savings banks. It is represented that each shareholder is thoroughly familiar with the Applicant's operations and investments and regularly receives detailed information concerning the nature and performance of the Applicant's investments. It is also represented that all of the Applicant's directors have been and are required by its corporate charter to be officers of

savings bank shareholders of the Applicant.

Applicant states that certain information currently provided to Applicant's shareholders in the annual reports under the Act (Form N–1R and the Form N–1 amendment) is already reported to the shareholders in other documents, which Applicant represents it will continue to provide its shareholders. On the other hand, Applicant submits that some types of information Applicant must provide in the annual reports required under the Act, such as the type of company the Applicant is, frequency of board meetings, method of filling vacancies on the board of Directors, and correspondence with shareholders, is information provided primarily for the Commission and need not be provided annually to the shareholders. Applicant maintains that all of its shareholders are aware of such information by virtue of their status as shareholders and that information is set forth in Applicant's bylaws, which may be amended only upon shareholders approval.

Applicant represents that, if the requested exemptions are granted, certain information not currently provided to shareholders in documents other than Applicant's annual reports under the Act will be provided to shareholders. The annual report to shareholders prepared by the investment adviser and custodian, for example, will include a statement of considerations that affected participation of broker-dealers in commissions or other compensation paid on portfolio transactions of the Applicant, a statement whether its code of ethics has been maintained and enforced, and a statement of any cross-ownership or circular ownership between the Applicant and any other company. The investment advisor and custodian's annual financial report will also state the amount of commissions and any other amounts paid to broker-dealers, the discount on redemption of the Applicant's securities, and whether any suspension of the right of redemption or delay in payment upon repurchase has occurred during the fiscal year. The investment advisor and custodian's monthly financial report will also be distributed to shareholders. The minutes of Applicant's annual meeting of shareholders will identify Applicant's fidelity bond insurer and state any pending legal proceedings against Applicant and any savings account or deposit established by Applicant with any institution other than the custodian. In addition, the minutes of Applicant's annual meeting of shareholders or a special report to shareholders will contain the results of a survey which will be undertaken each year to determine the relationships and transactions, if any, between directors, officers, and affiliated persons of Applicant and Applicant, its investment adviser or directors, officers, controlling persons or affiliated persons of the investment adviser, and its broker-dealers. Applicant represents that it will submit the various documents to be sent to shareholders to the Commission in lieu of the annual reports should such submission be desired.

Applicant states that it believes that an exemption from the annual reporting requirements of Section 30(a) of the Act and Rule 8b–16 thereunder will be in the public interest and consistent with the protection of investors and the purposes and policies of the Act. Applicant submits that its shareholders, all of which are financially sophisticated institutional investors, receive and will continue to receive all the relevant financial and investment information necessary to make an informed investment decision from sources other than the Form N–1R and the annual amendment to Form N–1. Applicant states that the Commission will continue to receive the information Applicant is required to provide under Sections 30(b)(1) and (2) of the Act, which will supply the Commission with an ongoing summary of the Applicant's activities and performance. Furthermore, Applicant undertakes that at such time as the Commission may develop a new form to replace Form N–1R, Applicant will file such form, provided, that any of Applicant's obligations to provide information under the instant exemptive order, if granted, will cease to the extent such obligations are fulfilled or removed by the Commission's adoption of such new form or the Applicant's filing of such new form. Finally, Applicant submits that compliance with the annual reporting requirements of the Act imposes an unnecessary and substantial burden, and that because of its peculiar ownership and management characteristics and state regulation, submission of such reports to the Commission serves no purpose not already accomplished.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 11, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8405 Filed 3–28–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 13836; 812–5743]

Narragansett Capital Corp. et al.; Application for an Order Permitting Certain Proposed Transactions and Exempting Those Transactions From the Provisions

March 21, 1984.

Notice is hereby given that Narragansett Capital Corporation ("Narragansett"), registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified, management investment company, and Arthur D. Little, Robert D. Manchester, William P. Lane, Gregory P. Barber, and Roger A. Vandenberg (collectively, the "Individual Applicants," collectively with Narragansett, "Applicants"), 40 Westminster Street, Providence, RI 02903, filed an application on January 12, 1984, and amendments thereto on February 15 and March 6, 1984, requesting an order of the Commission pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder permitting certain proposed transactions, and pursuant to Section 17(b) of the Act exempting those transactions from the provisions of Section 17(a) of the Act. In those transactions, described more fully below, Narragansett First Fund ("First Fund"), a limited partnership controlled by Narragansett in which the Individual Applicants have financial interests, would participate with certain persons directly or indirectly affiliated with Narragansett. Those persons are affiliated indirectly with Narragansett because they are associated with portfolio companies affiliated with Narragansett or Narragansett Venture Corporation ("Venture Corporation"), a wholly-owned subsidiary of Narragansett, a registered investment company under the Act and a small business investment company under the Small Business Investment Company

Act of 1958, as amended. Some of those persons are directly affiliated with Narragansett as co-partners with Narragansett of a limited partnership, WBC Management Limited Partnership, which is the general partner of a portfolio company of Narragansett, WB Cable Associates Ltd. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of its relevant provisions.

Applicants state that by an application filed April 23, 1981, (as amended, the "Original Application"), and by an application for an amended order, filed July 14, 1982, (collectively, as amended, the "Application for Amendment"), they sought an order of the Commission pursuant to Sections 6(c), 17(b) and 57(c) of the Act exempting them from certain provisions of the Act with respect to the establishment and operation of First Fund and permitting certain proposed transactions involving First Fund pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder. On February 25, 1982, the Commission issued a notice (Investment Company Act Release No. 12248) of the filing of the Original Application. On April 2, 1982, the Commission issued an Order (Investment Company Act Release No. 12347) granting the relief sought by the Original Application (the "Original Order"). On September 22, 1982, the Commission issued an order (Investment Company Act Release No. 12684) amending the Original Order (the "Amended Order") and granting the relief sought by the Application for Amendment. Applicants state that since the filing of the Original Application and the Application for Amendment, Narragansett received commitments from a number of institutional investors for investments in First Fund, and in closings occurring from December, 1982 through February, 1983, First Fund was organized under a Limited Partnership Agreement (as amended, the "Partnership Agreement") with 37 Limited Partners, including Narragansett (the "Limited Partners") committing capital contributions in the aggregate amount of $74,650,000 in addition to the General Partner's capital contribution of $500,000.

According to the application, Narragansett is the sole general partner and the Individual Applicants are the limited partners of Narragansett Management Partners ("NMP"), a limited partnership that is the sole general partner of First Fund. Monroe M. Rifkin ("Rifkin"), Charles R. Morris III ("Morris"), Bruce Paul ("Paul"), Cambridge Venture Partners ("Cambridge") and Rifcam Limited Partnership ("Rifcam"), a limited partnership of which Rifkin is the general partner and Cambridge is the limited partner, are affiliated persons (pursuant to Section 2(a)(3) of the Act) of certain portfolio companies of Narragansett and Venture Corporation (the "Portfolio Companies") because each owns more than 5% of the voting securities of one or more of the Portfolio Companies. Rifkin, Morris and Roger Leonard ("Leonard") are "affiliated persons" of Narragansett directly because each is a co-partner with Narragansett in WBC Management Limited, a limited partnership that is the general partner of a portfolio company of Narragansett, WB Cable Associates Ltd. Rifkin, Morris, Paul, Leonard, Cambridge and Rifcam (the "Rifkin Group") are assumed to be "affiliated persons" of each other. The Portfolio Companies are in turn "affiliated persons" of Narragansett and Venture Corporation because either Narragansett or Venture Corporation owns more than 5% of the voting securities of the Portfolio Companies. Rifkin Associates, Inc. ("Associates") is a cable television management company owned by Rifkin, which manages the Portfolio Companies for a fee based on revenues and is assumed to be an "affiliated person" of Rifkin. The Individual Applicants, First Fund, and Venture Corporation are all affilicates of Narragansett; Rifkin, Morris, Paul, Cambridge and Rifcam are affiliated persons of one or more of the Portfolio Companies because they each own more than 5% of the voting securities of one or more of the Portfolio Companies. Applicants also assert that none of Rifkin, Morris, Paul, Cambridge, Rifcam or Associates are affiliated persons of Narragansett, Venture Corporation or any other person affiliated with Narragansett or Venture Corporation, except for the Portfolio Companies.

Applicants asset that no Individual Applicant nor any other person affiliated with Narragansett or Venture Corporation that would be included in items (A) through (E) of Paragraph (d)(5)(i) of Rule 17d(i) has any financial interest, direct or indirect, in any person who is, was or will be a participant in the proposed transactions except for the financial interests of the Individual Applicants in Narragansett and in the First Fund through NMP. None of the Individual Applicants nor any of the other persons who are affiliated with Narragansett have any financial interest, direct or indirect, in Rifkin, Morris, Paul, Leonard, Rifcam, Cambridge, Associates or the other persons associated with Rifkin or in any of the Portfolio Companies, except through their financial interests in Narragansett or Venture Corporation.

The application states that the proposed transactions involve the sale of FNI Communications Company ("FNI"), the owner and operator of four cable television systems operating through 13 franchises located within 90 miles of Nashville, Tennessee, and serving over 25,000 basic subscribers. FNI is presently 100% owned by Sidney Sheldon. Associates conducted a due diligence review of the properties and in behalf of an entity to be controlled by Rifkin and Narragansett submitted a bid to purchase the assets of FNI for $24,500,000 in cash, which was accepted by the seller on December 23, 1983. The specific terms of the proposed sale of FNI involve many separate transactions between the affiliated persons described above, and are set forth in detail in the application.

According to the application, it is presently planned that the assets of FNI will be purchased under an Asset Purchase Agreement with FNI (the "Purchase Agreement") by an operating limited partnership ("Operating Partnership No. 1"), of which a wholly owned subsidiary of Narragansett (the "Subsidiary") and Rifkin are the limited partners and a Tennessee limited partnership ("Management Partnership No. 1") is the sole general partner. FNI Management Corp. ("General Partner No. 1") and RICAP Company ("General Partner No. 2") are the general partners of Management Partnership No. 1. Rifkin and the Subsidiary each own 50% of the voting stock of General Partner No. 1 and General Partner No. 2, as well as shares of non-voting stock of General Partner No. 1.

Applicants state that if the order requested by the present application is received before the closing date under the Purchase Agreement, Narragansett will, prior to the closing, transfer to First Fund at its cost all of the stock of the Subsidiary and a subordinated note of Operating Partnership No. 1 in the amount of $4,200,000 (the "Subordinated Note No. 1"). This transfer would terminate Narragansett's interest in Operating Partnership No. 1, Management Partnership No. 1 and both General Partner No. 1 and No. 2. If that order is not received prior to the closing date, Narragansett will not transfer the stock of the Subsidiary or the Subordinated Note No. 1 to First Fund.

will make the subordinated loan to and the limited partnership investments in Operating Partnership No. 1 or No. 2, as the case may be, planned for First Fund, and First Fund will not acquire any interest in the Subsidiary or any other entity involved in the acquisition of FNI initially or thereafter.

According to the application, a financing plan which is connected with the proposed sale of FNI contemplates raising between $6,000,000 and $7,000,000 through a private offering through an investment banker of limited partnership interests in another operating limited partnership ("Operating Partnership No. 2"). If the placement of limited partnership interests in Operating Partnership No. 2 is completed prior to the closing date under the Purchase Agreement, the rights of Operating Partnership No. 1 under the Purchase Agreement will be assigned to Operating Partnership No. 2, which will make the purchase. If the placement is completed after the closing date, the assets purchased by Operating Partnership No. 1 will be transferred at their original cost to Operating Partnership No. 2 subject to liabilities, as soon as the placement is completed.

Applicants state that the organizational structure of Operating Partnership No. 2 would be similar to that of Operating Partnership No. 1. The general partner of Operating Partnership No. 2 will be a Tennessee limited partnership (Management Partnership No. 2) of which Rifkin and the Subsidiary will be the limited partners. Management Partnership No. 2 will have two corporations as its general partners (GP No. 1 and GP No. 2), the voting stock of each of which will be owned equally by Rifkin and the Subsidiary. In order to comply with certain Federal income tax requirements Rifkin and the Subsidiary will also purchase non-voting stock of one of the general partners (GP No. 1) in an amount sufficient to provide such general partner with a net worth equal to approximately 10% of the capital contributed by limited partners to Operating Partnership No. 2. The financing of Operating Partnership No. 2 in addition to the $6,000,000 to $7,000,000 of limited partnership equity would consist of an $18,000,000 secured revolving line of credit or term loan from a non-affiliated bank and $1,000,000 to $2,000,000 of subordinated debt. In the event the order requested by the application is received prior to the closing date under the Purchase Agreement Narragansett will transfer at its cost to First Fund the subordinated note of Operating Partnership No. 2 (the "Subordinated Note No. 2").

Applicants assert that the assignment of its rights under the Purchase Agreement or the sale of the assets acquired from FNI by Operating Partnership No. 1 to Operating Partnership No. 2 would substantially benefit First Fund since upon the admission of the new limited partners to Operating Partnership No. 2, First Fund will be repaid a substantial part of the equity investment in the Subsidiary, while retaining a substantial portion of the equity interest in Operating Partnership No. 2 through its ownership interest in Management Partnership No. 2. Upon closing under the Purchase Agreement, Associates will receive a fee of $100,000 from Operating Partnership No. 1 or No. 2 as compensation for finding and investigating this investment opportunity. Associates will operate the Operating Partnership No. 1 or Operating Partnership No. 2 as the case may be, under a management contract pursuant to which Associates will receive an annual fee equal to approximately 5% of gross operating revenues.

According to the application, the Purchase Agreement between Operating Partnership No. 1 and FNI is being negotiated. Among other things it contemplates placing $1,000,000 is escrow to be surrendered to FNI as liquidated damages should a closing not take place due to the failure of performance on the part of Operating Partnership No. 1. Should the escrow fund be surrendered its cost to Narragansett and the Rifkin Group would be $763,000 and $125,000, respectively. If the order requested is received before the closing under the Purchase Agreement, Narragansett's obligation with respect to the escrow fund will be assumed by First Fund, and the Subordinated Note No. 1 or Subordinated Note No. 2, as the case may be, issued to Narragansett by Operating Partnership No. 1 will be held by First Fund, which will accordingly bear that cost.

Applicants assert that the transactions involving First Fund and the Rifkin Group described herein would come within the exemptions granted by Rule 17a–6 and Rule 17d–1(d)(5) were it not for the financial interests of the Individual Applicants as limited partners of NMP. These financial interests are the same as those contemplated at the time of the issuance of the Amended Order. The participation of the Individual Applicants in the profits and losses of First Fund through their limited partnership interests in NMP was recognized at the time of the issuance of the Amended Order and the relationship between the Individual Applicants and the shareholders of Narragansett has not changed. In the Amended Order the Commission recognized that the requirement of approval by the "Required Majority" of the Board of Directors of Narragansett (as defined in Section 57(c) of the Act) would protect the interests of the Narragansett shareholders in the transactions contemplated by the Application for Amendment. Applicants contend that there is no reason to apply a different standard to the transactions contemplated hereby, which will not be consummated unless they receive such approval after full disclosure of the interests of all parties, and the financial interests of the Individual Applicants in NMP and hence in First Fund are well known to the Narragansett Directors.

Applicants represent that none of the Individual Applicants nor any other persons so affiliated with Narragansett or Venture Corporation that they would be included in items (A) through (E) of subparagraph (i) of paragraph (5) of Rule 17d–1(d) will have a direct or indirect financial interest in any person (except for First Fund and Narragansett) who is, was or will be a participant in the proposed transactions. Accordingly, Applicants assert that the Individual Applicants would have no incentive to benefit the Rifkin Group as opposed to Narragansett or First Fund.

Applicants assert that denying the requested exemptive relief would deprive the Narragansett stockholders of the benefits that would flow from participation by First Fund in transactions involving Rifkin and the Rifkin Group. The experience that Narragansett has had with Rifkin and the Rifkin Group through investments made by Narragansett or Venture Corporation will be valuable in evaluating the proposed investment by First Fund. The investments made by Narragansett and Venture Corporation in the Portfolio Companies in participation with the Rifkin Group were independent of the proposed transactions. The proposed transactions could not be made by Venture Corporation because FNI is not a small business concern (as a small business investment company Venture Corporation can only invest in small business concerns). Nor could they be made by Narragansett because they involve a leveraged buyout and the First Fund Limited Partnership Agreement prohibits Narragansett (without the Consent of the Limited Partners) from

engaging directly in such a buyout until First Fund has made investments aggregating 90% of the total capital contributions of Limited Partners to the First Fund (90% of total capital contributions is $67,185,000 and investments to date total $14,225,000). Applicants assert that the exemptive relief requested will advance the time at which First Fund shall have made investments aggregating 90% of the total capital contributions of Limited Partners to First Fund, at which time Narragansett would be permitted for the first time to engage directly or indirectly through other partnerships or corporations in leveraged buyouts of non-small business concerns, activities substantially the same as those of First Fund, which will accrue to the benefit of the Narragansett shareholders, since Narragansett will not only be free to engage directly in leveraged buyouts of non-small business concerns, but it will also be able to reduce its expenses by organizing other venture capital partnerships and allocating a portion of its expenses to those other partnerships.

Applicants represent that the First Fund Limited Partnership Agreement anticipated the participation of First Fund in transactions with persons such as the Rifkin Group, who are affiliated with Narragansett, and provided for protection for the interests of the Limited Partners. Section 4.8 of the Limited Partnership Agreement expressly authorizes the purchase by First Fund of securities of an entity in which an "affiliated person" (as defined in Article 1 of the Partnership Agreement) is an officer, director or shareholder, provided the General Partner obtains any required regulatory approval, a favorable recommendation of the Advisory Board and Consent of the Limited Partners. The term "affiliated person" as defined in the Partnership Agreement includes Rifkin, Paul, Cambridge and Rifcam because each owns 10% or more of the stock of a company controlled by Narragansett. The "Advisory Board" consists of seven members, four of whom are elected by the Limited Partners as representatives of the Limited Partners and shall not be "affililated persons" (as defined in Section 2(a)(3) of the Act) of Narragansett or the General Partner, and three of whom are designated by the General Partner.

"Consent of the Limited Partners" means the consent of Limited Partners whose total percentage interest represents at least 60% of the aggregate percentage interests held by the Limited Partners, who are sophisticated institutional investors. Hence if the requested order is issued by the Commission, the proposed transactions would still require a favorable recommendation by the Advisory Board, which is not controlled by Narragansett nor the General Partner, and written consent or approval by Limited Partners owning at least 60% of the total limited partnership interests. Applicants assert that this will insure that the transaction will be reasonable and fair and will not involve any overreaching by any person. Narragansett, which owns a 5.358339% interest as a Limited Partner, would grant its consent and its interest would be included in the minimum percentage.

Applicants assert that in making their determinations the Directors of Narragansett, the members of the Advisory Board and the Limited Partners will be well advised of the financial interest of the Individual Applicants in NMP and will have those interests in mind in approving the particular transaction. Narragansett as the general partner of NMP, which is the General Partner of First Fund and its directors will have a fiduciary relationship to the Limited Partners of the First Fund as well as to the Narragansett stockholders. Applicants assert that any investments of First Fund approved by a Required Majority of the Board of Directors of Narragansett will be considered from the point of view of the benefits to the Narragansett stockholders and not with a view to the benefits accruing to the Rifkin Group.

Applicants assert that, as stated in the Original Application and the Application for Amendment, the relationships established among Narragansett, the Individual Applicants and First Fund is designed to achieve a balance between Narragansett's shareholders and the Individual Applicants that is consistent with the provisions, policies and purposes of the Act and a participation that is not different from or less advantageous than that of other participants as is required by Rule 17d–1 under the Act. There is no change in these relationships in the transactions described herein. Applicants also assert that the proposed transactions are consistent with the policy of Narragansett as recited in its registration statement and reports filed with the Commission. They state that the investment policies of Narragansett currently in effect are set forth in Exhibit E to the proxy statement filed as Exhibit A to the Original Application and that none of these policies in any way restrict Narragansett or any entity controlled by Narragansett, such as First Fund, from entering into the proposed transaction with the Rifkin Group.

Applicants state that Narragansett and the Individual Applicants will participate in the success of the investment in FNI by First Fund through their percentage interest in NMP as described in the Application for Amendment which was approved by the Amended Order. Narragansett will also participate as a Limited Partners of First Fund. The proposed transactions will make no change in those relationships. The participation by the Rifkin Group in the transactions described herein may be different from that of First Fund and hence from the indirect participation by Narragansett and the Limited Partners. However, Applicants assert that these differences will be negotiated at arms-length by the management of Narragansett and will be reasonable and fair under the circumstances and in the light of the objectives of the parties or they would not be approved by the "Required Majority" of the Narragansett Board of Directors, the Advisory Board of First Fund and limited partners owning at least 60% of the total limited partners' percentage interest in First Fund as is required for the Consent of the Limited Partners. In each case there will be full disclosure of all of the pertinent facts, including the financial interest of the Individual Applicants in NMP. There will be no financial interest of the Individual Applicants or other persons affiliated with Narragansett, other than the Rifkin Group, in any parties which participate in the transactions described herein, except for Narragansett and First Fund. Applicants therefore assert the participation by Narragansett in the proposed transactions is not on a bais less advantageous than that of the Individual Applicants or the Limited Partners.

Notice is further given that any interest person wishing to request a hearing on the application may, not later than April 12, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the report should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8407 Filed 3-28-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13838; 812-5643]

Resources Life Insurance Company, et al.; Application for an Order of Exemption

March 21, 1984.

Notice is hereby given that Resources Life Insurance Company ("RLICO"), One Bridge Plaza, Fort Lee, New Jersey 07024, Resources Variable Account I, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust and established by RLICO in connection with the proposed issuance of certain variable annuity contracts ("Account"), and Integrated Capital Services, Inc. (the principal underwriter for the contracts) (collectively, "Applicants") filed an application on September 12, 1983 and amendments thereto on March 9 and March 16, 1984 for an order pursuant to section 6(c) of the Act granting exemptions from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit transactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein in support of the requested relief pursuant to section 6(c), which are summarized below, and are referred to the Act for a statement of the relevant provisions.

Applicants request exemption from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to deduct from contract values any premium taxes imposed thereon and to impose a guaranteed records maintenance charge of $30 upon December 31st of each calendar year. Applicants represent that this latter charge is not designed to exceed actual expenses incurred and contains no element of profit.

Applicants also request relief to the extent necessary to deduct a mortality and expense risk charge from the Account at an effective annual rate of 1.40% of the value of the assets of the Account and represent that this charge is reasonable in amount as determined by industry practice with respect to comparable annuity products and that the basis for this representation is reflected in documents on file with RLICO. Applicants will impose in some cases a sales load upon partial and total contract surrenders. Applicants acknowledge that this charge may be insufficient to cover all costs of distributing the contract and that any shortfall would be absorbed by the general account of RLICO, which may include profits derived from the mortality and expense risk charge. In this regard RLICO represents that it has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account and contractowners, and the Account represents that it will invest only in funds which undertake to have a board with a disinterested majority formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 12, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8410 Filed 3-28-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13840; 812-5742]

Travelers Equities Fund, Inc., et al.; Application for Order Exempting Proposed Transactions and Permitting Proposed Transactions

March 22, 1984.

Notice is hereby given that Keystone Custodian Funds, Inc. ("Keystone"), One Tower Square, Hartford, Connecticut 06115, the corporate trustee of Keystone Custodian Fund, Series K-2 ("Series K-2"), Series K-2 and Travelers Equities Fund, Inc. ("TEFI") ("Applicants"), both open-end, diversified management investment companies registered under the Investment Company Act of 1940 ("Act"), filed an application on January 11, 1984, and an amendment thereto on February 24, 1984, for an order of the Commission (1) pursuant to Sections 6(c) and 17(b) of the Act, exempting certain transactions incident to the reorganization of TEFI and Series K-2 from the provisions of Section 17(a), 19(b), and 22(c) of the Act and Rules 19b-1 and 22c-1 thereunder, and (2) pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting the proposed reorganization. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the provisions cited in the application.

Applicants state that TEFI was organized in 1968 as a Maryland corporation the investment objective of which is primarily the long-term appreciation of capital and secondarily the growth of income without emphasis on obtaining short-term trading profits. It is stated that, as of December 31, 1983, TEFI had net assets of approximately $49.3 million and approximately 5,000 shareholders. Applicants state further that Series K-2 was organized in 1935 as a Pennsylvania unincorporated common law trust the investment objective of which is capital growth. Applicants state that, as of December 31, 1983, Series K-2 has net assets of approximately $141.9 million and approximately 22,000 shareholders.

Applicants propose that Series K-2 acquire all of the assets of TEFI in the manner set forth in an Agreement and Plan of Reorganization (the "Agreement") between Keystone on behalf of Series K-2 and TEFI. Applicants state that, under the terms of the Agreement, on a closing date (the "Closing Date"), Series K-2 will acquire all of the assets of TEFI in exchange for shares of Series K-2 and the assumption of all of the liabilities of TEFI by Series K-2. Applicants represent that each TEFI shareholder will be entitled to receive that proportion of Series K-2 shares to be received by TEFI that the number of TEFI shares owned by such shareholder bears to the number of TEFI shares outstanding on the date of exchange. Applicants state that full shares and, to the extent necessary, a fractional share of Series K-2 equal in aggregate net asset value to the aggregate net asset value of TEFI, adjusted as described below, are to be issued by Series K-2 in exchange for the net assets of TEFI. The value of the exchanged Series K-2 shares and TEFI's assets acquired by Series K-2 will be determined using the valuation procedures applicable to the net assets

of Series K–2 as set forth in its trust agreement and then current prospectus.

Applicants state that Keystone has agreed to provide, at no cost to the shareholders of TEFI, account insurance to all individual shareholders of TEFI on the Closing Date who continue to maintain their investments and reinvest all dividends and capital gains distribution on Series K–2 shares which they receive in connection with the reorganization. The insurance is intended to guarantee that the value of former TEFI shareholders' Series K–2 accounts on the date of death will be no less than the value of their TEFI accounts on the Closing Date, reduced by the proportionate amounts of any redemptions in their Series K–2 accounts. Applicants state that they deem this insurance arrangement not to require exemptive relief under Section 17(d) of the Act and that therefore they are seeking no such relief in their application.

Applicants state that TEFI and Series K–2 each have agreed to declare a dividend to their respective shareholders prior to consummation of the reorganization of all of their respective undistributed investment company taxable income and any net realized capital gain (to the extent not offset by a capital loss carryover) through the Closing Date. Applicants state that if not making such a distribution by Series K–2 would not materially adversely affect shareholders of TEFI in the reorganization, then any such net realized capital gain will not be distributed by Series K–2.

As a result of the reorganization, TEFI shareholders will be allocated a portion of the net unrealized appreciation in the portfolio of Series K–2. Accordingly, for purposes of Series K–2's acquisition of TEFI's assets, Applicants will make an adjustment to compensate TEFI shareholders for any additional capital gains tax payable after the reorganization resulting from Series K–2's realization of unrealized appreciation in its portfolio attributable to periods before the reorganization. Applicants state that such adjustment will be made according to the Agreement by calculating the "opportunity cost" to shareholders of an assumed amount of tax payable on a portion of the change in unrealized appreciation experienced by shareholders. Applicants state that the calculated opportunity cost will be reflected in the number of shares issued by Series K–2 for the acquisition of the net assets of TEFI. Applicants state further that, as of December 31, 1983, TEFI had $1,097,000 of net unrealized appreciation on investment and Series K–2 had $35,374,000 of net unrealized appreciation on investments. Applicants submit that, if the proposed transaction had occurred on December 31, 1983, the amount of the adjustment would have been $252,558 or approximately plus $.055 per share to TEFI and less $.013 per share to Series K–2.

Applicants state that Series K–2 will assume all liabilities of TEFI in connection with the acquisition of its assets and that Series K–2 will bear the fees and expenses incurred by it in connection with the reorganization. The Travelers Corporation ("Travelers") will bear the fees and expenses incurred by TEFI in connection with the reorganization, except the expenses of independent counsel to the non-interested directors of TEFI. It is expected that the reorganization will be submitted for approval by the holders of two-thirds of the outstanding shares of TEFI and that the acquisition, if approved, will be consummated shortly thereafter.

Applicants state that Travelers Investment Management Company is investment adviser for TEFI. In addition, approximately 35 percent of the outstanding shares of TEFI are beneficially owned by Travelers. The Massachusetts Companies, Inc. ("MassCo"), also a wholly-owned subsidiary of Travelers, beneficially owns 28 percent of the outstanding shares of TEFI. Keystone, a wholly-owned subsidiary of Travelers, is the corporate trustee of Series K–2. Applicants submit that they may be deemed to be affiliated persons of each other for purposes of the prohibitions of Sections 17(a) (1) and (2) of the Act. In addition, the proposed reorganization may be deemed to involve a joint enterprise or other joint arrangement for purposes of Section 17(d) of the Act and Rule 17d–1 thereunder.

Applicants state that TEFI and Series K–2 have each made a distribution of realized capital gains to shareholders following their most recent fiscal year ends. The Agreement provides that TEFI and Series K–2 will distribute to shareholders prior to the Closing Date any investment company taxable income and net realized capital gains. Applicants submit that, to the extent that such distribution involves the distribution of capital gains more often than once every twelve months, it would be prohibited by Section 19(b) and Rule 19b–1 thereunder.

The Agreement provides that shares of Series K–2 will be issued on the Closing Date at their then net asset value in exchange for assets of TEFI, subject to the adjustment based on the amount of net unrealized appreciation in the portfolios of TEFI and Series K–2. Applicants submit that the issuance of shares of Series K–2 in the manner provided by the Agreement may be deemed to violate the provisions of Section 22(c) of the Act and Rule 22c–1 thereunder.

Applicants assert that the terms of the proposed reorganization are consistent with the standards of Sections 6(c) and 17(b) of the Act and Rule 17d–1 under the Act. The Board of Directors of TEFI, including a majority of the directors who are not interested persons of TEFI or Series K–2, has approved the proposed reorganization and recommended that it be submitted to TEFI's shareholders for approval. Applicants assert further that the Board of Directors of Keystone including those who have in various other contexts performed the functions of independent directors of Series K–2, has approved the proposed reorganization. The Boards of Directors of TEFI and Keystone have further determined that an adjustment to reflect the difference in the amount of unrealized capital appreciation in the portfolios of TEFI and Series K–2 is appropriate.

Applicants assert that, in connection with its approval of the proposed reorganization and its decision to recommend the transaction to shareholders for approval, the Board of Directors of TEFI also considered the continued viability of TEFI. The directors were concerned with the continuing net redemptions experienced by TEFI, with its small size and sales load structure, and with TEFI's continued ability to obtain high-quality management services without increases in the costs of such services to shareholders. The Board of Directors also considered the fact that the reorganization could result in higher expenses to TEFI shareholders. However, Applicants submit that shareholders of TEFI will become shareholders of a large and growing fund with an experienced, well-respected investment manager, improved investment performance and an active, viable distribution program. Applicants assert that shareholders of TEFI can also be expected to benefit indirectly from the greater diversification of security holdings possible in a portfolio of Series K–2's size.

Applicants represent further that the advantages of the proposed reorganization to shareholders of TEFI outweigh any disadvantage in the structural differences between TEFI and

Series K–2. Applicants state that, whereas TEFI shareholders have one vote per share on all matters on which shareholders vote under Maryland law or the Act, Series K–2 shareholders have one vote per share only on certain matters. Applicants state that, although Series K–2 shareholders are not called upon to approve the continuance of Keystone as corporate trustee, Series K–2 shareholders have the voting rights provided by Sections 13(b), 16(c) and 32(a) of the Act.

Applicants asssert that the proposed reorganization is in the interest of Series K–2 shareholders because despite the absence of immediate monetary savings, the increase in Series K–2's net assets resulting from the reorganization could possibly reduce management fees and permit greater diversification of investment. Applicants state that Series K–2 will increase its assets without incuring the transaction costs incident to investing a comparable amount of cash.

Applicants assert that the proposed reorganization is consistent with the policies of Series K–2 and TEFI. Applicants state that the primary investment objective of each fund is capital growth and that the investment policies and restrictions of Series K–2 and TEFI are similar. Applicants represent that securities in the investment portfolio of TEFI are suitable investments for Series K–2. Applicants represent further that no realignment of TEFI's portfolio will occur prior to the reorganization and TEFI's shareholders will not incur any brokerage expense in connection with the reorganization. Applicants represent that securities received by Series K–2 as a result of the reorganization will be held for investment until they are sold in the ordinary course of portfolio management for investment purposes.

Applicants state that compliance with Rule 17a–8 under the Act would exempt them from the prohibitions of Section 17(a) of the Act if the possibility of such compliance were not negated by Travelers' and MassCo's ownership of TEFI shares and Travelers' and Keystone's possible status as separate investment advisers. Nevertheless, the Boards of Directors of TEFI and Keystone have made the determinations required by Rule 17a–8 under the Act. Applicants assert that Travelers will vote its TEFI shares in the same proportion that the publicly-held TEFI shares are voted on the transaction.

Applicants submit that granting the requested relief from Section 22(c) of the Act and Rule 22c–1 thereunder is consistent with the exemptive standards of Section 6(c) of the Act. Applicants submit that if Rule 17a–8 under the Act were available to them, exemptive relief from the provisions of Rule 22c–1 under the Act would not be required because Rule 22c–1(a)(2) under the Act provides that Rule 22c–1 shall not prevent any registered investment company from adjusting the price of its redeemable securities sold pursuant to a merger, consolidation or purchase of substantially all of the assets of a company, which meets the conditions specified in Rule 17a–8 under the Act. Applicants submit that they have met the conditions of Rule 17a–8 under the Act and that granting the requested relief from Section 22(c) of the Act and Rule 22c–1 thereunder is appropriate.

Applicants assert that granting the requested exemption from the provisions of Section 19(b) of the Act and Rule 19b–1 thereunder is also appropriate under the exemptive standards of Section 6(c) of the Act. Applicants state that Section 19(b) of the Act is designed to prevent realized capital gains from being distributed to shareholders in a manner indicating such capital gains distributions to be part of regular dividends from investment income. Applicants propose to distribute any investment company taxable income and realized capital gains prior to the Closing Date. Applicants represent that the distributions would be made in connection with the reorganization for tax and accounting purposes. Accordingly, Applicants submit that the distribution of any net realized capital gains to TEFI and Series K–2 shareholders prior to the reorganization will not result in any of the abuses addressed by Section 19(b) of the Act and Rule 19b–1 thereunder.

Applicants assert that the terms of the proposed reorganization are fair and reasonable and do not involve overreaching on the part of any person concerned and that the proposed reorganization is consistent with the policies recited in Applicants' respective registration statements and reports filed under the Act and with the general purposes of the Act. Applicants further submit that the participation of TEFI and Series K–2 in the proposed transaction is consistent with the provisions, policies and purposes of the Act and is not on a basis different from or less advantageous than that of other participants.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 16, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8406 Filed 3–28–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 13837; (812–5642)]

Providence Life Insurance Company, et al.; Application for an Order of Exemption

March 21, 1984.

Notice is hereby given that Providence Life Insurance Company ("PLICO"), One Bridge Plaza, Fort Lee New Jersey 07024, Providence Variable Account I, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust and established by PLICO in connection with the proposed issuance of certain variable annuity contracts ("Account"), and Integrated Capital Services, Inc. (the principal underwriter for the contracts) (collectively, "Applicants") filed an application on September 12, 1983 and amendments thereto on March 9 and March 16, 1984 for an order pursuant to section 6(c) of the Act granting exemptions from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit transactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein in support of the requested relief pursuant to section 6(c), which are summarized below, and are referred to the Act for a statement of the relevant provisions.

Applicants request exemption from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to deduct from contract values any premium taxes imposed thereon and to impose a guaranteed records maintenance charge of $30 upon December 31st of each calendar year. Applicants represent that this latter charge is not designed to exceed actual expenses incurred and contains no element of profit.

Applicants also request relief to the extent necessary to deduct a mortality and expense risk charge from the Account at an effective annual rate of 1.40% of the value of the assets of the Account and represent that this charge is reasonable in amount as determined by industry practice with respect to comparable annuity products and that the basis for this representation is reflected in documents on file with PLICO. Applicants will impose in some cases a sales load upon partial and total contract surrenders. Applicants acknowledge that this charge may be insufficient to cover all costs of distributing the contract and that any shortfall would be absorbed by the general account of PLICO, which may include profits derived from the mortality and expense risk charge. In this regard PLICO represents that it has concluded that there is reasonable likelihood that the proposed distribution financing arrangement will benefit the Account and contractowners, and the Account represents that it will invest only in funds undertaken to have a board with a disinterested majority formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 12, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8409 Filed 3–28–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 20777; File No. SR–PSE–84–5]

Filing of Proposed Rule Change by Pacific Stock Exchange, Inc.

March 21, 1984.

Pursuant to Section (19)(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 8, 1984, the Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Exchange proposes to amend its listing fee schedule by adopting a refund policy under which the Exchange would return all but 25% of the listing fee paid by an issuer that withdraws an original or additional listing application before the Exchange has either approved or disapproved it. The amount retained would be applied as partial payment for the listing fee of a new application submitted within one year to list the same issue. On March 14, 1984, the PSE filed with the Commission Amendment No. 1 to SR–PSE–84–5 which states that the Exchange will refund all but 25% of the fee paid for a listing application that has been disapproved by the Exchange. In addition, Amendment No. 1 provides that no refund will be made on a listing application that is withdrawn after the Exchange has approved it. According to the Exchange, the proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable fees and other charges among issuers and other persons using its facilities.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Reference should be made to File No. SR–PSE–84–5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public inaccordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room 450 5th Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8408 Filed 3–28–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 20778; SR–Phlx–84–4]

Philadelphia Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

March 21, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 23, 1984, the Philadelphia Stock Exchange, Inc. ("Phlx"), 1900 Market Street, Philadelphia, PA 19103, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The rule change would: (1) Fix the cut-off time for options exercises at 5:30 p.m. (New York time) on the last business day before expiration; (2) delete a clause providing an exception from the established cut-off time for options in an account maintained for another member and including only positions of the latter's customers; (3) drop certain explanatory matter relating to the rules of the Options Clearing Corporation ("OCC"); (4) add a provision requiring time-stamping of exercise instructions; and (5) add a reference to notices not to exercise options which otherwise would be automatically exercised under OCC Rule 805. Phlx states that the purpose of the proposed rule change is to take account of OCC rules calling for automatic exercise in certain cases. The proposed rule also shortens the Phlx exercise cut-off rule, adopting language similar to that in the current Chicago

Board Options Exchange ("CBOE") rule and that of the American Stock Exchange, Inc. ("Amex").[1]

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. SR-Phlx-84-4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that insofar as the proposal would alter the existing Phlx rule, it is substantially the same as the CBOE and Amex rules recently published for public comment, considered and approved by the Commission. In light of this fact, and to reduce the potential for confusion, accelerated approval is appropriate.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

[1] *See* CBOE Rule 11.1(b) and Amex Rule 980(b). Proposed changes to these rules were approved by the Commission in CBOE-83-20, Securities Exchange Act Release No. 20172, September 12, 1983, 48 FR 42869, September 20, 1983; and SR-Amex-83-25, Securities Exchange Act Release No. 20338, November 1, 1983, 48 FR 51186, November 7, 1983. The Amex rule change was granted accelerated approval on the basis of the CBOE filing.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8411 Filed 3-28-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 84-023]

Acceptance of Plan Review, Inspections and Examinations by the American Bureau of Shipping (ABS) on Behalf of the United States Coast Guard

AGENCY: Coast Guard, DOT.

ACTION: Notice of public comment period.

SUMMARY: The Coast Guard is requesting public comment on the implementation of certain delegations by the Coast Guard to the American Bureau of Shipping regarding vessel plan review, inspections and admeasurement.

DATE: Comments must be received prior to April 30, 1984.

ADDRESS: Comments may be mailed to Commandant (G-CMC/44), U.S. Coast Guard, Washington, D.C. 20593.

SUPPLEMENTARY INFORMATION:

Discussion

In 1982, the Coast Guard was given authority by Congress to delegate certain plan review and vessel inspection and examination functions to the American Bureau of Shipping (ABS), a private sector, non-profit classification society. There followed several memorandums of understanding (MOU) between the Coast Guard and the ABS. One MOU concerning plan review and vessel inspection was signed on April 27, 1982 and published in the Federal Register on June 10, 1982 (47 FR 25235). Implementing guidance for this MOU is contained in Navigation and Vessel Inspection Circular (NVC) 10-82. Another MOU addressed ABS performing certain admeasurement functions. That MOU was signed on February 1, 1982 and published in the Federal Register of Apirl 1, 1982 (47 FR 13947). Navigation and Vessel Inspection Circular 1-82 gives guidance on implementing this MOU.

The MOU of April 27, 1982 sought to reduce the duplication in plan review and vessel examination suggested to exist between the statutorily mandated safety inspections of the Coast Guard and the classification surveys of the ABS. This MOU was limited to new construction issues and was made optional because of service costs associated with owner selection of the ABS alternative. These delegations do not relieve the Coast Guard of its statutory responsibility for commercial vessel safety. To carry out these responsibilities the Coast Guard has maintained oversight of those activities delegated to ABS and is the final authority in administrative appeal. The benefits to be gained by this action are:

Shorten the time required to review certain vessel construction plans.

Simplify inspection procedures.

Allow better utilization of Coast Guard inspection personnel.

The MOU of February 1, 1982, provides for Coast Guard acceptance of certain ABS admeasurement certificates. Because of the ABS cost issues, this MOU did not make admeasurement by ABS mandatory but provides vessel owners with an alternative to Coast Guard admeasurement. Use of ABS admeasurement services will also reduce the Coast Guard admeasurement workload.

To assess the affects of these procedures and to report to Congress, the Coast Guard is seeking comments from industry and the general public. In addition to general comments, we wish that the following questions be addressed. Have these new procedures led to more efficient plan review and scheduling of inspections? Have there been any undue problems in implementing these procedures such as difficulties in appeals or interpretations? Do you favor expansion of the MOU to include Coast Guard acceptance of ABS' work product in additional areas of new construction activity, such as structural fire protection? What experience have you had with ABS admeasurement?

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard Chief, Office of Merchants Marine Safety.

[FR Doc. 84-8431 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Advisory Committee; Reestablishment; National Airspace Review

Announcement. Notice is given of the reestablishment of the National Airspace Review Advisory Committee. This Advisory Committee stems from informal meetings held by the Federal Aviation Administration (FAA) in May of 1981 on a proposed review of airspace and procedural aspects of the National Airspace System. The Administrator of

the Federal Aviation Administration is the sponsor of the Committee. The membership will include experts from the Government, the aviation industry, and those representing the viewpoints of other elements of the aviation community. Non-Federal members of the Committee do not become Government employees. They serve without compensation and at their own expense. The Committee will make recommendations to the FAA on airspace and procedural areas identified in the NAR Plan to make the system more effective and efficient for all airspace users.

Public Interest. The Secretary of Transportation has determined that the reestablishment and continued use of the Committee is necessary in the public interest in connection with duties imposed on the FAA by law. Meetings of the Committee will be open to the public except as provided for in Section 10(d) of the Advisory Committee Act.

Issued in Washington, D.C., on March 21, 1984.

R. J. Van Vuren,

Associate Administrator for Air Traffic.

[FR Doc. 84-8375 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 2-2 of the Federal Aviation Administration National Airspace Review Advisory Committee. The agenda for this meeting is as follows: A review of current special VFR procedures and their application is necessary. A review of pertinent handbook material and Federal Aviation regulations relating to these operations will be undertaken by the group.

DATE: Beginning Monday, April 23, 1984, at 11 a.m., continuing daily, except Saturdays, Sundays, and holidays, not to exceed two weeks.

ADDRESS: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, 426-3560. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Associate Administrator for Air Traffic, AAT-1, 800 Independence Avenue, SW., Washington, D.C. 20591, by April 16. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C., on March 23, 1984.

John Watterson,

Acting Manager, Special Projects Staff, Office of the Associate Administrator for Air Traffic.

[FR Doc. 84-8370 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and the Delegation of Authority from the Director, USIA (47 FR 57600, December 27, 1982), I hereby determine that the objects in the exhibit "The Sun King: Louis XIV and the New World" (included in the list [1] filed as a part of this Determination), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements between the Louisiana State Museum and foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Louisiana State Museum, New Orleans, Louisiana, beginning on or about April 29, 1984, to on or about November 18, 1984, and at the Corcoran Gallery of Art, Washington, D.C., beginning on or about December 20, 1984, to on about April 7, 1985, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

[1] An itemized list of imported objects included in the exhibit is filed as part of the original document.

Dated: March 26, 1984.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 84-8417 Filed 3-28-84; 8:45 am]

BILLING CODE 8230-01-M

Grants, Program for Private Not-for-Profit Organizations; In Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment and activity.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

U.S.-Japan Parliamentary/Legislative Exchange Program on Economic Issues and Foreign Affairs. USIA is interested in establishing a two-way exchange program for members and staffers of the Japanese Diet and the U.S. Congress. The initial program in Washington D.C. could be for approximately 12 Japanese participants. Programs should provide a comparison of the U.S. Congress and Japanese Diet, with particular emphasis on economic and foreign policy issues. Meetings and discussions would, for example, compare the role of political parties, the bureaucracy, and the executive in affecting foreign policy legislation. They may also examine differences in budget development and legislative oversight. (Tentative activity date: Fall 1984.)

Your submission of a letter indicating interest in the above project concept begins the consultative process. This letter should further explain why your organization has the substantive expertise and logistical capability to successfully design, develop and conduct the above project.

Emphasis during the preliminary consultative process will be on identifying organizations whose goals and objectives clearly complement or coincide with those of USIA. Furthermore, USIA is most interested in working with organizations that show promise for innovative and cost effective programming; and with

organizations that have substantial potential for obtaining third party private sector funding in addition to USIA support. Organizations must also demonstrate a potential for designing programs which will have a lasting impact on their participants. In your response, you may also wish to include other pertinent background information.

This is not a solicitation for a grant proposal. Following the receipt of your letter, and an internal review, USIA may invite your organization to examine and further develop USIA's initiative program concept(s) (summarized above). USIA would then consider your fully developed proposal for limited financial assistance. To be eligible for consideration, organizations *must* postmark their general letter of interest within 20 days of the date of this notice.

Mark Blitz, Director, Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (Attn: Initiative Programs), United States Information Agency, 301 4th Street, SW., Washington, D.C. 20547

Dated: March 26, 1984.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 84-8418 Filed 3-28-84; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Veterans Administration Medical Center, Tampa, Florida; Land Acquisition and Construction of a Radiation Therapy Suite, Clinical Addition, and a Spinal Cord Injury Addition; Finding of No Significant Impact

The Veterans Administration (VA) has assesed the potential environmental impacts that may occur as a result of the proposed acquisition of approximately 20 acres and construction of a Radiation Therapy Unit, Clinical Addition, and a Spinal Cord Injury Unit (SCIU) and has determined that the potential environmental impacts will be minimal from the development of this project.

The project is in several parts. The Radiation Therapy Unit will be a single story building of approximately 20,000 gross square feet west of the hospital on property that the VA presently owns. The Clinical Addition and SCIU will be west of the Radiation Therapy Unit on the land to be acquired. The Clinic will be approximately 200,000 gross square feet on two levels. The SCIU will be a single level structure interconnected to the Clinic Addition.

Development of the project will cause minor short and long term impacts in the form of air pollution (dust and fumes) during construction operations.

The VA will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

An Environmental Assessment has been prepared in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389-3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: March 22, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 84-8428 Filed 3-28-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 62
Thursday, March 29, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

March 23, 1984.

FCC To Hold Open Commission Meeting, Friday, March 30, 1984

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, March 30, 1984, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—1—Title: Modification of Policy on Ownership and Operation of U.S. Earth Stations that Operate with the INTELSAT Global Communications Satellite System. (CC Docket No. 82-540) Summary: The Commission will consider responses to its notice of inquiry concerning changes to the Commission's current policy on the ownership and operation of U.S. earth stations that operate with the INTELSAT Global Communications Satellite System.

Common Carrier—2—Title: In the Matter of Joint Request of Communications Satellite Corporation and RCA Global Communications, Inc., to resolve dispute concerning the manner by which capital contributions for international earth station facilities may be adjusted. File No. I-S-P-83-005. Summary: The Commission will consider applications for review and requests for reallocation of joint owners' shares in ESOC filed by RCA Global Communications and Western Union International, Inc. The Commission will also consider a motion for stay of the Commission's order pending court review filed by RCA.

Common Carrier—3—Title: Application of Communications Satellite Corporation (Comsat) to participate in the INTELSAT Business Services (IBS) program. Summary: The Commission will consider whether Comsat's participation in the IBS program is in the public interest.

Common Carrier—4—Title: International Relay, Inc., Memorandum Opinion, Order and Authorization to construct and operate earth stations to provide International Business Service. File Nos. CSG-84-001-P/L, I-T-C-84-001, CSG-84-004-P/L, I-T-C-84-024. Summary: The Commission will consider granting IRI's applications for authority to construct and operate international earth stations to provide INTELSAT's International Business Service to area businesses.

Common Carrier—5—Title: Applications of Communications Satellite Corporation for authorization to construct and operate an earth station at the New York Teleport complex. Summary: The Commission will consider whether to authorize the Communications Satellite Corporation to construct a satellite earth station at the Teleport complex, Staten Island, New York and operate it with INTELSAT satellites to provide International Business Service.

Common Carrier—6—Title: Notice of Proposed Rulemaking to eliminate or amend the Commission's satellite procurement rules. Summary: The Commission will consider revision of its satellite procurement rules in view of changed circumstances since their adoption in 1964.

Common Carrier—7—Title: Changes in the Corporate Structure and Operations of the Communications Satellite Corporation. (CC Docket No. 80-634) Summary: The Commission will consider adoption of a Memorandum Opinion and Order concerning Comsat's corporate structure and cost allocation practices.

Common Carrier—8—Title: In the Matter of Regulatory Policies Concerning Direct Access to INTELSAT Space Segment for the U.S. International Service Carriers. (CC Docket No. 82-548) Summary: The Commission will consider pleadings filed in response to its Notice of Inquiry concerning the possible modification of the current arrangements whereby the USISCs acquire, through the Communications Satellite Corporation (Comsat), the satellite capacity of the International Telecommunications Satellite Organization (INTELSAT).

Common Carrier—9—Title: Overseas Option for High Speed Switched Digital Service, AT&T Communications Transmittal No. 14. Summary: The Commission will consider a proposed offering by AT&T for an international video teleconferencing service.

Common Carrier—10—Title: In the Matter of Integrated Services Digital Networks (ISDI). (Gen. Docket No. 83-841) Summary: In August, 1983, the Commission released a Notice of Inquiry in this proceeding inviting comment on a range of ISDN issues. The Commission will consider the adoption of a report addressing these issues and the comments filed thereon.

Common Carrier—11—Title: North American Telecommunications Association Petition for Emergency Relief Requiring Non-Discriminatory CPE Interconnection During the Six-Month Transition Period Prior to BOC's Compliance with the Computer II Rules. North American Telecommunications Association Motion for Partial Stay of the Dial Tone Referral Modification Granted in CC Docket No. 83-115 Pending Submission and Disposition of Petitions for Reconsideration. Summary: The FCC will consider: (1) NATA's petition for an emergency ruling requiring the BOCs to process all service requests for interconnection of CPE through the Centralized Operations Groups (COGs), and (2) NATA's motion for a stay of that portion of the *BOC Separation Order*, FCC 83-252, CC Docket 83-115 which permits a BOC to refer a customer to the BOC's separate CPE Organization, provided the customer is informed that other sources of CPE are available.

Common Carrier—12—*Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286 (Jurisdictional Separations) The Commission will decide whether to refer certain additional questions to the Joint Board in this proceeding.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information cerning this meeting may be obtained from Sally Lawrence, FCC Public Affairs Office, telephone number (202) 254-7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-8544 Filed 3-27-84; 2:47 pm]

BILLING CODE 6712-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 522b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, March 26, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conaver (Comptroller of the

Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Maine Savings Bank, Portland, Maine, and insured mutual savings bank, for consent to merge, under its charter and title, with The Savings and Loan Association of Bangor, Bangor, Maine, a non-FDIC insured institution, and for consent to establish the three offices of The Savings and Loan Association of Bangor as branches of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,977-L—Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico
Case No. 45,983-SR—Indian Springs State Bank, Kansas City, Kansas

Memorandum re: Approval of Funds and Award of Contract for Computer Room Renovation.

Memorandum re: Purchase of Two Additional Floors in Ecker Square.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: March 26, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-8559 Filed 3-27-84; 3:23 pm]

BILLING CODE 6714-01-M

3

FEDERAL ELECTION COMMISSION

Federal Register No. 84-7872

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, March 27, 1984, 10:00 a.m.

CHANGE IN MEETING: The closed meeting scheduled for this date has been canceled.

* * * * *

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, April 3, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, April 5, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Eligibility for chandidates to receive Presidential Primary matching funds
Draft Advisory Opinion #1984-4: Shatzi Duffy, WCCL-PAC Dir., Wisconsin Citizens Concerned for Life PAC
Draft Advisory Opinion #1984-8: The Honorable John J. Duncan, U.S. House of Representatives
Finance Committee Report
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-8518 Filed 3-27-84; 12:30 pm]

BILLING CODE 6715-01-M

4

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m., April 4, 1984.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion open to the public:

1. Agreement No. 10487: Establishment of the U.S. Gulf/European Commodity Rate Agreement.

Portion Closed to the public:

1. Docket No. 82-54: Space Charter and Cargo Revenue Pooling Agreements in the United States/Japan Trades—Motion for Reconsideration of Order of August 19, 1983.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 84-8526 Filed 3-27-84; 12:30 pm]

BILLING CODE 6730-01-M

5

FEDERAL RESERVE SYSTEM

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, April 4, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: March 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8506 Filed 3-27-84; 3:46 pm]

BILLING CODE 6210-01-M

6

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday April 4, 1984.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of March, 1984.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, Tel: (202) 523-5920.

DATE OF NOTICE: March 26, 1984.

Rowland K. Quinn, Jr.,

Executive Secretary, National Mediation Board.

[FR Doc. 84-8501 Filed 3-27-84; 10:30 am]

BILLING CODE 7550-01-M

7

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of April 2, 1984, at 450 Fifth Street, NW., Washington, D.C.

A closed meeting will be held on Wednesday, April 4, 1984, at 9:00 a.m. An open meeting will be held on Wednesday, April 4, 1984, at 2:30 p.m. in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more

of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway and Cox voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, April 4, 1984, at 9:00 a.m., will be:

Institution of administrative proceedings of an enforcement nature.

Institution and settlement of administrative proceedings of an enforcement nature.

Institution of injunctive action.

Litigation matter.

Consideration of amicus participation.

Opinions.

The subject matter of the open meeting scheduled for Wednesday, April 4, 1984, at 2:30 p.m., will be:

Consideration of whether to issue releases: setting aside, in part, proposed fees of the National Association of Securities Dealers, Inc. ("NASD") as an inappropriate limitation on the Institutional Networks Corporation's access to certain NASD quotation information; expanding the current proceeding to cover quotation information on all securities in the NASDAQ system; and modifying the terms of the interim relief currently in effect;' and approving in part and disapproving in part the NASD's proposed fees. For further information, please contact William W. Uchimoto at (202) 272–2409.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Wescoe at (202) 272–2092.

March 23, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8470 Filed 3–26–84; 4:17 pm]

BILLING CODE 8010–01–M

8

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: (49 FR 9672 March 14, 1984)

STATUS: Open/closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, March 9, 1984.

CHANGE IN THE MEETING: Deletion/ additional items.

The following items were not considered at an open meeting scheduled for Thursday, March 22, 1984, at 2:30 p.m.

1. Consideration of whether to adopt revised rules under the Public Utility Holding Company Act of 1935 governing the Preservation of Records of registered holding companies and their mutual or subsidiary service companies. For further information, please contact Grant G. Guthrie at (202) 272–7677.

2. Consideration of whether to adopt proposed Rule 205–3, with changes, under the Investment Advisers Act of 1940 to permit registered investment advisers to enter into contracts with certain clients providing for compensation based on a share of capital gains or capital appreciation in the client's account. For further information, please contact Forrest R. Foss at (202) 272–3038.

The following additional item was considered at a closed meeting scheduled for Thursday, March 22, 1984, following the 2:30 p.m. open meeting.

Investigatory matter.

The following additional item will be considered at an open meeting scheduled for Thursday, March 29, 1984, at 10:00 a.m.

Consideration of whether to authorize Consolidated Natural Gas Company, a registered holding company, to adopt antitakeover amendments to its corporate charter and solicit proxies in connection therewith under the Public Utility Holding Company Act of 1935. For further information, please contact James E. Lurie at (202) 272–7648.

Chairman Shad and Commissioners Treadway and Cox determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: JoAnn Zuercher at (202) 272–2014.

George A. Fitzsimmons,

Secretary.

March 23, 1984.

[FR Doc. 84–8471 Filed 3–26–84; 4:17 pm]

BILLING CODE 8010–01–M

9

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

ENTITY: United States Synthetic Fuels Corporation.

ACTION: Notice of meeting.

SUMMARY: Interested members of the public are invited to attend and observe a meeting of the Board of Directors of the United States Synthetic Fuels Corporation to be held at the time date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (9 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1) and Section 4 of the Corporation's Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close a portion of the meeting pursuant to Article II, Section 4 of the Corporation's By-laws, Section 116(f) of the said Act and Sections 4 and 5 of the said policy.

MATTERS TO BE CONSIDERED:

Open session

1. Call to Order (9:30 a.m. EST).
2. Approval of Minutes.
3. Resolution to Close Meeting.

Closed session

4. Consideration of Pending Synthetic Fuel Projects.

A. Tar Sands Projects:
- Hop Kern River Project
- Forest Hill Project
- Kentucky Tar Sand Project
- Chaparrosa Ranch Project
- Enpex Project
- Sunnyside Project

B. Coal (including lignite and peat) Projects:
- First Colony Project
- Cool Water Project
- DOW Syngas Project
- Great Plains Coal Gasification Project
- Louisiana Synthetic Fuels Project
- Arkansas Lignite Conversion Project
- Memphis Project
- Northern Alabama Project
- Northern Peat Energy Project

C. Oil Shale Projects:
- Seep Ridge Project
- Paraho-Ute Project
- Means Oil Shale Project
- Cathedral Bluffs Project
- Union Parachute Creek Phase II

In addition, the Board of Directors will consider such other matters as may be properly brought before the meeting.

TIME AND DATE: 9:30 a.m. (EST), April 5, 1984.

PLACE: U.S. Synthetic Fuels Corporation, 2121 K Street, NW., Room 503, Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Mr. Owen J. Malone, Assistant Secretary, at (202) 822–6336.

United States Synthetic Fuels Corporation.

Robert W. Gambino,

Group Vice President-Corporate.

March 26, 1984.

[FR Doc. 84–8464 Filed 3–26–84; 4:24 pm]

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federal register

Thursday
March 29, 1984

Part II

National Aeronautics and Space Administration

48 CFR Ch. 18

Implementation of the Federal Acquisition Regulation (FAR); NASA Federal Acquisition Regulation Supplement (NASA/FAR Supplement); Final Rule

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 18

Implementation of the Federal Acquisition Regulation (FAR); NASA Federal Acquisition Regulation Supplement (NASA/FAR Supplement)

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: At 49 FR 6388 NASA published a Notice of proposed rule making which made available to the public a copy of the NASA FAR Supplement which implements and supplements the Federal Acquisition Regulation (FAR). The deadline for receipt of comments, if any, was set at March 22, 1984. To date, several copies of the Supplement have been distributed, but no comments have been received. NASA desires that its NASA FAR Supplement become effective on the effective date of the FAR which is April 1, 1984. Accordingly, this final rule adopts the initial draft of the NASA FAR Supplement as final.

EFFECTIVE DATE: This rule is effective April 1, 1984.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, D.C. 20546. Telephone (202) 453–2118.

SUPPLEMENTARY INFORMATION: Although the initial draft of the NASA FAR Supplement is adopted as final in order to meet the effective date of the FAR, all comments received as a result of the 49 FR 6388 Notice of proposed rule making will be carefully reviewed and any amendments deemed necessary as a result thereof will be published in the Federal Register as amendments to this final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. NASA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule provides uniformity with other Federal agencies and reduces the administrative impact on bidders as set forth in OFPP Policy Letter 83–2.

List of Subjects in 48 CFR Ch. 18

NASA Federal Acquisition Regulation Supplement, Government procurement.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(c)(1).

S. J. Evans,

Assistant Administrator for Procurement.

Title 48 of the Code of Federal Regulations is amended by establishing Chapter 18 to read as set forth below:

CHAPTER 18—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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Part
1801 Federal Acquisition Regulation System
1802 Definitions of words and terms
1803 Improper business practices and personal conflicts of interest
1804 Administrative matters
1805 Publicizing contract actions

SUBCHAPTER B—ACQUISITION PLANNING

1807 Acquisition planning
1808 Required sources of supplies and services
1809 Contractor qualifications
1810 Specifications, standards, and other purchase descriptions
1812 Contract delivery or performance

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACTING TYPES

1813 Small purchase and other simplified purchase procedures
1814 Formal advertising
1815 Contracting by negotiation
1816 Types of contracts
1817 Special contractor methods

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

1819 Small business and small disadvantaged business concerns
1822 Application of labor laws to government acquisition
1823 Environment, conservation, and occupational safety
1824 Protection of privacy and freedom of information
1825 Foreign acquisition

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

1828 Bonds and insurance
1829 Taxes
1830 Cost accounting standards
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1833 Disputes and appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

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1852 Solicitation provisions and contract clauses
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SUBCHAPTER A—GENERAL

PART 1801—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION FEDERAL ACQUISITION REGULATION SUPPLEMENT

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1801.270 Amendment of regulation.
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Subpart 1801.6—Contracting Authority and Responsibilities

1801.601 General.
1801.603 Selection, appointment, and termination of appointment.
1801.603–1 General.
1801.603–4 Termination.

Authority: 42 U.S.C. 2473(c)(1).

1801.000 Scope of part.

This part sets forth basic policies and general information about the National Aeronautics and Space Administration (NASA) Federal Acquisition Regulation (FAR) Supplement including purpose, authority, applicability, issuance, arrangement, numbering, dissemination, implementation, supplementation, maintenance, administration, and deviation.

Subpart 1801.1—Purpose, Authority, Issuance

1801.101 Purpose.

(a) The NASA FAR Supplement establishes agency-wide uniform policies and procedures that implement and supplement the FAR.

1801.102 Authority.

(a) The Assistant Administrator for Procurement has been delegated authority to prepare, issue, and maintain the NASA FAR Supplement, by the Administrator under the authority of:

(1) The National Aeronautics and Space Act of 1958, as amended (Pub. L. 85–568; 42 U.S.C. 2451 et seq.);

(2) 10 U.S.C. Chapter 137;

(3) Other statutory authority; and

(4) FAR Subpart 1.3.

1801.103 Applicability.

(a) The NASA FAR Supplement applies to all acquisitions as defined in FAR Part 2 except where expressly excluded in the FAR or this supplement.

1801.104 Issuance.

1801.104–1 Publication and code arrangement.

(a) The NASA FAR Supplement is published in:

(1) The daily issue of the **Federal Register**;

(2) Cumulated form in the Code of Federal Regulations (CFR); and

(3) A separate loose-leaf edition adaptable for either interleaving with the FAR or filing separately.

(b) The NASA FAR Supplement is issued as Chapter 18 of Title 48 CFR and parallels the FAR in format, arrangement, and numbering system. Thus, a formal citation to this paragraph would appear as 48 CFR 1801.104–1(b).

1801.104–2 Arrangement of regulations.

(a) *General.* The NASA FAR Supplement conforms with the arrangment and numbering system prescribed by FAR 1.104. The numbering illustrations at FAR 1.104–2(b) are equally applicable to the NASA FAR Supplement; however, users are reminded that in the loose-leaf edition of the supplement, NASA's assigned CFR Chapter number 18 will appear to the left of the applicable part number separated by a dash, e.g., 1815.402–1.

(b) *Numbering.* (1) All coverage in the NASA FAR Supplement that is unique to NASA will use Part, Subpart, Section, and Subsection numbers 70 through 89 (see 1801.303–70):

(i) Part 1870 is the first part number NASA can use for adding coverage that neither implements or supplements the FAR; i.e., there is no appropriate subject heading within the 53 parts of the FAR under which the coverage could be located.

(ii) Subpart 1815.70 is the first subpart number NASA can use to supplement FAR Part 15.

(iii) Section 1815.470 is the first number NASA can use to supplement FAR Subpart 15.4.

(iv) Subsection 1815.402–70 is the first number NASA can use to supplement FAR 15.402.

(v) Subsection 1815.402–170 is the first number NASA can use to supplement FAR 15.402–1.

(2) All coverage in the NASA FAR Supplement other than that identified

with a 70 or higher number, as described in (a)(1) above, implements the FAR and will bear the identical number and title of the FAR segment being implemented down to the subsection level, e.g., 1815.402–1 implements FAR 15.402–1. Below this level (paragraph, subparagraph (see FAR 1.104–2(b)(2))), no attempt is made to correlate NASA FAR Supplement alphanumerics with FAR alphanumerics.

(c) *References and citations.* (1) Unless otherwise stated, cross references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this Regulation.

(2) This Regulation may be referred to as the National Aeronautics and Space Administration Federal Acquisition Regulation Supplement, the NASA FAR Supplement, or for the purposes of brevity the NFS. This subparagraph would normally be cited as the NASA FAR Supplement 1801.104–2(c)(2) but within this regulation it will be cited as 1801.104–2(c)(2).

(d) *Provisions and clauses.* See FAR Subpart 52.1 and Subpart 1852.1 for information regarding the numbering and dating of provisions and clauses.

1801.104–3 Copies.

Copies of the NASA FAR Supplement in **Federal Register**, loose-leaf, and CFR form may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402.

1801.104–370 Dissemination of this Regulation, revisions and procurement notices.

(a) The NASA FAR Supplement and NASA FAR Supplement Directives (NFSD's) (see 1801.270), will be distributed directly to NASA Headquarters and installations by the U.S. Government Printing Office. The number of copies of the regulation, and revisions thereof, will be distributed on the basis of the requirements furnished by each Headquarters office and NASA field installation, to the Office of Procurement, NASA Headquarters (Code HP–1). Procurement Notices will be distributed by the Procurement Policy Division, Office of Procurement, NASA Headquarters. Both NFSD's and Procurement Notices which revise this Regulation will be published in the **Federal Register.**

(b) Heads of field installations will ensure that copies of the NASA FAR Supplement and revisions thereto are distributed to all interested activities and individuals within their installation. Code HP–1 is responsible for distribution to Headquarters offices.

(c) Subscriptions to the NASA FAR Supplement including applicable NFSD's and PN's, may be purchased by private concerns and individuals from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Subpart 1801.2—Administration

1801.270 Amendment of regulation.

This Regulation will be amended from time to time to set forth improved procedures which reduce contract preparation time, simplify and standardize contract forms, and improve the contracting process. Acquisition personnel are encouraged to submit suggestions, based on operating experience, for improving and simplifying the procedures set forth in this Regulation. Such suggestions should be submitted through the Procurement Officer to the Office of Procurement, NASA Headquarters (Code HP–1).

1801.270–1 Revisions.

This Regulation will be amended by issuance of NASA FAR Supplement Directives (NFSD's) containing loose-leaf replacement pages which revise Parts, Subparts, or paragraphs. Also see 1801.270–2 below. Each replacement page will bear, at the top, the NFSD number and page number. A vertical bar at the beginning or end of a line indicates that a change has been made within that line.

1801.270–2 Procurement notices.

(a) Procurement Notices (PN's) shall also be published as often as may be necessary or advisable under any of the following circumstances:

(1) To promulgate as rapidly as possible selected material revising this Regulation, in a general or narrative manner, in advance of a specific page replacement type revision to this Regulation.

(2) To disseminate material applicable to procurement which is not suitable for insertion in this Regulation but which may have the effect of a directive to, or be of importance and interest to its recipients.

(3) When the policy and/or procedure is expected to be effective for a period of 1 year or less.

(b) Unless otherwise indicated, each item in a Procurement Notice will remain in effect until the effective date of that subsequent NASA FAR Supplement revision which incorporates the item, or until specifically cancelled.

1801.270–3 Effective date.

(a) Statements in NASA FAR Supplement Directives and Procurement Notices to the effect that the material published therein is "effective upon receipt" or upon a specified date, or that changes set forth in the Directive or Notice are "to be used upon receipt," mean that any new or revised clauses or forms included in the Directive or Notice shall be included in invitations for bids and requests for proposals issued thereafter, unless a different meaning is expressed in the Directive or Notice. However, unless otherwise provided, the new revised clauses or forms need not be included in solicitations already in process of preparation where their inclusion would cause an undue delay in the solicitation.

(b) Compliance with a revision to this Regulation shall be in accordance with the NFSD or PN which contains the revision. Procurements initiated after receipt of new or revised clauses should, to the maximum practicable extent, include such clauses.

(c) Unless otherwise stated, invitations for bids which have been issued and bilateral agreements upon which negotiations have been completed prior to the receipt of new or revised contract clauses need not be amended to include the new or revised clauses if such amendment would unduly delay the procurement action.

1801.270–4 Numbering.

NASA FAR Supplement Directives and Procurement Notices will be numbered consecutively on a calendar year basis beginning with number 1 prefixed by the last two digits of the calendar year, e.g., 84–1; 84–2; 84–3, etc.

Subpart 1801.3—Agency Acquisition Regulations

1801.301 Policy.

All agency-wide policies and procedures that govern the contracting (see FAR Subpart 2.1) process or otherwise, control contracting relationships shall be incorporated in the NASA FAR Supplement.

1801.302–70 Field installation instructions and implementation of the NASA FAR Supplement.

Heads of NASA field installations may implement the FAR and NASA FAR Supplement by prescribing for their installation detailed procurement operating instructions, delegations of authority, and assignment of responsibilities which they deem essential for the efficient performance of their procurement function. Such instructions shall comply with FAR 1.302, FAR Subpart 1.4, and Subpart 1801.4.

1801.303 Codification and public participation.

1801.303-70 Assignment of numbers.

(a) Part, Subpart, Section, and Subsection numbers 1 through 69 are reserved for FAR use.

(b) Part, Subpart, Section, and Subsection numbers 70 through 89 are reserved for NASA FAR Supplement use.

(c) Part, Subpart, Section, and Subsection numbers 90 and up are reserved for use by NASA contracting offices.

Subpart 1801.4—Deviations From the FAR and NASA FAR Supplement

1801.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing deviations from the NASA FAR Supplement and for the internal processing of FAR deviation requests under FAR Subpart 1.4.

1801.401 Definition.

"Deviation" means—

(a) "Deviation" as defined at FAR 1.401; and/or

(b) Any one or combination of the following:

(1) The issuance or use of a policy, procedure, solicitation provision (see definition in FAR 52.101(a)), contract clause (see definition in FAR 52.101(a)), method, or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the NASA FAR Supplement.

(2) The omission of any solicitation provision or contract clause when its prescription requires its use.

(3) The use of any solicitation provision or contract clause with modified or alternate language that is not authorized by the NASA FAR Supplement (see definitions of "modification" and "alternate" in FAR 52.101(a)).

(4) The use of a solicitation provision or contract clause prescribed by the NASA FAR Supplement on a "substantially as follows" or "substantially the same as" basis (see definitions in FAR 52.101(a)), if such use is inconsistent with the intent, principle, or substance of the prescription or related coverage on the subject matter in the supplement.

(5) The authorization of lesser or greater limitations on the use of any solicitation provision, contract clause, policy, or procedure prescribed by the NASA FAR Supplement.

(6) The issuance of agency-wide policies or procedures that govern the contracting process or otherwise control contracting relationships that are not incorporated into the NASA FAR Supplement in accordance with FAR 1.301(a) and 1801.301.

1801.402 Policy.

Unless precluded by law, executive order, or regulation, deviations from the NASA FAR Supplement may be granted as specified in this subpart. See FAR Part 53 and Part 1853 regarding exceptions to forms prescribed therein.

1801.403 Individual deviations.

Individual deviations affect only one contracting action and unless FAR 1.405(e) is applicable, may be authorized only by the Assistant Administrator for Procurement or a designee. See 1801.471 regarding request for deviations.

1801.404 Class deviations.

Class deviations affect more than one contracting action. When it is known that a class deviation will be required on a permanent basis, the contracting office should propose an appropriate NASA FAR Supplement revision to cover the matter. Only the Assistant Administrator for Procurement or a designee may approve class deviations. See 1801.471 regarding request for deviations.

1801.405 Deviations pertaining to treaties and executive agreements.

Deviations to the NASA FAR Supplement pertaining to treaties or executive agreements will be processed under the procedures in FAR 1.404 except that deviations not authorized by FAR 1.104 (b) or (c) will be requested under 1801.471.

1801.470 Modification to existing contracts for new procurement.

When an existing contract is modified to add new procurement, approval of the deviations previously granted for the existing contract must be obtained for the modification as though the modification were a new contract. New procurement for the purpose of this section shall be considered any action which requires the citation of an authority to negotiate. An information copy of each request for deviation shall be furnished to the cognizant Associate Administrator.

1801.471 Procedure for requesting deviations.

(a) Requests for authority to deviate from the provisions of this Regulation and other procurement publications shall be submitted to the Office of Procurement, NASA Headquarters (Code HP-1). Such requests shall be signed by the Procurement Officer, or in his absence, the duly appointed Acting Procurement Officer. Such requests shall be submitted as far in advance as the exigencies of the situation will permit.

(b) Each request for a deviation shall contain as a minimum—

(1) Identification of the NASA FAR Supplement requirement from which a deviation is sought;

(2) A full description of the deviation and the circumstances in which it will be used;

(3) A description of the intended effect of the deviation;

(4) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request;

(5) The name of the contractor and identification of the contract affected, including the dollar value;

(6) Detailed reasons supporting the request, including any pertinent background information which will contribute to a fuller understanding of the deviation sought; and

(7) A copy of the counsel's concurrence or comments thereon.

Subpart 1801.5—Agency and Public Participation

1801.570 Publicizing the development of NASA procurement policies, regulations, procedures, and forms.

The views of all interested parties including Government agencies, private organizations and associations, business firms, educational institutions, and individuals will be solicited and considered in the development or amendment of any NASA procurement policy, regulation, procedure, or form. The views of interested parties shall be solicited in accordance with OFPP Policy Letter No. 83-2, dated May 25, 1983.

Subpart 1801.6—Contracting Authority and Responsibilities

1801.601 General.

At NASA, the authority and responsibility to contract for authorized supplies and services are delegated to the Assistant Administrator for Procurement by NMI 5101.8, Delegation of Authority—To Take Actions in Procurement and Related Matters (Assistant Administrator for Procurement), and the authority and responsibility to act in certain circumstances is redelegated to various NASA officials by NMI 5101.24 (Delegation of Authority—To Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters (various officials).

1801.603 Selection, appointment, and termination of appointment.

1801.603-1 General.

In addition to the requirements and criteria of FAR 1.603, selection, appointment, and termination of appointment of NASA contracting officers shall comply with NASA Procurement Notice 81-32. The NASA Contracting Officer Warrant Program, dated February 1, 1982.

1801.603-4 Termination.

When a letter is required to terminate the appointment of a contracting officer, the letter should read substantially as follows:

Date ———

To: (Name, grade and position title)
From: (Appointing Authority)
Subject: Termination of Appointment as Contracting Officer, Certificate of Appointment, Serial No. ———.
Your appointment as Contracting Officer contained in the subject Certificate is hereby terminated effective ———, 19—.
(Signature and Title) ———

PART 1802—DEFINITIONS OF WORDS AND TERMS

Sec.
1802.000 Scope of part.

Subpart 1802.1—Definitions

1802.100 Definitions.

Authority: 42 U.S.C. 2473(c)(1).

1802.000 Scope of part.

Definitions of commonly used words and terms are in FAR Subpart 2.1. This part amplifies many of the FAR definitions and also includes definitions of other words and terms commonly used in the NASA acquisition process.

Subpart 1802.1—Definitions

1802.100 Definitions.

As used throughout this regulation the following words and terms are used as defined in this subpart unless (a) the context in which they are used clearly requires a different meaning or (b) a different definition is prescribed for a particular part or portion of a part.

"Administrator" means the Administrator or Deputy Administrator of NASA.

"Announcement of opportunity" means a competitive solicitation for proposals, issued pursuant to NASA Handbook (NHB) 8030.6A, "Guidelines for Acquisition of Investigations."

"Assistant Administrator for Procurement" means the Assistant Administrator for Procurement, Office of Procurement, NASA Headquarters (Code H).

"Contracting activity" in NASA includes each "installation" as defined herein.

"Contracting office" within NASA is synonymous with the previously used term "procurement office."

"Defense agencies" as used in the FAR and this regulation, includes NASA unless NASA is specifically excluded.

"Field installation" means Ames Research Center, Goddard Space Flight Center, John F. Kennedy Space Center, Langley Research Center, Lewis Research Center, Johnson Space Center, George C. Marshall Space Flight Center, National Space Technology Laboratories, and any other field installation hereafter established by NASA.

"Head of the agency" in NASA means the Administrator or Deputy Administrator of NASA.

"Head of the contracting activity" in NASA this term includes the Director (or other Head) of a NASA field installation; and the Director, Headquarters Administration Division (Code NH-6), NASA Headquarters.

"Installation" means NASA Headquarters and field installations and is synonymous with the term "contracting activity."

"Procurement" as used in this Regulation is interchangeable with the term acquisition, as defined in FAR Subpart 2.1.

"Procurement Officer" as used in this Regulation refers to the chief of the contracting office, as defined in FAR Subpart 2.1.

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1803.1—Safeguards

Sec.
1803.101 Standard of conduct.
1803.101-1 General.
1803.101-2 Solicitation and acceptance of gratuities by Government personnel.

Subpart 1803.2—Contractor Gratuities to Government Personnel

1803.203 Reporting suspected violations of the gratuities clause.

Subpart 1803.3—Reports of Identical Bids and Suspected Antitrust Violations

1803.03 Reporting suspected antitrust violations.

Subpart 1803.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

1803.602 Exceptions.

Subpart 1803.70—Contracts Between NASA and Former NASA Employees

1803.7001 Policy.
1803.7002 Solicitation provision.

Authority. 42 U.S.C. 2473(c)(1)

Subpart 1803.1—Safeguards

1803.101 Standards of conduct.

1803.101-1 General.

(a) A number of Federal statutes prohibit certain acts by Government personnel and special Government employees as defined in 18 U.S.C. 202 in relation to procurement activities of the Government. Among these statutes are the following: (1) 18 U.S.C. 201 relating to bribes in order to secure a Government contract; (2) 18 U.S.C. 203 relating to compensation for services rendered in connection with any proceeding or claim in which the United States has an interest; (3) 18 U.S.C. 205 relating to acting as an agent or attorney for prosecuting any claim against the United States; (4) 18 U.S.C. 208 relating to transacting business as an officer or agent of the United States with firms of which the officer or agent, spouse, minor child, or partner is an official or in which the officer or agent has a pecuniary interest; and (5) 18 U.S.C. 209 relating to compensation from non-Government sources in connection with Government services.

(b) The statutory prohibitions, and their application to NASA personnel, are discussed in NHB 1900.1B, Standards of Conduct for NASA Employees, and NHB 1900.2A, Standards of Conduct for NASA Special Government Employees. All NASA personnel involved in procurement actions shall become familiar with these statutory prohibitions. Any questions concerning them shall be referred to legal counsel. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218). (See Subpart 1803.70 for policy on contracting with former NASA employees.)

1803.101-2 Solicitation and acceptance of gratuities by Government personnel.

Any suspected violations shall be reported promptly to the Installation Office of Inspector General (see NMI 3711.6B, Employee-Communications Channels).

Subpart 1803.2—Contractor Gratuities to Government Personnel

1803.203 Reporting suspected violations of the Gratuities clause.

Any suspected violations of the clause at FAR 52.203-3, Gratuities, shall be reported to the Installation Office of Inspector General (see NMI 3711.6B).

Subpart 1803.3—Reports of Identical Bids and Suspected Antitrust Violations

1803.303 Reporting suspected antitrust violations.

(a) When bids or proposals are received and, in the opinion of the contracting officer, are indicative of possible antitrust violations, the contracting officer shall report such circumstances to the General Counsel, NASA Headquarters, through the Office of Procurement (Code HP–1). Reports of such bids or proposals should not be submitted automatically, but only when there is some reason to believe that those bids or proposal may not have been arrived at independently. Such reports shall be submitted with conformed copies of bids or proposals, contract documents, and other supporting data, and shall set forth:

(1) The noncompetitive pattern or situation under consideration;

(2) Purchase experience in the same product or service for a reasonable period of time (one or more years) prior to the receipt of the bids or proposals under consideration, including unit and total contract price and abstracts of bids;

(3) Community of financial interest among bidders, insofar as it is known;

(4) The extent, if any, to which specification requirements or patents restrict competition;

(5) Information which may be available with respect to the pricing system employed in bids or proposals believed to reflect noncompetitive practices; and

(6) Any other information considered pertinent.

(b) Evidence of noncompetitive bid practices that, in the opinion of the General Counsel, NASA Headquarters, may violate the antitrust laws shall be forwarded to the Attorney General of the United States (see FAR 3.303).

Subpart 1803.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1803.602 Exceptions.

The Administrator has delegated to the Assistant Administrator for Procurement (Code H) the authority to authorize an exception to the policy in FAR 3.601 (see NMI 5101.8, Delegation of Authority—To Take Actions in Procurement and Related Matters (Assistant Administrator for Procurement)).

Subpart 1803.70—Contracts Between NASA and Former NASA Employees

1803.7001 Policy.

(a) It is NASA policy that contracts will not normally be placed on a noncompetitive basis with any individual who was employed by NASA during the past 2 years, or with any firm in which such a former employee is a partner, principal officer, majority shareholder, or which is otherwise controlled or predominantly staffed by such former employees, unless it is determined to be in the best interest of the Government to do so (see 1815.670(c)).

(b) Where it has been determined that it is appropriate to contract with an individual or a firm described in paragraph (a) above, the approval authority for the Justification for Noncompetitive Procurement (JNCP) shall be one level higher than that prescribed in 1815.670(d) (1), (2), and (3).

(c) If an individual or firm described in paragraph (a) above is involved in a competitive procurement, precautions must be taken to ensure that such individual or firm, per se, is not accorded preferential treatment. In the event such individual or firm is the successful offeror, the contract file shall include a separate document which fully explains the safeguards used to ensure fair treatment of all offerors under the procurement.

(d) Nothing in this subpart shall be construed as relieving former employees from obligations prescribed by law, such as 18 U.S.C. 207, Disqualification of Former Officers and Employees.

(e) The policy set forth in paragraph (a) above shall also be considered when reviewing subcontracts for the purpose of granting consent under NASA prime contracts (see FAR 44.202–2(a)(7)).

1803.7002 Solicitation provision.

The contracting officer shall insert the provision at 1852.203–70, Contracts Between NASA and Former NASA Employees, in all solicitations.

PART 1804—ADMINISTRATIVE MATTERS

Subpart 1804.1—Contract Execution

Sec.

1804.101 Contracting officer's signature.
1804.103 Contract clause.

Subpart 1804.2—Contract Distribution

1804.202 Agency distribution requirements.

Subpart 1804.4—Safeguarding Classified Information Within Industry

1804.402 General.

Subpart 1804.6—NASA Contract Reporting

1804.670 General.
1804.671 Individual Procurement Action Report (NASA Form 507).
1804.671–1 Applicability and coverage.
1804.671–2 Contractual records.
1804.671–3 Submission due date.
1804.671–4 Preparation of Individual Procurement Action Report (NASA Form 507).
1804.671–5 Limited preparation of NASA Form 507.
1804.671–6 Special procurement placement codes (PPC) for certain procurements under $10,000 (no NASA Form 507 required).
1804.672 Report on NASA subcontracts.
1804.672–1 NASA contract clause.
1804.673 Individual contract report for contracts exceeding $150,000 for purchase of supplies and equipment.
1804.673–1 General.
1804.673–2 Applicability and coverage.
1804.673–3 Definition.
1804.673–4 Submission of reports.
1804.674 Subcontracting report.
1804.675 NASA financial management reporting.
1804.675–1 NASA contract clauses.
1804.676 Committee on Academic Science and Engineering (C.A.S.E.) report.

Subpart 1804.8—Contract Files

1804.802 Contract files.
1804.802–70 Handling of classified materials.
1804.802–71 Use of standard file folders for drawer and shelf filing.
1804.802–72 Filing of documents.
1804.802–73 Arrangement of files.
1804.803 Contents of contract files.
1804.803–70 Separate files.
1804.804 Closeout of contract files.
1804.804–2 Closeout of the contracting office files if another office administers the contract.
1804.804–5 Detailed procedures for closing out contract files.
1804.805 Disposal of contract files.
1804.805–70 Review, separation, and retirement of contract files.

Subpart 1804.70—Transfer of Contracting Office Responsibility

1804.7000 Scope of subpart.
1804.7001 Definition.
1804.7002 Restrictions.
1804.7003 Preparatory actions.
1804.7004 Coordinating actions by the contracting officer of the installation transferring the contract.
1804.7005 Inventory of current requests for contract administration assistance.
1804.7006 Transfer review.
1804.7007 Notification to the contractor.
1804.7008 Notification to other agencies.
1804.7009 Administrative actions.
1804.7010 Transfer.
1804.7011 Final action by the contracting officer transferring the contract.
1804.7012 Action by the contracting officer receiving the contract.

Subpart 1804.71—Uniform Acquisition Instrument Identification

1804.7100 Scope of subpart.
1804.7101 Policy.

1804.7102 Invitations for bids, requests for proposals, contracts, agreements, and modifications.
1804.7102-1 Identification of invitations for bids and requests for proposals.
1804.7102-2 Contracts and agreements requiring numbering.
1804.7102-3 Assignment and control of numbers.
1804.7102-4 Assigned contract or agreement prefixes.
1804.7102-5 Serial numbers.
1804.7102-6 Modifications of contracts or agreements.
1804.7102-7 Letter contracts.
1804.7103 Purchase orders and requests.
1804.7103-1 General.
1804.7103-2 Assigned purchase order or request prefixes.
1804.7103-3 Serial numbers.

Subpart 1804.72—Review and Approval of Contractual Instruments

1804.7200 Scope of subpart.
1804.7201 Contract review function.
1804.7202 Research contracts with colleges and universities.
1804.7203 Advance information.
1804.7204 Review by the contracting officer.
1804.7205 Information to be furnished when requesting approval of contracts and supplemental agreements.
1804.7206 Conditional approval of contracts and supplemental agreements.

Subpart 1804.73—Procurement Request

1804.7301 General.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1804.1—Contract Execution

1804.101 Contracting officer's signature.

In the case of negotiated contracts, the contracting officer shall sign after the contractor, except where otherwise required by the particular contract form or by the circumstances of the acquisition.

1804.103 Contract clause.

See Subpart 1804.72, Review and Approval of Contractual Instruments.

Subpart 1804.2—Contract Distribution

1804.202 Agency distribution requirements.

In addition to the requirements in FAR 4.201 contracts shall be distributed as follows:

(a) For research or research and development projects one copy of the contract plus a copy of the contractor's technical proposal, if any, will be furnished to the Scientific and Technical Information Office, Code NIT-40, NASA Headquarters.

(b) On contracts with educational institutions, further distribution of contractual documents shall be made in accordance with paragraph (c) below.

(c) On all contracts and modifications requiring approval of the Assistant Administrator for Procurement, one executed copy will be retained by the Office of Procurement, NASA Headquarters.

(d) Upon approval (or disapproval) of the proposed contract or modification the Assistant Administrator for Procurement will forward the original and two executed copies of the contract or modification together with the contract file to the Procurement Officer or other official as deemed appropriate.

Subpart 1804.4—Safeguarding Classified Information Within Industry

1804.402 General.

NASA industrial security policies and procedures are prescribed in NASA Management Instruction 1650.1, Industrial Security Policies and Procedures and performed by the Department of Defense (see 18042.202-70(d)).

Subpart 1804.6—NASA Contract Reporting

1804.670 General.

This Subpart prescribes uniform reports which are required to be prepared by contracting and contract administration offices in order to provide management with necessary information to help formulate, change or measure the effectiveness of procurement policy.

1804.671 Individual Procurement Action Report (NASA Form 507).

The Individual Procurement Action Report (NASA Form 507) is designed to provide essential procurement records and statistics through a single uniform reporting program as a basis for required recurring and special reports to the President, the Congress, the Department of Labor, Office of Federal Procurement Policy, Federal Procurement Data Center, the Federal Emergency Management Agency, the General Accounting Office, the Small Business Administration, and other Federal agencies. The preparation and utilization of NASA Form 507 has been made an integral part of the Agency-wide Financial and Contractual Status (FACS) System.

1804.671-1 Applicability and coverage.

The levels at which procurements are individually reportable and require an NF 507 are as follows:

(a) Initial basic procurement.

(1) All contracts (procurements) regardless of dollar obligation amount.

(2) All grants and cooperative agreements and Space Act agreements.

(3) All intragovernmental procurements and purchase orders when the *initial* obligation is $10,000 or more.

(4) All delivery orders for ordering supplies and services of $10,000 or more.

(5) All contracts and purchase orders for consulting services.

(Note.—All other purchase orders under $10,000 are *not* reportable.)

(b) Modifications of procurements that are individually reportable and require NASA Form 507.

(1) Modifications of $10,000 and over.

(2) Modifications which change the estimated cost and/or fee by $10,000 or more; and modifications which extend the completion date by three months or more beyond the date previously reported.

(3) Modifications and modifications which change procurement statistics previously reported.

1804.671-2 Contractual records.

For the purpose of these instructions, the words "contractual records" are used as a generic term for all reportable procurements which include contracts, grants, cooperative agreements, Space Act Agreements and intragovernmental awards. The NASA Form 507 or installation equivalent constitutes the source of data for contractual records with the exception of the obligations, which are obtained from the financial records.

1804.671-3 Submission due date.

The FACS report will be submitted monthly as of the last day of the month to arrive in NASA Headquarters not later than the close of business on the 8th work day following the month being reported. It is suggested that "Procurement" establish an agreement with "Finance" on a cut-off date for processing contractual documents to insure that the same contracts are included in the monthly Procurement and Financial submission.

1804.671-4 Preparation of Individual Procurement Action Report (NASA Form 507).

An individual Procurement Action Report (NASA Form 507) shall be prepared and submitted to Headquarters for each procurement action that meets the reportable criteria described in 1804.671-1 above. Detailed item instructions for the preparation of NASA Form 507 are listed below and correspond to the item numbers shown on the NF 507. Position numbers indicated after each item are the number of characters required in reporting the data element.

(a) *Item 1—Type of record* (1 position). Enter *N* to indicate new initial basic procurement and/or modification procurement that are individually reportable. Enter *C* to indicate a correction to an error on a previously

reportable basic and/or modification procurement.

(b) *Item 2—Contract/grant/purchase order number* (11 positions including blanks). Enter the specific contract, grant, cooperative agreement, Space Act Agreement or purchase order number for which the data are reported. This item contains eleven digits. The first five digits represent the prefix field and the last six digits are used to serially number each contract. If a serial number does not fill out the entire field, leave those digit positions blank in lieu of zeros. For utility contract/purchase order numbers enter an alpha letter in the last position of the serial number. The alpha letter will indicate the fiscal year the service was provided.

(c) *Contract numbering scheme.* (1) The method of numbering contracts and purchase orders is set forth in 1804.71 (*e.g.*, NAS9-14000, NAS10-9080, NASW-2080).

(2) The method of numbering grants is set forth in the NASA Grant and Cooperative Agreement Handbook, NHB 5800.1B paragraph 306 (e.g., NAGW-1).

UTILITY CONTRACTS/PURCHASE ORDERS SERIAL NUMBER SCHEME

Last digit alpha letter	Fiscal years
Z	1980; 1990; etc.
Y	1979; 1989; etc.
X	1978; 1988; etc.
W	1987; 1997; etc.
V	1986; 1996; etc.
U	1985; 1995; etc.
T	1984; 1994; etc.
S	1983; 1993; etc.
R	1982; 1992; etc.
Q	1981; 1991; etc.

(d) *Item 3—Modification number* (3 positions). Enter the supplementary procurement contractual identification code and serial number assigned to the modification action; e.g., S01, M02, A03, etc. The codes currently used are as follows:

Identification Codes

A for *Amendment*
C for *Change Orders*
D for *Delivery Orders*
K for *Call Orders*
L for *Letter Contracts*
M for *Modifications*
N for *Change Notice*
O for *Task Orders*
S for *Supplemental Agreement*

(e) *Item 4—Accounting installation number* (2 positions). Enter a numeric code which identifies the installation currently responsible for maintaining the fiscal records. The following is a list of installations and their assigned codes:

Code and Installations

10 NASA Headquarters
15 Mission Analysis Division
21 Ames Research Center
22 Lewis Research Center
23 Langley Research Center
24 Hugh L. Dryden Flight Research Facility
51 Goddard Space Flight Center
55 NASA Resident Procurement Office—JPL
57 KSC Western Test Range
62 George C. Marshall Space Flight Center
64 National Space Technology Laboratories
72 Lyndon B. Johnson Space Center
76 John F. Kennedy Space Center

(f) *Item 5—Procuring installation number* (2 positions). Enter a numeric code which identifies the installation responsible for the procurement. The following is a list of installations and their assigned codes:

Code and Installations

02 Headquarters Support Division
04 Headquarters Contracts & Grants Division
21 Ames Research Center
22 Lewis Research Center
23 Langley Research Center
24 Hugh L. Dryden Flight Research Facility
51 Goddard Space Flight Center
53 Wallops Flight Center
54 NASA Resident Procurement Office—JPL
62 George C. Marshall Space Flight Center
64 National Space Technology Laboratories
72 Lyndon B. Johnson Space Center
76 John F. Kennedy Space Center

(g) *Item 6—Other agency order number* (15 positions). Enter on this line the Federal agency contract number for orders under contracts awarded by other Federal agencies *(i.e., GSA Federal Supply Schedule, Government Printing Office, etc.)* FPDS will match this number with the initiating agencies procurement statistical data submission.

(h) *Item 7—Contractor identification code (CIC)* (7 positions). This code will be obtained from the publication "NASA Contractor Identification Code." It identifies the procurement in terms of the contractor's name, contractor's division (if any), contractor's address, and contract place of performance. A unique code is assigned for each different combination of the aforementioned items. For combinations not listed in the coding publication, a telephone call will be made to the Office of Procurement, NASA Headquarters (Code HM-1) which will immediately assign a code and, where abbreviations are necessary, the applicable English. The new code will be listed in the next issue of the coding publication.

(i) *Item 8—Contractor's name* (not to exceed 29 positions, including spaces). Enter the name of the contractor. (For editing purposes, the first five characters of the name must be identical to those shown in the publication "NASA Identification Codes" issued quarterly by the Office of Procurement, NASA Headquarters (Code HM-1). For Intragovernmental actions, enter the name of the Department (US Army, US Navy, US Commerce, etc.) and on Item 9 (Contractor Division), the name of the cognizant procuring activity (bureau, command, technical service, etc.). If the activity is a single manager agency, enter the name of the agency.

(j) *Item 9—Contractor's division* (20 positions). Enter the name of the contractor's division if one is named in the contractual instrument. (For editing purposes, the first five characters of the division name must be identical to those shown in the publication "NASA Contractor Identification Codes" issued quarterly by the Office of Procurement, NASA Headquarters (Code HM-1).

(k) *Item 10—Contractor's address—city and State.* Enter city and State of contractor's address as stated in contractual instrument.

(l) *Items 11 and 12—Place of performance* (city—24 positions; State—2 positions, Zip Code—5 positions). Enter the location (city and State) of the principal plant or place of business where the items will be produced or supplied from stock or where the service will be performed. (For editing purposes, the first 3 characters of the city name must be identical to those shown in the publication "NASA Contractor Identification Code.") For construction contracts, enter the site of construction. If more than one location is involved, enter the principal place of performance. In those cases involving intragovernmental actions where the place of performance is unknown, enter the address of the cognizant Government agency. Enter the Zip Code in Item 12.

(m) *Item 13—Contract date/modification date* (6 positions).

(1) *Contract Date*—Enter the year, month and day (two numerics each) shown on the face of the contract. With respect to preliminary contractual instruments, enter the date of commitment to the contractor. This date will be shown as the date of the contract when it is definitized.

(2) *Modification Date*—When reporting a modification, enter in item 13 the year, month and day (two numerics each) shown on the face of the modification being reported.

(n) *Item 14—Completion date* (6 positions). Enter the year, month, and day (two numerics each), either specified or estimated, when all work on the contract and modifications thereto are scheduled for completion. If the date is not determined, enter D in the first position. This date may or may not change as modifications to the contract are issued.

(o) *Item 15—Procurement placement code* (2 positions). Enter a 2-position alpha code which identifies the type of contractor, the extent of competition on the procurement, and the negotiation authority. Refer to the procurement placement code (PPC) matrix (see Supplement 70, Subpart 1). This code relates to the contract in its entirety and can be changed only by a correction.

(1) All procurement awards under $10,000 to "Disadvantaged Business Firms-Direct" shall be reported with a second letter "M" of the procurement placement code, *e.g.*, BM, KM, etc.

(2) All procurement awards under $10,000 to "Women-Owned Firms" shall be coded with a second letter "W" of the procurement placement code, *e.g.*, BW, KW, etc.

(p) *Item 16—Kind of Action.* Enter a 2-numeric code which identifies in general terms the kind of procurement and the action taken to initiate the procurement or modification thereto. Following is a list of codes to be used:

New Contracts

01 *New letter contract*—Enter this code when a new letter contract has been executed.

02 *Definitive contract superseding letter contract*—Self explanatory.

03 *Definitive Contract*—Enter this code for new procurements (except when codes 04, 05, 06 or 21 are applicable) when the first binding document contains all the terms and conditions of the agreement.

04 *Order under contract (BOA's, indefinite delivery order, Federal supply schedule)*—Enter this code when reporting against indefinite delivery type contracts or basic ordering agreements, GSA Federal Supply Schedule contracts, utility contracts, production lists, job orders, task orders, and the like when firm obligations are created by the issuance of such documents.

05 *Intragovernmental*—Enter this code for orders issued to other Federal agencies.

06 *Grants*—Enter this code for new grants.

21 *Cooperative agreement and space act agreement*—Enter this code for new cooperative agreements and Space Act Agreements.

Modifications to Existing Contracts

07 *Additional work*—Enter this code for reporting modifications to existing contracts which add new procurement. New procurement for the purpose of this report shall be a modification action which usually requires the preparation of a Determination and Findings (D&F) to justify the use of authority to negotiate.

08 *Supplemental agreement*—Use this code for reporting bilateral, definitized modifications except those covered in code 10.

09 *Change order*—Enter this code for reporting change orders issued pursuant to the "Changes" clause of the contract.

10 *S/A Definitizing change order*—Enter this code when definitizing change orders.

11 *Administrative*—Enter this code when reporting unilateral modifications and administrative type changes such as incremental funding modifications and novation agreements.

12 *Termination for default*—Enter this code when reporting a termination for default.

13 *Termination for convenience*—Enter this code when reporting a termination for convenience.

(q) *Item 17—Type of contractor* (2 positions).

Business

01 *Section 8(a)—disadvantaged*—Enter this code when the award is placed through the Small Business Administration to a minority business firm which is owned and controlled by socially and economically disadvantaged individuals in accordance with Section 8(a) of the Small Business Act.

02 *Reserved.*

03 *Disadvantaged direct*—Enter this code when the award is placed directly with a disadvantaged business firm.

04 *Other business*—Enter this code when the award is not placed with a minority business firm.

Nonprofit Institutions

05 *Educational*—Enter this code when the award is placed with an educational institution *not* State/Federal-owned.

06 *Hospital*—Enter this code when the award is placed with a hospital *not* State, Federal or local government-owned.

07 *Research foundations/laboratories*—Enter this code when the award is placed with a research foundation or research laboratory *not* State, Federal or local government-owned.

08 *Other nonprofit*—Enter this code when the award is placed with a nonprofit institution or organization which is a corporation, foundation, trust, or institution not organized for profit, no part of its net earnings is applied to the profit of any private shareholder or individual.

State/Local Government

09 *Educational*—Enter this code when the award is placed with a State/Federal-owned educational institution. (Privately owned educational institutions will be coded 05.)

10 *Hospital*—Enter this code when the award is placed with a State, Federal or local government-owned hospital. (Privately owned hospitals will be coded 06.)

11 *Research organization*—Enter this code when the award is placed with a State, Federal or local government-owned research organization.

12 *Other State/local government*—Enter this code when the award is placed with other State or local government organizations.

(r) *Item 18—Type of contract* (2 positions).

(1) Enter a 2-digit code which identifies the type of contract in accordance with the provisions of the basic contract. The following codes are to be used:

01 Firm Fixed-Price (see FAR 16.202). (Also use this code for purchases under GSA Federal Supply Schedule contracts.)

02 Fixed-Price—Redetermination (see FAR 16.205).

03 Fixed-Price—With Economic Price Adjustment (see FAR 16.203).

04 Fixed-Price—Incentive (see FAR 16.204).

05 Cost-No Fee (see FAR 16.302).

06 Cost Sharing (see FAR 16.303). (The estimated cost reported will include *only* the Government's share.)

07 Cost-Plus-Fixed-Fee (see FAR 16.306).

08 Cost-Plus-Incentive-Fee (see FAR 16.304).

09 Time and Materials (see FAR 16.601).

10 Labor-Hour (see FAR 16.602).

11 Retroactive Price Redetermination (see FAR 16.206).

12 Cost-Plus-Award-Fee (see FAR 16.305).

(2) Combination contract types will be reported as follows:

(i) Where the contract has one type of incentive arrangement applying to cost performance and another to technical and/or schedule performance, report the contract type assigned to the cost incentive feature. For example, a contract providing a cost-plus-incentive-fee arrangement on cost, and an award fee arrangement on technical and/or schedule performance, will be reported as a code *08—Cost-Plus-Incentive-Fee.*

(ii) Where one or more items of work are priced exclusively under one of the arrangements coded above, with one or more additional items priced exclusively under another such arrangement, report the contract type in accordance with the code assigned to the predominate arrangement based on dollars.

(s) *Item 19—Labor surplus area* (1 position) (See PRD 78-10).

N *Awards not in a labor surplus area*—Enter this code if the award was not made to a labor surplus area concern.

1 *Labor surplus area—no preference*—Enter this code if the procurement was awarded to a concern in a labor surplus area, but no set-aside preference was involved.

2 *Labor surplus area—tie bid preference*—Enter this code if the procurement was awarded to a concern in a labor surplus area or an area/concern individually certified by the Department of Labor and tie bid preference was given.

3 *Total labor surplus/small business set-asides preference*—Enter this code when reporting an award resulting from a combined total labor surplus area and small business set-aside.

4 *Total labor surplus set-aside preference*—Enter this code if the procurment was awarded to a labor surplus area concern, as a result of a set-aside preference.

(t) *Item 20—Subject to statutory requirements* (1 position). Code in accordance with the provisions of the contract as follows:

N Not subject to statutory requirements listed below.

1 Subject to Walsh-Healey Act, Manufacturer (see FAR 22.606–1).

2 Subject to Walsh-Healey Act, Regular Dealer (see FAR 22.606–2).

3 Subject to Service Contract Act (see FAR Subpart 22.10).

4 Subject to Davis-Bacon Act (see FAR 22.403–1).

(u) *Item 21—Extent of Competition* (1 position).

Advertised

1 *Two-step*—Enter this code for procurement which resulted from acceptance of a bid made by a supplier in response to formal advertisement for bids following request for an evaluation of technical proposals. (see FAR 14.503.)

2 *Other advertised*—Enter this code for procurement which resulted from acceptance of a bid made by a supplier in response to formal advertisement for bids. (see FAR 14.101.)

Competitively Negotiated

3 *Source evaluation board*—Enter this code where offers were received from at least two responsive offerors capable of satisfying the Government's requirements wholly or partially, where the awards were made on the basis of price, design, or technical competition and where Source Evaluation Board procedures were used to evaluate the proposals (see FAR 15.506–2). This code will also be entered where Architect-Engineer Selection Board procedures were used (see FAR 36.603–2).

4 *No source evaluation board*—Enter this code where offers were received from at least two responsive offerors capable of satisfying the Government's requirements wholly or partially, where the awards were made on the basis of price, design, or technical competition, and where Source Evaluation Board procedures were not used to evaluate the proposals.

Noncompetitively Negotiated

5 *Follow-on after competition*—Enter this code when the award means a new procurement placed with a particular contractor to continue or augment a specific NASA program where such placement was necessitated by prior procurement decisions, e.g., contracts with a particular contractor for continuation of research and development in the same program, contracts for support equipment and spare parts from contractor furnishing original equipment. This code will be used *only* when the contractor was selected initially on the basis of competitive negotiation. Follow-on contracts where the contractor was selected initially on the basis of noncompetitive negotiation will be reported as negotiated noncompetitive (code 6).

6 *Other noncompetitive negotiated*—Enter this code where an offer was received from only one responsive offeror capable of satisfying the Government's requirements wholly or partially and where the work involved is not a follow-on procurement reportable under item 5 above. A single source procurement is one in which there was only one responsive reply to a competitive solicitation.

7 *Unsolicited proposal*—Enter this code to identify procurements resulting from a written offer to perform work which does not result from a formal written request for proposals issued by NASA (see FAR 15.501). A negotiated noncompetitive procurement placement code will be used when reporting unsolicited proposals.

(v) *Item 22—Reason for not selecting small business* (2 positions). When an award is made to a large business firm, this code is used to identify the reason the award was not made to a small business firm. If the reason for not awarding the contract to a small business firm is other than one of the codes listed, then use the appropriate "Other" code. If more than one reason is involved, indicate the dominant one. For purchases under Federal Supply Service contracts, use code 04 if no small business firm is listed in the GSA Schedule; however, if a small business firm is listed, use code 10. This code relates to the procurement in its entirety and can be changed only by a correction.

(w) *Item 23—Type of service or product* (4 positions). Enter the code which indicates the principal type of effort or end item that is obtained under the contract. If more than one classification is applicable to the procurement, enter the one accounting for the largest dollar volume of procurement. Codes have been established to identify R&D procurements, service contracts and supply and equipment contracts.

(1) *Research and Development (R&D) Procurement*—R&D codes are used for the following:

(i) All contracts negotiated under authority 10 U.S.C. 2304(a)(11), Experimental, Developmental, or Research work;

(ii) Most, but not all, contracts negotiated under 10 U.S.C. 2304(a)(5), Services of Educational Institutions;

(iii) All contracts funded by R&D appropriations; and

(iv) All contracts for research and development work, even though not authorized under 10 U.S.C. 2304(a)(11) or (5), or funded by R&D appropriations.

(2) If the procurement involves space research and development, enter one of the following codes:

R&D Code and Type of R&D Procurement	
AR1 *	Aeronautics & Space Technology
AR2 *	Space Science and Applications
AR3 *	Space Transportation Systems
AR4 *	Tracking and Data Acquisition
AR9 *	Other Space R&D

*See paragraph (w)(3)(ii) below.

(3)(i) If the procurement involves other than space research and development, enter the applicable code from the FPDS Product and Service Coding Manual or NASA FAR Supplement 70, Subpart 2.

(ii) For the fourth digit of the code use "0" or one of the following "stages of R&D":

Code and Meaning	
1	Research
2	Exploratory Development
3	Advanced Development
4	Engineering Development
5	Operational Systems Development
6	Management and Support
7	Commercialization

Note.—For definitions of "stage of R&D" see FPDS Product and Service Coding Manual or 1804.6727(d).

(4) *Other services.* Enter one of the service codes listed in Supplement 70, Subpart 2, which identifies the principal type of services and construction procured under the contract. (Do *not* use these codes for R&D services and procurement of supplies and equipment.)

(5) *Supply and equipment contracts.* For contracts for off-the-shelf supplies and equipment, enter one of the codes listed in Supplement 70, Subpart 2, to identify the principal item of supply or equipment procured under the contract.

(x) *Item 24—Proposed procurement synopsized* (1 position). Enter Y (yes) or N (no) to indicate whether the procurement was synopsized in the Department of Commerce publication "Synopsis of U.S. Government Proposed Procurement, Sales, and Contract Awards" (see FAR 5.201).

(y) *Item 25—Contract administration delegated* (1 position). Enter Y (yes) or N (no) to indicate whether any contract administration functions have been delegated to another Government agency (see FAR Subpart 42.2).

(z) *Item 26—Consultant type contract* (1 position). Enter Y (yes) or N (no) to indicate whether the contract is for consulting services. For the definition of consulting services (see FAR 37.201).

(aa) *Item 27—Support Services Type Contract* (1 position). Enter Y (yes) or N (no) to indicate whether the contract is for support services.

(1) *In-house contractor support:*

(i) Provides a service to the installation, and

(ii) Is performed on or near the installation, and

(iii) Is continuous in nature, and

(iv) Is not provided by prime product development contractor when the work is for the purpose of fulfilling the prime contract, and

(v) Is characterized as: that support necessary due to the on or near site population and activated facilities (housekeeping M and O function), and

the effort necessary to support the research, development or test efforts the installation performs in-house; and

(vi) Excludes:

(A) Construction, alteration and repair contractor;

(B) Purchase and incidental services;

(C) Prime product development contractor;

(D) Operations support contractors; and

(E) Tenants.

(2) *Operations support contractors.* Contractors whose work is performed on or near site due to the location of major operations facilities. (This is the effort associated with carrying out mission operations and is done on-site because that is where the captured facility is—a launch pad or Mission Control Center or a tracking station.)

(i) Restricted to major national operations facilities and foreign and domestic tracking network stations:

(A) JPL-Mission Control Center (DSN)

(B) Goldstone

(C) Mesa Antenna Range

(D) JSC-Mission Control Center (MSF)

(E) GSFC-Mission Control Center (STDN)

(F) World-Wide Network Tracking Stations

(G) OTDA-Operations Funded Support

(H) KSC-Launch Complex 39 and related support facilities;

(ii) That support funded by STS operations at MSFC, KSC, and JSC;

(iii) Tracking operations support contractors are subdivided as on-site (at or near GSFC or JPL) and as off-site.

(3) *Purchased and/or incidental services.*

(i) Purchased services (described in terms of funds only) are:

(A) Delivery orders against Federal supply schedules;

(B) Purchase orders;

(C) Blanket purchase agreements; or

(D) Basic ordering agreements not exceeding $10K per order.

(ii) Incidental services are:

(a) Described in terms of manpower required to perform the services;

(b) Procured from vendors who provide similar services to the local community;

(c) Vendor provides all or a substantial amount of the capital investment required to perform the work under the contract;

(d) Includes small contracts generally not exceeding four to five man-years per annum.

(bb) *Item 28—Cost accounting standards clause* (1 position). Enter Y (yes) or N (no) to indicate whether the contract contains the clause "Cost Accounting Standards" (see FAR 30.303–2).

(cc) *Item 29—New technology clause* (1 position). Enter Y (yes) or N (no) to indicate whether a long form or short form "New Technology" clause is included in the contract or the "Patent (Small Business Firms and Nonprofit Organizations)" clause (See FAR 27.302–4). For purchases under Federal Supply Schedule contracts, enter N (no).

(dd) *Item 30—Report on small business subcontracting program* (1 position). Enter Y (yes) or N (no) to indicate whether the contract contains the clause requiring the contractor to furnish the information prescribed on Standard Forms 294 and 295 (see 1804.6749).

(ee) *Item 31—Report on geographical distribution of NASA subcontracts* (1 position). Enter Y (yes) or N (no) to indicate whether the contract contains the clause requiring the contractor to furnish the information prescribed on NASA Form 667 (see 1805.6750).

(ff) *Item 32—Affirmative action plan* (1 position). Enter Y (yes) or N (no) to indicate whether the business concern certified that an affirmative action plan has been developed and is on file. Only contractors with 50 or more employees and receiving awards of $50,000 or more are required to develop a plan (see FAR 22.804).

(gg) *Item 33—Previously held contract subject to affirmative action program requirements* (1 position). Enter Y (yes) or N (no) to indicate whether the business concern certified that there has been a previous contract(s) subject to Affirmative Action Program requirements of the rules and regulations of the Secretary of Labor. (Refer to Standard Form 33) (see FAR 22.810).

(hh) *Item 34—Contract Physically Complete* (1 position). Enter Y (yes) or N (no) when the contract becomes physically complete, i.e., after all articles and services called for under the contract including such related items as reports, spare parts, and exhibits have been delivered to and accepted by the Government.

(ii) *Item 35—Modification obligations* (1 position). Enter the modification increase or decrease of $10,000 or more. Round the entry to the nearest dollar.

(jj) *Item 36—Women-owned business* (1 position). Enter Y (yes) or N (no) to indicate whether the business concern is women-owned. Enter 1 to indicate that the business firm did not certify as women-owned.

(2) *Women-owned business*—A women-owned business is a business that is at least 51 percent owned, controlled and operated by a woman or group of women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management. For the purposes of this definition, businesses that are publicly owned, joint stock associations and business trusts are exempted. Exempted businesses may voluntarily represent that they are or are not women-owned if this information is available.

(kk) *Item 37—Management reporting requirements (MRR): correlated cost and performance data reporting* (1 position). Enter one of the following codes (see NHB 9501.2A):

N None Required
2 NF 533M only
3 NF 533M and 533Q
4 NF 533M and 533P
5 NF 533P and 533Q
6 NF 533M, 533P and 533Q

(ll) *Item 38—Management reporting requirements (MRR): property and space hardware reporting* (1 position). Enter one of the following codes (see FAR 45.505–11): (Not required on grants)

N None Required
2 NF 1018 without Space Hardware
3 NF 1018 with Space Hardware

(mm) *Item 39—Trade data.* (1) Enter *one* numeric (0–9) to indicate the number of firms that offered foreign end products. Entry required regardless of whether Buy American Act is invoked or not. If none enter *0*. If 9 more enter *9*.

(2) *Percent difference* (2 positions)—If the evaluation factor under Buy American Act is used and results in an award to a firm offering a domestic product, enter the percent difference between the award price and the low firm offering a foreign end product, computed before application of the Buy American Act differential, i.e., the difference divided by the price of the low firm offering a foreign end product. Enter percentage as a whole number. If the evaluation factor under Buy American is not used, enter *0 0*.

(3) *Country of manufacturer* (2 positions)—If the product is manufactured, mined or grown in a foreign country or U.S. outlying area, enter the code from NBS–LO–1067 of that country/area. In the case of a service—if the service is performed by a foreign contractor (including U.S. outlying area contractor)—enter the code from NBS–10–1967 of that, country/area. If the product is manufactured, mined or grown in the U.S.A. (the 50 States and the District of Columbia), or the service is performed by a U.S. contractor, leave this item blank.

(4) *Percent Foreign Content* (2 positions)—Enter the percent of the

contract award price that represents the foreign content of the items or services procured. If none, enter *0 0*. If percent is 99 or 100, enter *9 9*. This information is required only from the successful offeror and regardless of whether the Buy American Act is invoked.

(nn) *Item 40—Total price or estimated cost* (11 positions). (1) Enter the total estimated price or cost for all contracts. For cost-reimbursement type contracts, enter the estimated total allowable cost, exclusive of fee, as prescribed in the contract (see FAR Subpart 16.3). For incentive contracts, enter the target cost exclusive of target profit or fee. For all other contracts, enter the definitized estimate of total cost exclusive of profit or fee.

(2) On *modifications*, enter the total cumulative, definitized estimated cost and *not* merely the increase or decrease effected by the respective modification. (The initially reported estimated cost will be overlaid by modification data.) Round all entries to the nearest whole dollar.

(00) *Item 41—Total profit or fee* (11 positions). (1) Enter the definitized negotiated fee or profit when applicable or available. For incentive contracts, enter the target fee or target profit. For award fee contracts, enter the base fee or potential award fee.

(2) On *modifications*, enter the total cumulative, definitized fee and *not* merely the increase or decrease effected by the respective modification. (The initially reported fee will be overlaid by modification data). Round all entries to the nearest whole dollar.

(pp) *Item 42—Description of contract/modification.* (1) Enter a brief description of the end item or services being procured. For modifications, enter a brief description of the purpose.

(2) *Prepared By.* Type name and/or signature of contracting officer or representative responsible for data being reported.

(3) *Date.* Enter the date report was prepared.

1804.671-5 Limited preparation of NASA Form 507.

For procurement actions listed below, the data to be reported will be *limited* as follows:

(a) *Intragovernmental basic procurement.* The following items will be completed (all other items will be blank):

1. Type of Record
2. Contract/PO Number
4. Accounting Installation Number
5. Procuring Installation Number
7. CIC Number
8. Contractor Name
9. Contractor Division (when applicable)
10. Contractor Address
11. Place of Performance—City
12. Place of Performance—State and Zip
13. Contract Date
14. Completion Date
15. Procurement Placement Code (98)
16. Kind of Action (05)
23. Type of Service or Product
34. Contract Physically Complete (when applicable).
40. Total Price or Estimated Cost
42. Description of Contract

(b) *Grants, cooperative agreements and space act agreements.* The following items will be completed (all other items will be blank):

1. Type of Record
2. Grant/Cooperative agreement/Space Act Agreement Number
4. Accounting Installation Number
5. Procuring Installation Number
7. CIC Number
8. Contractor Name
9. Contractor Division (when applicable)
10. Contractor Address
11. Place of Performance—City
12. Place of Performance—State and Zip
13. Contract Date
14. Completion Date
15. Procurement Place Code (ST, WT, SX, WX, SW, or WW)
16. Kind of Action (06 or 21)
17. Type of Contractor (05–12)
19. Labor Surplus Area (N or 1)
21. Extent of Competition (6 or 7)
23. Type of Service or Product

(c) *Reportable modification.* Only the following items need to be completed.

1. Type of Record
2. Contract/Grant/PO Number
3. Modification Number
4. Accounting Installation Number
5. Procuring Installation Number
13. Modification Date
14. Completion Date (when applicable)
16. Kind of Action (07–13)
18. Type of Contract (when applicable)
28. Cost Accounting Standards Clause (when applicable)
30. Report on Small Business Subcontracting Program (when applicable)
31. Report on Geographical Distribution of NASA Subcontracts (when applicable)
34. Contract Physically Complete (when applicable)
35. Modification Obligations (when applicable)
37. MRR: Cost and Performance Reporting (when applicable)
38. MRR: Property and Space Hardware Reporting (when applicable)
40. Total Price or Estimated Cost (when applicable)
41. Total Profit or Fee (when applicable)
42. Description of Modification

(d) *Corrections.* Only the following items need to be completed:

1. Type of Record
2. Contract/Grant/P.O. Number
3. Modification Number (when applicable)
4. Accounting Installation Number
5. Procuring Installation Number
6. Contract Physically Complete

Plus items to be corrected. If an item needs to be corrected to a blank enter an asterisk.

1804.671-6 Special procurement placement codes (PPC) for certain procurements under $10,000 (no NASA Form 507 required).

(a) The accounting copies on all procurements under $10,000 to Disadvantaged Business Firms—Direct shall be coded with a second letter M of the PPC, *e.g.*, BM, KM, etc. (See PPC matrix in Supplement 70, Subpart 1.)

(b) The accounting copies on all procurements under $10,000 to "Women-Owned Business Firms" shall be coded with a second letter W of the PPC, *e.g.*, BW, KW, etc. (See PPC matrix in Supplement 70, Subpart 1.)

1804.672 Report on NASA subcontracts.

NASA Form 667 will be used to obtain information relating to the geographic distribution of subcontracts awarded under certain NASA contracts.

1804.672-1 NASA contract clause.

The clause at 1852.204-70 shall be inserted in all NASA contracts of $500,000 or more and in all contracts where a modification increases the amount of a contract to $500,000 or more. In the latter instance, the clause will be inserted at the time of the applicable modification but will not be retroactive so as to require the reporting of subcontracts award prior to such modification.

1804.673 Individual contract report for contracts exceeding $150,000 for purchase of supplies and equipment.

1804.673-1 General.

This paragraph establishes procurement data reporting requirements to comply with the Trade Agreement Act of 1979 mandated by section 2 of Pub. L. 96-39. The Office of Federal Procurement Policy, Office of Management and Budget Policy Letter 80-8, dated December 11, 1980, formally established the reporting requirements, disseminated reporting instructions, and designated the Federal Procurement Data Center (FPDC) to collect the data.

1804.673-2 Applicability and coverage.

(a) The levels at which procurement data are to be reported and an "Individual Contract Report for Contracts Exceeding $150,000 for the Purchase of Supplies and Equipment" report to be completed are as follows:

(b) The data requirements are applicable to all contract actions made with appropriated or nonappropriated funds for "supplies and equipment" where the total dollars obligated is more

than $150,000. An Individual Contract Report for Contracts Exceeding $150,000 for the Purchase of Supplies and Equipment shall be prepared and submitted for each reportable contract action in accordance with the following instructions:

(1) A contract which obligated more than $150,000.

(2) Indefinite quantity type contract or basic ordering agreement that may result in the obligations during the fiscal year which accumulate to more than $150,000.

(3) A modification that obligated more than $150,000.

(4) A modification of $10,000 or more to a basic contract that obligated more than $150,000.

(5) Termination of contract that was previously reported.

(6) When a single solicitation results in two or more contracts for the same product and the total amount of the multiple contracts exceed $150,000.

1804.673-3 Definition.

For the purpose of reporting, a reportable contract action means any action that obligates or deobligates funds and is taken to obtain supplies or equipment from sources outside the Federal Government.

1804.673-4 Submission of reports.

The contracting officers or their representatives shall complete an "Individual Contract Report for Contracts Exceeding $150,000 for the Purchase of Supplies and Equipment" for all contract actions made with appropriated or nonappropriated funds for supplies and equipment where the total dollars obligated is more than $150,000 and submit the report to NASA Headquarters, Procurement Management Division (Code HM-1). NASA Headquarters (Code HM-1) will accumulate the reports and submit an Agency consolidated report quarterly to the Federal Procurement Data Center.

1804.674 Subcontracting report.

Standard Forms 294, Subcontracting Report for Individual Contracts, and 295, Summary Subcontract Report, will be used to obtain data to provide a basis for evaluating the effectiveness and extent of subcontracting programs involving small and small disadvantaged business concerns pursuant to the Small Business Act of 1958, as amended by Pub. L. 95-507.

1804.675 NASA financial management reporting.

When financial management reporting on NASA Form 533 series of reports is required (see NASA Management Instruction 9501.2A "Procedures for Contractor Reporting of Correlated Cost and Performance Data") such requirement will be set forth in the procurement request, and the appropriate clauses prescribed at 1804.675-1 shall be included in the contract.

1804.675-1 NASA contract clauses.

(a) The clause at 1852.204-71 shall be used when the NASA Form 533 series of reports, excluding the optional Monthly Contractor Financial Management Performance Analysis Report (NASA Form 533P), is required from the contractor.

(b) The clause at 1852.204-72 shall be used in conjunction with the clause in subparagraph (a) above when the optional Monthly Performance Analysis Report is also required from the contractor.

1804.676 Committee on Academic Science and Engineering (C.A.S.E.) Report.

The Committee on Academic Science and Engineering (C.A.S.E.) Report on College and University projects (NASA Form 1356) is designed to collect data (not appropriate for inclusion on NASA Form 507) required for preparation of Government-wide reports on sponsored projects in universities. Information submitted with NASA Form 1356 is used in conjunction with existing procurement and financial data to produce reports required by the National Science Foundation Act, the Office of Management and Budget, the Legislative Branch and private sector requestors. The preparation and utilization of NASA Form 1356 has been made an integral part of the information system for recording all activity with colleges and universities, regardless of the nature of the obligating instrument (grant, contract, cooperative agreement, purchase order) or type of proposal (solicited or unsolicited). Preparation of the form is specified by NMI 5101.12. Detailed instructions for completion are on the form itself.

Subpart 1804.8—Contract Files

1804.802 Contract files.

The cognizant NASA contracting office will be responsible for maintaining the contract administration file where the contract administration functions have not been delegated under FAR Subpart 42.1.

1804.802-70 Handling of classified material.

When the bulk of the material is unclassified, classified material relating to the same contract shall be maintained in a separate file folder and container, and the unclassified folder marked or cross-referenced to indicate the location of the classified material. The front and back of each folder containing classified material shall be marked with the highest classification assigned to any of the documents in the folder.

1804.802-71 Use of standard file folders for drawer and shelf filing.

(a) For all short duration contracts and for small purchase files, standard letter-size folders should be used. For complex long-duration high-dollar value contracts, heavy individual or 6-part partitioned folders, with front and back flaps, two dividers, expansion gussets between flaps and dividers, and fasteners mounted at the top of the insides of the flaps and on each side of the dividers, may be used.

(b) Loose dividers (file inserts), pre-punched at the top of fastening documents, may be used for subdividing material within the same folder when special folders are not used.

1804.802-72 Filing of documents.

(a) Documents relating to a specific contract and described in FAR 4.803 (a), (b) and (c) should normally be placed in chronological order in an "OFFICIAL FILE" folder or folders. Each folder shall be marked or labeled with the contract number and, when more than one folder is required for the same contract, with information as to the file segment. Other identifying data, such as the contractor's name, should be added only when needed to facilitate filing and locating.

(1) A separate folder need not be established for each subcontract, small purchase, or small dollar value contract, on which little or no administration is required; these should be filed in numerical sequence within the same folder.

(2) When a single folder is used, basic procurement documents and all modifications ordinarily should be filed on the left side of the folder and all other material on the right side. As volume warrants, a contract file may be subdivided further, either within the folder or by using additional folders, as appropriate (e.g., by pre-contract documents, basic contract, contract modifications, termination documents, quality assurance and progressing and production surveillance, property administration and plant clearance, termination documents, and general correspondence).

(3) When it is impractical to file certain documents in the official case folder because of their bulk or use, they may be maintained separately in other suitable containers, but they shall be handled as "OFFICIAL FILES" and

cross-referenced in the contract case file.

(4) Documents relating to two or more contracts may be filed in one contract file and cross-referenced in the others, or enough copies reproduced to provide for filing one in each related contract file. Other pertinent documents of a more general nature may be filed separately in the contractor general file and cross-referenced in the contract file.

(b) Documents described in FAR 4.801(c)(3) and relating generally to the contractor rather than to a specific contract shall be placed in a folder labeled with the contractor's name. When necessary, additional folders may be used and the material subdivided by subject such as general, production, termination, property control, and performance.

1804.802-73 Arrangement of files.

(a) Contract file folders normally should be arranged numerically by contract serial number. When special circumstances warrant, contract folders may be arranged alphabetically by contractor's name.

(b) Contractor general file folders shall be arranged alphabetically by name of the contractor.

1804.803 Contents of contract files.

1804.803-70 Separate files.

Records regarding quality assurance or property actions shall be maintained in separate folders to facilitate possible early disposal of these files.

1804.804 Closeout of contract files.

1804.804-2 Closeout of the contracting office files if another office administers the contract.

(a) Upon receipt of the contract completion statement (NASA Form 1611) from the contract administration office, and compliance with FAR 4.804-2(b), the contracting officer shall complete Item 10 of the NASA Form 1611.

(b) The date in Item 9d of NASA Form 1611, Contract Completion Statement, shall be used as the closeout date for file purposes, except that the date in Item 10e of NASA Form 1611 shall be used when completion of any pending significant contracting office action extends more than three months beyond the date shown in Item 9d of NASA Form 1611.

1804.804-5 Detailed procedures for closing out contract files.

(a) When the contracting office retains contract administration it shall use as necessary NASA Form 1612, Contract Closeout Checklist, and DD Form 1593, Contract Administration Completion Record, to ensure that the applicable actions enumerated at FAR 4.804-5(a) are completed.

(b) Upon completion of paragraph (a) above the contracting officer shall use NASA Form 1611, Contract Completion Statement, (this will satisfy the requirements of FAR 4.804-5(b)) for all contracts exceeding $10,000. For contracts $10,000 and under, the contracting officer shall file a signed statement that all contract actions are complete.

1804.805 Disposal of contract files.

See NHB 1441.1A, NASA Records Disposition Handbook.

1804.805-70 Review, separation, and retirement of contract files.

(a) *Review of contract case and cross reference locator files.* Upon determination of contract completion under the procedures outlined in 1804.804, each office shall review all files pertaining to the individual contract as follows:

(1) *Duplicate or working contract case file*—remove any original or official file copies of documents and place them in the appropriate official file; destroy immediately any remaining material, or segregate and mark it for early disposal.

(2) *Official contract case file*—remove folder for completed contract from the active file series, mark each folder or folder tab "Completed (Date)" and place folder in completed (inactive) contract file series; separate series should be established for contracts of $10,000 or less and for contracts of more than $10,000, to facilitate later disposal.

(3) *Cross reference/locator files*—remove any contract cross-reference data forms relating to the completed contracts, mark each "Completed (Date)", and place them in completed (inactive) cross-reference/locator file series for later disposal.

(b) *Review of contractor general files.* Each office shall review contractor general files at least once annually and—

(1) Remove obsolete and superseded documents relating generally to the contractor (e.g., documents no longer pertinent to any aspect of contractor's current or future capability, performance, or programs, and documents relating to a contractor who is no longer a possible source of supplies, services, or technical assistance) and dispose as authorized in 1804.805; and

(2) Remove any documents pertaining only to completed contracts, place those not routine in nature in inactive contract file for later disposal, and immediately dispose of routine documents as authorized in NHB 1441.1A.

Subpart 1804.70—Transfer of Contracting Office Responsibility

1804.7000 Scope of subpart.

This subpart contains policies and procedures applicable to the transfer of contracts between NASA installations.

1804.7001 Definition.

"Transfer of a contract," as used in this subpart means that process whereby a contract and all future responsibility for the contract held by one installation is transferred or reassigned in writing, to another installation.

1804.7002 Restrictions.

(a) Requests for permission to transfer a contract to another NASA installation, when deemed advisable by the Director of the installation, shall be addressed to the appropriate official-in-charge of a Headquarters program office or the designated program director after concurrence from the recipient installation director.

(b) Contracts shall not be transferred by an installation until approved by the cognizant official-in-charge of the Headquarters program office or designated program director and the concurrence of the recipient installation director. The concurrence of the Associate Administrator for Management Operations is also required for a transfer where an installation's roles and missions may be affected.

(c) An information copy of the memorandum consummating each transfer shall be sent to the Director, Institutional Operations Division, Management Operations Office.

1804.7003 Preparatory actions.

The Procurement Officer of the installation transferring the contract shall contact the Procurement Officer of the installation scheduled to receive the contract. This contact shall be for the purpose of establishing a working agreement and a time phase schedule of transfer actions.

1804.7004 Coordinating actions by the contracting officer of the installation transferring the contract.

The contracting officer shall coordinate with the following elements within his installation prior to transferring a contract:

(a) Financial Mangement Office to determine the contract financial records to be transferred, and the method, timing, and dollar amount of such transfers.

(b) Technical (Engineering and Project) Office to determine the status of any outstanding engineering changes.

(c) Reliability and Quality Assurance Office to determine status and method of transferring the reliability and quality assurance functions.

(d) Industrial Property and Facilities Office to determine the method of transferring the records of Government property.

(e) Transportation Office to determine the status of Bills of Lading furnished to the contractor.

(f) Security Office to determine if any classified material is outstanding and if special precautions are necessary during the transfer process.

(g) Other organizational elements to determine the status of any other actions such as New Technology, Materials Reports, PERT, and Safety.

1804.7005 Inventory of current requests for contract administration assistance.

The contracting officer transferring the contract shall prepare an inventory of all outstanding requests for contract administration assistance issued to other Government agencies (e.g., Military Departments of the Department of Defense, Defense Contract Administration Services Regions, TVA, DOE, FAA, etc.). This inventory shall include the name and address of the agency office, functions requested to be performed, estimated cost of the services, and estimated reimbursement due the administration agency for the services to be performed on the incomplete portion of each requested function. Copies of this inventory will be provided for the contracting officer to whom the contract is to be transferred.

1804.7006 Transfer review.

The contracting officer to whom the contract is to be transferred shall be given an opportunity to review the contract, letters of request, actions in process, and other related files and to request corrective action, if necessary, prior to the official transfer of the contract.

1804.7007 Notification to the contractor.

After coordination with the installation organizational elements as required in 1804.7004 and with the receiving contracting officer, the contractor shall be notified in writing of the impending transfer by the transferring contracting officer.

1804.7008 Notification to other agencies.

As early as practicable after coordination between procurement offices has been effected, the contracting officer transferring the contract, shall notify all agencies performing or requested to perform administration services of the impending transfer.

1804.7009 Administrative actions.

Prior to transferring the contract, a complete inventory shall be made of the contents of the contract file to be transferred. All contract administration actions in process shall be set forth as a separate listing in an inventory and shall include the status of each action.

1804.7010 Transfer.

Upon completion of the preparatory actions required herein, both contracting officers shall agree upon acceptable dates for the transfer of the contract responsibility and the contract files. The contracting officer of the installation transferring the contract shall issue letters as indicated below and provide copies to the contracting officer receiving the contract.

(a) *Contractor.* Notification of the transfer date, termination of appointment of contracting officer's representatives, and the name, mailing address, and telephone number of the contracting officer at the installation receiving the contract.

(b) *Contracting Officer's representatives.* Termination of each contracting officer's representative appointment effective on the date of transfer.

(c) *Agencies performing contract administration functions.* Notification of the effective date of transfer of the contract along with the mailing address and telephone number of the contracting officer at the installation receiving the contract. (Existing requests for contract administration functions shall not be terminated.)

(d) *Installation organizational elements.* Notification of the effective date of transfer and other pertinent information.

(e) *Receiving installation.* Transfer of contract responsibility and transmission of the contract file including an inventory of its contents, and a summary of any contractual problems which should be brought to the attention of the contracting officer receiving the contract. This letter also shall contain a provision for acceptance of the responsibility for the contract and its related files by the contracting officer and a notification of the acceptance to the contracting officer of the installation transferring the contract.

1804.7011 Final action by the contracting officer transferring the contract.

The contracting officer at the installation transferring the contract shall retain for permanent file a copy of—

(a) The approvals and concurrences required by 1804.7002(b);

(b) The inventory receipt signed by the contracting officer receiving the contract;

(c) The contract for historical purposes; and

(d) Any additional documents considered necessary to present a complete summary of the transfer action.

1804.7012 Action by the contracting officer receiving the contract.

The contracting officer receiving the transferred contract shall—

(a) Acknowledge receipt of the contract and its related files;

(b) Inform all offices affected within the installation of the receipt of the contract;

(c) Appoint new contracting officer's representatives, and such other technical representatives as are deemed necessary;

(d) Issue a modification to the contract to provide for the administrative changes caused by the transfer action, such as identifying the—

(1) Office responsible for performing contract administration;

(2) Office responsible for making payment;

(3) Office to which vouchers are to be submitted;

(4) Office to which reports and data are to be submitted;

(5) Place of delivery of contract items; and

(6) Any other change made necessary as a result of the transfer;

(e) Provide copies of the contract documents to the installation offices which have a functional responsibility for the contract; and

(f) Where appropriate, supplement the letter of request to the Government agency providing contract administration support services, to reflect the changes resulting from the transfer action, including identification of new contracting officer's representatives, manpower accounting reporting, reimbursement information, and other changes resulting from the transfer action. The supplement may terminate or amend an existing contract administration support arrangement or may request support in additional areas.

Subpart 1804.71—Uniform Acquisition Instrument Identification

1804.7100 Scope of subpart.

This subpart contains the administrative requirements and

procedures for uniform numbering of NASA contracts (including letter contracts), purchase orders (including requests to other Government agencies), grants, basic agreements, basic ordering agreements, other documents evidencing in whole or in part an agreement between the parties involving the payment of appropriated funds or collection of funds for credit to the Treasury of the United States, and modifications or supplements thereto. It further provides for a uniform identification system for numbering IFB's and RFP's.

1804.7101 Policy.

(a) Documents coming within the scope of this Subpart shall be numbered with approved prefixes and serial numbers for identification, audit, and filing purposes. If a prefix identification symbol is required for an installation or office not listed in this Subpart, a request for the assignment of a prefix identification shall be submitted to the Office of Procurement, NASA Headquarters (Code HP–1). Alpha-numeric characters, other than those prescribed in this Subpart, shall not be used as part of the numbering system. If other identification is required, it shall be placed on the document in such a location as to clearly separate it from the identification number prescribed herein.

(b) The indentification number shall be retained unchanged for the life of the particular instrument and shall consist of not more than 11 alpha-numeric characters positioned as prescribed in this Subpart.

1804.7102 Invitations for bids, requests for proposals, contracts, agreements, and modifications.

1804.7102–1 Identification of invitations for bids and requests for proposals.

IFB's and RFP's shall be numbered in accordance with the individual field installation's system for identifying IFB's and RFP's except that in all cases the identifying number shall begin with the installation's numerical identification prefix as set forth in 1804.7102–4.

1804.7102–2 Contracts and agreements requiring numbering.

The following contracts and agreements shall be numbered in accordance with the uniform numbering system prescribed in 1804.7102–3, 1804.7102–4, 1804.7102.5, 1804.7102–7:

(a) All contracts, including letter contracts, for procurement or sale of supplies or services involving or likely to involve the payment or receipt of $10,000 or more.

(b) All indefinite delivery type contracts involving more than one payment and estimated to involve payment or receipt of more than $10,000 during the fiscal year.

(c) All utilities contracts.

(d) All leases of real property and renewals thereof.

(e) All easements.

(f) All basic agreements.

(g) All basic ordering agreements.

(h) All other written agreements involving payment or receipt of funds not covered by 1804.7103.

1804.7102–3 Assignment and control of numbers.

(a) The numbering of contracts, agreements, and modifications thereto shall be centrally by each contracting office at NASA Headquarters, field installation, or office for which a prefix identification symbol has been assigned.

(b) A complete identifying number shall consist of the following and will be assigned to NASA contracts and agreements designated in 1804.7102–2:

(1) One of the prefix identification symbols contained in 1804.7102–4 followed by a hyphen.

(2) A serial number (assigned in accordance with 1804.7102–5) for the particular transaction.

1804.7102–4 Assigned contract or agreement prefixes.

(a) Approved prefixes for NASA contract or agreement numbers are as follows:

(1) Headquarters and Prefix

Headquarters Administration Office: NASW
Procurement Office (Basic Agreements And Institutional Cost Sharing Agreements): NAS11

(2) Field Installations and Offices and Prefix

Langley Research Center: NAS1
Ames Research Center: NAS2
Lewis Research Center: NAS3
Goddard Space Flight Center: NAS5
NASA Resident Office-JPL: NAS7
George C. Marshall Space Flight Center: NAS8
Lyndon B. Johnson Space Center: NAS9
John F. Kennedy Space Center: NAS10
National Space Technology Laboratories: NAS13

(b) The identification numbering system of all contracts that are totally funded under reimbursable arrangements with the Department of Energy shall conform to 1804.7102–3, except that a DEN prefix shall be used in lieu of the NAS prefix, e.g., DENW would be the Headquarters prefix and DEN8 would be the Marshall designation.

(c) In a like manner, all Special Agreements awarded under the authority of sections 203(c)(5) or 203(c)(6) of the Space Act will also be identified as set forth in 1804.7102–3, except that an NCA prefix shall be used in lieu of the NAS prefix.

(d) Also, all Cooperative Agreements subject to Pub. L. 97–258 will be identified as set forth in 1804.7102–3, except that an NCC prefix shall be used in lieu of the NAS prefix.

1804.7102–5 Serial numbers.

(a) Contracts and agreements identified in 1804.7102–2 shall be numbered serially by the organizational unit authorized to assign such numbers, commencing with the number "1", and continuing in successing without regard to fiscal year or type of contract; for example: NAS5–300, NAS5–301.

(b) If the contract is a facilities contract, the letter "F", in parentheses, shall be at the end of the serial number for identification pruposes; for example: NAS5–301(F).

(c) For basic agreements and institutional cost sharing agreements executed by the procurement office, the letter "B", in parentheses, shall be added at the end of the serial number for basic agreements and the letter "C", in parentheses, shall be added at the end of the serial number for institutional cost sharing agreements; for example: NAS11–1(B), NAS11–2(C).

(d) When the series of numbers under a symbol exceeds five digits (99,999), a new series of numbers will be used beginning the series with number 1 and followed by the capital letter "A". Should additional series become necessary, they will be distinguished by the capital letters "B", "C", etc. as may be required, except that the letters "I" and "O" shall not be used.

1804.7102–6 Modifications of contracts or agreements.

Modifications of definitive contracts or agreements shall (a) bear the same identification as the contract or agreement being modified, and (b) be numbered consecutively for each contract or agreement, beginning with Modification No. 1, regardless of whether the modification is accomplished by unilateral or bilateral action. Except for Notices of termination, modifications shall be effected by the use of Standard Form 30 (Amendment of Solicitation/Modification of Contract).

1804.7102–7 Letter contracts.

(a) *Superseding definitive contract.* The same number assigned to the letter contract according to 1804.7102–4 and 1804.7102–5 shall also be assigned to the superseding definitive contract. No other

contract number will be assigned to the superseding definitive contract.

(b) *Modifications.* (1) Additions or changes to letter contracts will be accomplished by modification to the letter contract. Modifications shall (i) bear the same identification as the letter contract being modified, and (ii) be numbered consecutively for each letter contract, beginning with Modification No. 1, regardless of whether the modification is accomplished by unilateral or bilateral action.

(2) Upon definitization of the letter contract, contract modification shall be accomplished by using the numbering system prescribed in 1804.7102–6.

1804.7103 Purchase orders and requests.

1804.7103–1 General.

Purchase orders (including blanket purchase agreements) and requests to other Government agencies to furnish supplies or services will be assigned a complete identifying number consisting of—

(a) One of the letter prefixes set forth in 1804.7103–2 followed by a hyphen; and

(b) A serial number, assigned in accordance with 1804.7103–3.

1804.7103–2 Assigned purchase order or request prefixes.

Approved letter prefixes for NASA purchase orders (including blanket purchase agreements) or requests to other Government agencies are as follows:

(a) Headquarters and Prefix

Headquarters Administration Office: W

(b) Field Installations and Offices and Prefix

Ames Research Center: A
George C. Marshall Space Flight Center: H
Goddard Space Flight Center: S
John F. Kennedy Space Center: CC
Langley Research Center: L
Lewis Research Center: C
Lyndon B. Johnson Space Center: T
NASA Resident Office-JPL: WO
National Space Technology Laboratories: NS

1804.7103–3 Serial numbers.

The same series of consecutive numbers will be used for numbering both purchase orders (including blanket purchase agreements) and requests to other Government agencies. The series of numbers will commence with the number 1 and continue in succession without regard to the fiscal year. The number will follow the letter symbol, separated by a hyphen, for example: Order Number L–350; Order Number W–1,000. When the series of numbers under a symbol exceeds 5 digits (99,999), a new series will be used beginning the series with number 1 and followed by the capital letter "A". Should additional series become necessary, they will be distinguished by the capital letters "B", "C", "D", etc., as may be required except that the letters "I" and "O" shall not be used.

Subpart 1804.72—Review and Approval of Contractual Instruments

1804.7200 Scope of subpart.

This subpart contains administrative requirements for furnishing advance contract information to NASA Headquarters and to specified field installations of certain proposed procurements expected to exceed the small purchase limitation and for obtaining the approval of NASA Headquarters, prior to award, of specified categories of contracts and supplemental agreements. It also lists information to be furnished by contracting officers in submitting contracts and supplemental agreements that require NASA Headquarters approval. These requirements are in addition to other approval and review requirements.

1804.7201 Contract review function.

The primary purpose of contract review and approval by NASA Headquarters of certain categories of contractual actions is to provide an independent review and analysis for the purpose of determining whether the procurements—

(a) Were competently negotiated;

(b) Are based on adequate information;

(c) Are in conformance with law, established policies and procedures, and sound business practices; and

(d) Will result in contracts that adequately protect the interest of the Government.

1804.7202 Research contracts with colleges and universities.

Where a contract is selected as the research support instrument (see paragraph 203 of the NASA Grant and Cooperative Agreement Handbook, NHB 5800.1A) and the proposed contractor is a nonprofit institution of higher education or a nonprofit institution which is operationally affiliated or integrated with an educational institution, the contracting office will, upon award, forward NASA Form 1356, C.A.S.E. Report on College and University Projects (see 1853.204–1356). This form is either submitted to the contracting office with funded procurement requests (see NMI 5101.12), or, in the case of certain non-funded actions, is initiated by the contracting office. NASA Forms 1356 will be completed, checked and promptly forwarded to the Procurement Management Division (Code HM–1), NASA Headquarters, in accordance with the instructions on the form.

1804.7203 Advance information.

(a) A copy of each unclassified presolicitation notice, solicitation or changes thereto including specifications but not drawings, shall be forwarded to the Office of Small & Disadvantaged Business Utilization, NASA Headquarters (Code K), at the time of issuance. If the proposed procurement is classified, only a copy of the solicitation notice is required.

(b) The presolicitation notice will contain the information prescribed by FAR 5.204). Each copy of the solicitation shall be accompanied by a statement of the estimated cost of the proposed procurement and a complete list of firms or persons solicited. This information is for internal NASA use only.

1804.7204 Review by the contracting officer.

All contractual documents, regardless of dollar value, require a complete review by the contracting officer.

1804.7205 Information to be furnished when requesting approval of contracts and supplemental agreements.

(a) *General.* Requests for approval of contracts and supplemental agreements submitted to Headquarters for approval by the Assistant Administrator for Procurement, in accordance with Subpart 1807.71, Master Buy Plan Procedures, and 1816.603, Letter contracts, shall include the information required by this section and shall be fowarded in sufficient time to allow a minimum of 15 days for review. The official contract file will be submitted with the request for approval and will include completed NASA Form 1098, "Checklist for Negotiated and Advertised Contract File Content (Award File)." Where Headquarters Legal Counsel review is required, a duplicate copy of the file should, if practical, be forwarded in order to expedite review. A list of contracts requiring such legal review will be published periodically.

(b) *Negotiation.* Each request for approval of a negotiated contract or supplemental agreement shall be accompanied by 8 copies of the contract, 4 of which are executed by the contractor and contracting officer, and by the official contract file which contains the appropriate documentation as set forth in FAR 4.803(a). However, for FAR 4.803(a) (10), (11), and (12) provide documentation pertaining only to the successful offeror and for FAR

4.803(a)(26) do not provide supporting documentation for previously issued contract modifications, except as required below. When the contract being forwarded is a supplemental agreement to an existing contract, the contract file shall include an index of all previous modifications which will serve as a guide or quick reference. S.A. No. 2-Added clause 1852.223-70, Safety and Health.

1804.7206 Conditional approval of contracts and supplemental agreements.

(a) Contracts and supplemental agreements submitted to Headquarters for approval by the Assistant Administrator for Procurement may be approved conditionally, subject to requiring the cognizant contracting office to take certain corrective actions within a specified period of time. These corrective actions include (1) revising, deleting, or adding contract clauses, and (2) developing additional supporting data for inclusion in the contract file, prior to or concurrent with the distribution of the approved contract or by an early supplemental agreement.

(b) The Procurement Officer will ensure that these corrective actions are accomplished in accordance with the conditional approval. In addition, the Procurement Officer will provide the Assistant Administrator for Procurement (Code HS-1) with a copy of the corrected contract pages, supplemental agreement, or additional supporting data that accommodates the conditions of approval. This should be evidenced by a memorandum that references the Headquarters approval memorandum and indicates the status of the corrective actions.

(c) On receipt and review of the corrective actions, Headquarters will notify the cognizant Procurement Officer of the disposition of the conditional approval. Such notice will be made a part of the official contract file and the Headquarters file of record.

Subpart 1804.73—Procurement Request

1804.7301 General.

(a) Procurement requests will be prepared and submitted to the contracting office in accordance with the latest revision of NASA Management Instruction 5101.12, "Policy and Procedures Concerning Procurement Request."

(b) Except in unusual circumstances, the contracting office will not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract obligation prior to the receipt of the approved procurement request certifying that funds are available when—

(1) Such action is necessary to meet critical program schedules;

(2) It has been established that program authority has been issued and that funds to cover the procurement will be available prior to the date set for contract award or contract modification; and

(3) The Procurement Officer authorizes such action prior to the issuance of the solicitation.

(c) The procurement request shall be assigned within the contracting office to a negotiator who will be responsible to the contracting officer for conducting the business aspects of the transaction. The negotiator will review the request to ensure that it complies with NASA Management Instruction 5101.12, the FAR, and this Regulation, and that the information contained in the request is in sufficient detail to prepare the solicitation. Uncertain requirements or inconsistencies in the procurement request will be discussed with the initiator of the request and clarified prior to the initiation of procurement action.

PART 1805—PUBLICIZING CONTRACT ACTIONS

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Subpart 1805.4—Release of Information.

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Subpart 1805.5—Paid Advertisements

1805.502 Authority.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1805.1—Dissemination of Information

1805.101 Methods of disseminating information.

For NASA policy regarding paid advertisements, see FAR 5.502 and 1805.502.

Subpart 1805.2—Synopses of Proposed Contracts

1805.201 General.

1805.201-70 Headquarters notification.

A copy of each synopsis of a proposed contract, sent to the Department of Commerce, shall be furnished to the Director of Small and Disadvantaged Business Utilization, NASA Headquarters (Code K).

1805.205 Special situations.

Potential sources which respond to NASA Advance Notices shall be added to the appropriate solicitation mailing list for the subsequent solicitation. Those sources which do not appear on the solicitation mailing lists established in accordance with FAR 14.205-1 shall be requested to submit Standard Form 129, Solicitation Mailing List Application. In those situations where responding sources are on established lists they may be requested to submit amended applications in order to reflect their current capabilities.

1805.207 Preparation and transmittal of synopses.

Within NASA, each notice publicizing procurement of architect-engineer services shall be headed *"R. Architect-Engineer Services."* The project shall be listed with a brief statement concerning the location, scope of service required, the significant evaluation criteria and the relative order of importance the Government attaches thereto, the estimated construction cost range, the construction cost limitation, type of contract proposed, the estimated start and completion dates, and the date by which responses to the notice must be received, including submission of Standard Form 255, Architect-Engineer and Related Services Questionaire for Specific Project, if required. Appropriate statements shall be made concerning any specialized qualifications, security classifications, and limitations on eligibility for consideration. Qualifications or performance data required from architect-engineer firms shall be described. If the procurement is to be set aside for small business, the notice shall so state, indicating the specific size standard to be used and requiring that eligible responding firms

submit a small business certification statement.

"Provisions of Note 62 shall apply to this notice except that in the second paragraph of the note: (a) the 'National Aeronautics and Space Administration' is substituted for the 'Department of Defense' wherever the reference appears, and (b) the third additional consideration listed is changed to read: '(3) past experience, if any, of the firm with respect to performance on contracts with NASA, other Government agencies, and private industry.' "

Subpart 1805.3—Synopses of Contract Awards

1805.302 Preparation and transmittal of synopses of awards.

1805.302-70 Headquarters notification.

The contracting officer shall forward, by mail, one copy of the synopsis of contract award as prepared under FAR 5.302 to the Office of Small and Disadvantaged Business Utilization, NASA Headquarters (Code K) and a copy to the Public Affairs Office of the installation.

1805.303 Announcement of contract awards.

Congressional notification shall be in accordance with 1805.403-70.

1805.303-70 Furnishing additional procurement information to the public.

(a) *Policy.* (1) In addition to publicizing procurements and contract awards in the Commerce Business Daily, it is NASA policy to furnish the public, upon request, through the public affairs office of the NASA installation receiving the request, information on specific current NASA procurements, including—

(i) The names of firms invited to submit bids or proposals;

(ii) The names of firms which attended pre-proposal briefing conferences when held;

(iii) After the date established for receipt of bids or proposals, the names of firms which submitted bids or proposals (but see Subpart 1815.6 regarding requests for information involving offerors participating in negotiations); and

(iv) Contract award information as required to be publicized in the Commerce Business Daily under the provisions of FAR 5.303 and this 1805.303-70.

(2) Exceptions to this policy will be permitted only when the Assistant Administrator for Procurement or the Director of the field installation concerned determines that the disclosure of such information would be prejudicial to the interests of NASA.

(b) *Procedures.* Contracts requiring approval by the Assistant Administrator for Procurement, in accordance with Subpart 1804.72 will not be distributed, nor will any information be given to any source outside of NASA that the contract has been approved, until 24 hours after the Director of Public Affairs and the Assistant Administrator for Legislative Affairs, NASA Headquarters, have been advised that the contract has been consummated.

(c) *Unsuccessful offerors.* For releasing information to unsuccessful offerors, see FAR 14.408 and FAR Subpart 15.10.

1805.303-71 Notification of the Public Affairs Office.

(a) *Letter contracts.* (1) The procedures for issuing and approving letter contracts are contained in FAR 16.603 and 1816.603. Prior to transmittal of a letter contract to a contractor for signature, the Procurement Officer will furnish to the Installation Public Affairs Office the following information:

(i) Whether the letter contract initiates a new contract or additional work or services under an existing contract.

(ii) Dollar amount authorized for letter contract and estimated total cost of the contract or supplemental agreement.

(iii) Name and address of the contractor.

(iv) Location where the work is to be performed.

(v) Brief description of the work, including identification of the program and project.

(vi) For the purpose only of responding to queries, a list of the unsuccessful offerors and addresses.

(2) Upon receipt of the information described in paragraph (a)(1) above, the Installation Public Affairs Office will transmit the information immediately, in the form of a news release, by priority TWX or more expeditious means (if appropriate), to the Director, Public Affairs Division, and the Director of Legislative Affairs, NASA Headquarters. The information will not be otherwise released by the Installation Public Affairs Office, nor will the letter contract be released before 2:30 p.m. Washington, DC time of the next working day, unless clearance has been received earlier from the office of the Director, Public Affairs Division. If individual circumstances clearly indicate a need for earlier action, exception must be obtained from the Assistant Administrator for Procurement.

(b) *Definitive contracts and supplemental agreements.* (1) This subparagraph pertains to contracts and supplemental agreements which do not require the approval of the Assistant Administrator for Procurement pursuant to 1804.7205 and are in an amount of $5,000,000 or over, exclusive of supplemental agreements covering overruns or incremental funding actions. Such contracts and supplemental agreements will not be distributed, nor information be given to any source outside NASA that the contractual instrument has been signed by both parties, until the following procedures are carried out:

(i) The Procurement Officer will furnish to the Installation Public Affairs Office the following information:

(A) Whether the contract initiates a new contract or additional work or services under an existing contract;

(B) Type of contract;

(C) Dollar amount authorized for the instant action and estimated total cost of the contract if this is different;

(D) Name and address of the contractor;

(E) Location where the work is to be performed;

(F) Brief description of the work, including identification of the program and project; and

(G) For the purpose only of responding to queries, a list of the unsuccessful offerors and addresses.

(ii) Upon receipt of the above information, the Installation Public Affairs Office will immediately prepare a news release in the form of a priority TWX which will contain as a minimum the information in paragraph (b)(1)(i) above, and transmit it to the Director, Public Affairs Division, and the Director of Legislative Affairs, NASA Headquarters. The information will not be otherwise released by the Installation Public Affairs Office, nor will the contract instrument be released before 2:30 p.m. Washington, DC time of the next working day, unless clearance has been received earlier from the office of the Director, Public Affairs Division. If individual circumstances clearly indicate a need for earlier action, exception must be obtained from the Assistant Administrator for Procurement.

(2) Contracts and supplemental agreement which require the approval of the Assistant Administrator for Procurement pursuant to 1804.7205 will be accompanied, when forwarded for such approval, by a draft news release prepared by the Installation Public Affairs Office and furnished to the contracting office for inclusion in the submission file. The news release will contain as a minimum the information required by paragraph (b)(1)(i) above. At the time the contract or supplemental

agreement is approved by the Assistant Administrator for Procurement, the news release will be forwarded inmediately to the Director, Public Affairs Division and the Director of Legislative Affairs.

Subpart 1805.4—Release of Information

1805.401 General.

Release of information to the Small Business Administration shall be in accordance with FAR 19.402(b).

1805.402 General public.

Requests from the general public for specific information will be processed in accordance with 1805.303–70.

1805.403 Requests from Members of Congress.

1805.403–70 Headquarters approval and release.

The proposed reply, with full documentation, will be promptly prepared and forwarded by the most expeditious means to the Assistant Administrator for Legislative Affairs, NASA Headquarters, for approval and release. (See 1805.303–70.)

Subpart 1805.5—Paid Advertisements

1805.502 Authority.

Use of paid advertisements for procurement purposes is not authorized in NASA.

SUBCHAPTER B—ACQUISITION PLANNING

PART 1807—ACQUISITION PLANNING

Subpart 1807.1—Acquisition Plans

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Authority: 42 U.S.C. 2473(c)(1).

Subpart 1807.1—Acquisition Plans

1807.101 Definitions.

"Procurement plan" means a detailed outline of the method by which the contracting officer expects to accomplish the procurement task. The plan is an administrative tool designed to enable the contracting officer to plan effectively for the placement and accomplishment of assigned procurements by analyzing the requirement for, and determining the method to be used in, placing the procurement. It also furnishes justification for the contemplated method of procurement for use in connection with the review and approval of higher authority when applicable.

1807.102 Policy.

NASA uses several methods to document its acquisition planning. These include the Project Approval Document (PAD), Project Plan, Program Operation Plan (POP), normal budget submissions, and procurement plan. The procurement plan is the only one of these coordinated documents that is a direct procurement responsibility. Instructions and requirements for completing the other documents are in various NMI's. The thresholds and requirements for NASA procurement plans are at 1807.103 below. As authorized in FAR 7.102, NASA will continue to use its existing procurement planning system in lieu of the criteria in FAR Subpart 7.1.

1807.103 Agency-head responsibilities.

(a) *Requirement for preparation of procurement plans.* (1) Except as otherwise authorized by paragraph (a)(2) below, the contracting officer shall prepare a procurement plan, with the advice and assistance of the cognizant technical division, on each negotiated procurement estimated to exceed the dollar amount set forth below for the installation concerned. Such plans shall be prepared prior to solicitation of proposals. Field installations may require the preparation of a procurement plan for negotiated procurements that are not anticipated to exceed the dollar amount established for the particular installation:

(i) $250,000 for—

(A) Headquarters Contracts and Grants Division.

(B) NASA Resident Office—JPL.

(C) National Space Technology Laboratories.

(ii) $500,000 for—

(A) Ames Research Center.

(B) Goddard Space Flight Center.

(C) Johnson Space Center.

(D) Kennedy Space Center.

(E) Langley Research Center.

(F) Lewis Research Center.

(G) Marshall Space Flight Center.

(2) Procurement plans are not required to be prepared for procurements—

(i) Of architect-engineer services;

(ii) Based on unsolicited proposals;

(iii) Of basic research from nonprofit organizations;

(iv) Of utility services where the services are available from only one source;

(v) Made from or through other government agencies;

(vi) Of industrial facilities required in support of related procurement contracts; and

(vii) Of flight payloads and investigations where selection is made pursuant to NHB 8030.6, Guidelines for Acquisition of Investigations.

(b) *Approval of procurement plans.* (1) Whenever the estimated cost of the procurement (including the aggregate amount of follow-on contracts) meets the thresholds below, procurement plans, shall, as a minimum, be reviewed and approved as follows:

(i) For procurements in excess of the dollar amount in 1807.103(a)(1) above, but less than the dollar amount below for the installation concerned, the procurement plan shall be submitted for the approval of the Procurement Officer or designee after review and written concurrence by the head of the cognizant technical division or laboratory, as applicable. (For the purpose of this requirement, the term "or designee" shall mean the individual authorized by the Procurement Officer to sign the procurement plan. Such authorization shall be in writing and shall not be delegated to more than one individual.)

(A) $1,250,000 for —

(*1*) National Space Technology Laboratories.

(*2*) Headquarters Contracts and Grants Division.

(*3*) NASA Resident Office—JPL.

(*B*) $2,500,000 for—

(*1*) Ames Research Center.

(*2*) Goddard Space Flight Center.

(*3*) Johnson Space Center.

(4) Kennedy Space Center.
(5) Langley Research Center.
(6) Lewis Research Center.
(7) Marshall Space Flight Center.

(ii) For procurements within the range of the dollar amounts below for the installation concerned, the procurement plan shall be submitted for the approval of the Head of the Installation, Deputy Installation Head, or Associate Director (the title "Associate Director" means a full Associate Director and not an Associate Director for * * *) after review and written concurrences by the Director or Assistant Director of the cognizant technical directorate, cognizant Program Manager, or cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement Officer.

(A) $1,250,000 but less than $2,500,000 for—

(1) National Space Technology Laboratories.
(2) Headquarters Contracts and Grants Division.
(3) NASA Resident Office—JPL.

(B) $2,500,000 but less than $5,000,000 for—

(1) Ames Research Center.
(2) Goddard Space Flight Center.
(3) Johnson Space Center.
(4) Kennedy Space Center.
(5) Langley Research Center.
(6) Lewis Research Center.
(7) Marshall Space Flight Center.

(iii) For procurements that are selected for Headquarters review and approval in accordance with the Master Buy Plan Procedure, the procurement plan shall be submitted for the signature of the Head of the Installation after review and written concurrences by the Director or Assistant Director of the cognizant technical directorate, cognizant Program/Project Manager, or cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement Officer. The procurement plan shall contain additional signature blocks for approval by the Assistant Administrator for Procurement and for concurrences by cognizant Officials-in-Charge of Headquarters offices. The procurement plan shall be submitted to the Assistant Administrator for Procurement (Code H) for coordination of the Headquarters review and approval process. The original and ten copies shall be submitted. The position title will be shown for each individual signing the procurement plan as required by paragraph (b)(1) (i) through (iii) above.

(2) Examples of what is meant by the phrase "including the aggregate amount of follow-on contracts" appearing in paragraph (b)(1) above are—

(i) Options as defined in FAR Subpart 17.2;

(ii) Agreements-to-agree, wherein the parties agree to negotiate for the extension of the supplies or services being procured; and

(iii) Later phases of the same project.

(3) Approval of a procurement plan does not constitute approval of any deviation or special conditions or clauses which may be required. Any such deviations must be submitted for review and approval under FAR Subpart 1.4 and/or 1801.4.

1807.170 Contents of the procurement plan.

1807.170-1 Procurement plans requiring approval by NASA Headquarters.

(a) Each procurement plan prepared for approval by NASA Headquarters shall be prepared on NASA Forms 1451 and 1452 or on a Headquarters-approved Optional Free Form for those installations that use automated equipment to prepare their procurement plans. Use of either the NASA forms or the Optional Free Form is authorized for preparing procurement plans to be approved by the Head of the Installation. Form 1451, Request for Procurement Plan Approval (see 1853.207-1451), shall be completed as follows:

(1) *Item 1. A descriptive short title.* In this item, include only a descriptive short title of the procurement plan. A Detailed Description of the Proposed Procurement will be attached to the Plan as Tab A. The information to be provided will consist of—

(i) A clear and concise description, including intended use, of the item or service to be procured;

(ii) Number of units, delivery schedule, and/or period of performance (Note: In the event a schedule of major events will enhance the plan, it should also be included);

(iii) An identification of any option provision including the period(s) covered and estimated costs thereof;

(iv) A brief discussion of the relationship between the proposed procurement and NMI 7121.1, Planning and Approval of Major Research and Development Projects; and

(v) A statement as to whether the contractor will be required to comply with detailed specifications, meet performance requirements, perform a mission, or furnish a level of effort.

(2) *Item 2. Name of installation.* Indicate the name of the installation responsible for the procurement.

(3) *Item 3. Plan prepared by.* Indicate the name of the individual who prepared the plan.

(4) *Item 4. Date.* Date the plan is prepared.

(5) *Item 5. Responsible technical office.* Identify the office (by title) that will be responsible for technical monitoring of the contract.

(6) *Item 6. Project Approval Document (PAD) citation and date.* Enter PAD title, number and date of project approval, and name and title of approving authority. If the required PAD, or PAD Change Request, is in process but has not been approved, enter all information except the date.

(7) *Item 7. Total estimated cost of this procurement.* Provide one figure for the total estimated cost of the proposed procurement, including options, if any. When options are involved, show the cost for each option separately in the description (Tab A), as a breakout from total cost.

(8) *Item 8. Separate approvals required.* Indicate by checkmark in each box whether separate approvals will be required for items 8.a. through 8.i. in support of the proposed procurement. Any determinations and findings requiring the approval of the Administrator under 10 U.S.C. 2304 (a)(11) through (a)(16), Justification for Noncompetitive Procurement, and Source Evaluation Board Appointment Letter (NHB 5103.6, Chapter 3, Source Evaluation Board Manual) will be attached to the procurement plan forwarded for approval. All other documents checked under Item 8 should be processed separately for approval.

(9) *Item 9. Proposed funding by fiscal year and project.* Identify the funding amounts by appropriation, fiscal year, and project, for the procurement covered by the plan. Where funding is obtained from multiple projects, provide a complete identification of each fund source.

(10) *Item 10. Competitive or noncompetitive.* If competitive, check box. If noncompetitive, indicate the name of the source in the space provided under Item 10.c.

(11) *Item 11. Type of contract.* State the type of contract recommended for the procurement. Under Tab B, Remarks, discuss the type of contract and the rationale for its selection. Where an incentive-type contract is proposed, discuss the type of incentive provision considered most suitable for the accomplishment of the procurement objectives.

(12) *Item 12. Facilities and Government-furnished property.* Indicate, by checking the appropriate box, whether the procurement will require the providing of any existing, new, or modified Government property.

When other Government property is to be provided, identify the item(s) and dollar amount(s) involved. The dollar amount(s) provided in Item 12 will not be included in the dollar amounts specified under Items 7 and 9 of the form unless the property or facilities specified are part of the procurement. If dollar amounts under Item 12 are included under Items 7 and 9, the amounts should be so annotated under this item in Tab B, Remarks.

(13) *Item 13. Procurement action schedule.* Indicate the date the procurement plan was submitted to Headquarters for review and approval. For all other entries, provide only the number of calendar days required to complete the action (beginning at the time the previous action was completed) in order to meet the program schedule.

(b) *Tab B, Remarks.* (1) *General.* Include any comments required by the above instructions not covered elsewhere and any other information considered essential to amplify or clarify any item on the form. In addition—

(i) Identify specific deviation(s) to the Acquisition Regulation if a deviation was indicated in Item 8;

(ii) Identify any special conditions or clauses required;

(iii) Identify the type of D&F used if other than 10 U.S.C. 2304 (a)(11) through (a)(16);

(iv) Include a copy of any comments by Counsel for the contracting office (or a statement that Counsel has no objection to the plan) and describe the actions taken in response to any such comments; and

(v) Discuss considerations given as to small business, including minority business enterprises, participation.

(2) *Relationship to other procurements, relevant data, and studies.* Discuss the relationship of this procurement to any other active contracts, including the status of completion of each such contract. Identify the extent to which the product of related contracts will affect this procurement and indicate whether performance under related, active contracts should be permitted to continue during the competitive phase of this action, where appropriate. Discuss all relevant data and studies, whether obtained under contract or through in-house efforts, and state whether such data and studies will be made available to all offerors participating in the competition. If data or studies are available, but it is not planned to make them available to prospective offerors, discuss the reasons for not doing so.

1807.170-2 Procurement plans requiring approval by the Procurement Officer.

Procurement plans prepared for the approval of the Procurement Officer are not subject to the requirement set forth in 1807.170-1 above. Such plans may be prepared in accordance with the procedures prescribed by each installation, provided, that each plan shall contain, as a minimum, the following information:

(a) Purpose and description of the proposed procurement.

(b) Program and project titles.

(c) Responsible technical office.

(d) Delivery schedule or period of performance.

(e) Estimated dollar amount of the procurement and funding data.

(f) Sources to be solicited and reasons for omission of other known sources, if any.

(g) Synopsis or explanation of exception.

(h) Justification for noncompetitive procurement (may be referenced in and attached to the plan).

(i) Determination and findings authorizing negotiation (may be referenced in and attached to the plan).

(j) Type of contract contemplated and, if not firm fixed-price, rationale therefor.

(k) Determination and findings for method of contracting (may be referenced in and attached to the plan).

(l) Incentive consideration, unless firm fixed-price contract is contemplated.

(m) Considerations as to small business, including minority business enterprises, participation.

(n) Government property description, monetary evaluation, and basis for requirement.

(o) Precontract costs, if any.

(p) Management information systems, if appropriate.

(q) Reliability and quality assurance, if appropriate.

(r) Technical data for reprocurement.

(s) Procurement action schedule.

1807.170-3 Assistance in providing for reliability assurance in procurement plans.

When system hardware costing over $1,000,000 is involved, reliability personnel at the field installation involved shall assist in the preparation of the procurement plan with respect to arrangements to be made for reliability monitoring. In the absence of such reliability personnel, the field installation shall seek the advice and assistance of the Director, Safety Reliability and Quality Assurance, NASA Headquarters, Code DP, or designee, in the preparation of procurement plans.

Subpart 1807.3—Contractor Versus Government Performance

1807.303 Determining availability of private commercial sources.

NASA procedures for periodic inventories and reviews of commercial and industrial activities are contained in NMI 7410.3, Delegation of Authority for Acquisition of Commercial or Industrial Products or Services for NASA's Use.

1807.307 Appeals.

NASA appeals procedures are contained in NMI 7410.3.

Subpart 1807.71—Master Buy Plan Procedure

1807.7100 Scope of subpart.

This Subpart prescribes the Master Buy Plan Procedure, contains the requirements for furnishing advance information to NASA Headquarters on proposed procurements that meet the criteria in this Subpart, and prescribes the procedures for selecting those procurements that are to be subject to NASA Headquarters review and approval and those that are to be processed at the installation level. This Subpart also prescribes the approval requirements for those procurements that are to be processed at the installation level.

1807.7101 Policy.

The Master Buy Plan Procedure is designed to enable management to focus its attention on a representative selection of high dollar value and otherwise sensitive procurement actions without compromise of Headquarters visibility or control over essential management functions. This procedure is expected to—

(a) Reduce the number of procurement actions requiring Headquarters review and approval;

(b) Permit better visibility of those procurement actions to be submitted to Headquarters;

(c) Permit better planning of workload and better use of personnel resources at both Headquarters and installation levels;

(d) Shorten the procurement review and approval cycle at Headquarters; and

(e) Increase the delegation of procurement responsibility and authority to each installation.

1807.7102 Applicability.

(a) The Master Buy Plan Procedure is applicable to each negotiated procurement, when the expected dollar value of that procurement, or aggregate amount of follow-on procurements (see

1807.103(b)(2)), is expected to equal or exceed the dollar value in paragraph (c) below, for the installation making the award, except that this procedure is applicable to—

(1) Procurement of utility services when an area-wide contract is not used and either—

(i) The annual cost of the services to be procured is estimated by the using installation, at the time of the initiation of the service or annual renewal of the expenditure, to exceed $100,000; or

(ii) When, except for communication services, a proposed connection charge, termination liability, or any other facilities charge to be paid (whether or not refundable) is estimated to exceed $25,000;

(2) Procurement of architect-engineer services when—

(i) The total dollar value is $250,000 or more; or

(ii) The work to be performed under a cost-plus-fixed-fee or fixed-price contract, regardless of the dollar amount, which involves the production and delivery of designs, plans, drawings, and specifications, and the fee inclusive of the architect-engineer's cost, to be paid to the architect-engineer for the performance of such services exceeds 6% of the estimated cost of the related construction project, exclusive of the amount of such fee (see FAR 15.903(d));

(3) Procurements which provide facilities having a total acquisition value exceeding $500,000, or provide real property regardless of amount (see 1845.302–1); and

(4) Leases, and extensions thereto, for the rental of real property by the Government where the annual rental is more than $50,000 or where a Certificate of Necessity under 40 U.S.C. 278b is required.

(b) Information on the above listed procurements is required to be submitted to NASA Headquarters in accordance with 1807.7103 for determination as to which individual procurement actions are to be submitted to NASA Headquarters for review and approval and which ones are to be approved at the installation level. These individual procurement actions may include one or more of the following: procurement plans, requests for proposals, justifications for noncompetitive procurements, source evaluation board appointments and source selections, prenegotiation positions, contracts (including supplemental agreements) and leases (see 1807.7106).

(c) The following are monetary limitations on Master Buy Plan Procedure:

(1) *$12,500,000:*

(A) National Space Technology Laboratories

(B) Headquarters Contracts and Grants Division

(C) NASA Resident Office-JPL

(2) *$5,000,000:*

(A) Ames Research Center

(B) Goddard Space Flight Center

(C) Johnson Space Center

(D) Kennedy Space Center

(E) Langley Research Center

(F) Lewis Research Center

(G) Marshall Space Flight Center

(d) The foregoing monetary limitations also apply to the following types of contracts:

(1) A contract which contains an option provision (including those authorized by FAR Subpart 17.2), or an agreement-to-agree provision, when the total dollar value, including the option(s) or agreement(s)-to-agree, equals or exceeds the dollar value in paragraph (a) above, for the installation awarding the initial contract.

(2) A supplemental agreement (except one which provides only for the addition or deletion of funds for incremental funding purposes) which—

(i) Definitizes either one or more debit change orders or one or more credit change orders when the total dollar value of either the debit change order(s) or credit change order(s) equals or exceeds the dollar value in paragraph (a) above for the installation making the award;

(ii) Definitizes and consolidates one or more debit and one or more credit change orders when the total dollar value of either the debit change order(s) or credit change order(s) before consolidation equals or exceeds the dollar value in paragraph (a) above, for the installation making the award; or

(iii) Adds new work and definitizes and consolidates one or more debit and one or more credit change orders when the total dollar value of either (A) the new work and debit change order(s), or (B) the new work and the credit change order(s) equals or exceeds the dollar value in paragraph (a) above, for the installation making the award.

(e) The Master Buy Plan Procedure does not apply to supplemental agreements which extend contract performance pursuant to agreement(s)-to-agree provisions, where the initial contract was approved by the Assistant Administrator for Procurement. However, where the supplemental agreement provides for a substantive change in the contract, e.g., expanded statement of work, substantial increase in contract value, etc., the Master Buy Plan Procedure will apply. Approval of such supplemental agreements may be specifically required by the Assistant Administrator for Procurement.

(f) The Master Buy Plan Procedure is not applicable to termination settlement agreements (see FAR Part 49).

1807.7103 Submission, selection, and notification procedure.

1807.7103–1 Submission of Master Buy Plan.

Prior to July 15th of every year, each installation will submit to the Assistant Administrator for Procurement (Code HS–1) a Master Buy Plan (original and eight copies) for the next fiscal year, listing therein every known procurement that meets the criteria in 1807.7102, and that (a) is expected to be initiated in that fiscal year and (b) has not been included in a previous Master Buy Plan or amendment to a Master Buy Plan. If applicable, the plan will include procurements that are for later phases of the same project (see 1807.103(b)(2)). The plans will be prepared in accordance with the format shown in 1807.7106, and, for every procurement listed therein, an identification will be provided as to the individual procurement documents that are involved (1807.7104). Procurement documents that require Headquarters approval (see 1807.7104) will be held in abeyance until receipt of the notification required by 1807.7103 (a) or (b). This is not to preclude the planning for or initiation of such actions up to that point where Headquarters approval may be required. The fiscal year Master Buy Plan shall include a listing of those procurements that were selected for Headquarters review and approval from prior fiscal year(s) Master Buy Plans and amendments to Master Buy Plans that have not been completed. The procurements should be listed by the appropriate fiscal year Master Buy Plan and should show the current status of the individual procurement documents previously selected for Headquarters review and approval.

1807.7103–2 Submission of amendments to the Master Buy Plan.

Procurements identified by installations after submission of their Master Buy Plan for a fiscal year, which meet one of the criteria in 1807.7102, will be submitted to Headquarters in the same manner as the original Master Buy Plan. Such amendments will be submitted sufficiently in advance of contract award date to allow Headquarters to select those procurement documents which will be subject to Headquarters review and approval without creating an unacceptable delay in contract

placement. When timely submittal is not possible, the installation will provide with the amendment a narrative explaining the circumstances leading to the late submittal.

1807.7103–3 Selection and notification procedures.

(a) *Selection of procurements.* Selection of procurements from the Master Buy Plan and amendments of Master Buy Plans to receive Headquarters review and approval and designation of the Source Selection Officials and the officials to whom the justifications for noncompetitive procurements are to be submitted for approval shall be made by the Assistant Administrator for Procurement with the concurrence of the cognizant officials-in-charge of Headquarters offices.

(b) *Notification when procurement is cancelled, superseded, deferred, or no longer requires Headquarters approval.* In the event a selected procurement, subsequent to its selection, is cancelled, superseded, or deferred, or no longer requires Headquarters approval in accordance with the criteria in 1807.7102, the Assistant Administrator for Procurement will be so advised, together with the reasons therefor. The Assistant Adminstrator for Procurement, with the concurrence of the cognizant officials-in-charge of Headquarters offices, will notify the installation in writing of any further action which may be required.

1807.7104 Procedures for procurements selected for Headquarters review and approval.

For those procurements which have been selected for Headquarters review and approval under this procedure, the cognizant installation will ensure that all documents that require Headquarters review and approval are submitted in accordance with established procedures. Such documents may include one or more of the following: procurement plans (1807.103), request for proposals, justifications for noncompetitive procurements (1815.105–70), source evaluation board appointments, and source selections (see NHB 5103.6A, Source Evaluation Board Manual), prenegotiation positions, contracts (including supplemental agreements), and leases (1807.7106).

1807.7105 Procedures for procurements not selected for Headquarters review and approval.

(a) Procurements which are not selected for Headquarters review and approval shall be processed at the installation level. For such procurements, the following documents, to the extent applicable, shall be approved by the Head of the Installation: procurement plans, justifications for noncompetitive procurements, and prenegotiation positions. If the procurement is subject to the Source Evaluation Board Manual, the Head of the Installation shall sign the source evaluation board appointment letter and shall be the Source Selection Official. If the procurement is between $2,500,000 and $5,000,000 and the installation's Master Buy Plan limitation is $2,500,000, the Head of Installation shall be the Source Selection Official and may redelegate this authority to cognizant management officials. The Head of the Installation may redelegate the authority to approve procurement plans and justifications for noncompetitive procurements and to sign source evaluation board appointment letters to the Installation's Deputy or an Associate Director (the title "Associate Director" means a full Associate Director and not an Associate Director for * * *). The Head of the Installation may redelegate the authority to approve prenegotiation positions to the level of the Procurement Officer. If the procurement is subject to the Source Evaluation Board Manual, the request for proposals shall be reviewed and approved in accordance with paragraph 403 of that manual. In all other procurements, requests for proposals shall be approved as directed by the Procurement Officer, commensurate with the sensitivity or significance of the procurements. Contracts (including supplemental agreements) and leases that are not selected for Headquarters review and approval under the Master Buy Plan Procedure, shall be subject to approval by the Procurement Officer. The signing of those documents by the Procurement Officer, as the contracting officer, constitutes such approval. The approvals required above may not be redelegated.

(b) Procurements authorized to be processed at the installation level will be subject to after-the-fact reviews by Headquarters personnel during normal procurement surveys or as the situation may otherwise indicate, or through special reviews.

1807.7106 Format of Master Buy Plan.

In accordance with the requirements of 1807.7103–1 and 1807.7103–2, Master Buy Plans and amendments to Master Buy Plans will be prepared in the format below:

Installation:..... Date:.....

Cognizant HDQ Program Office (1)	Descriptive Title of Procurement (2)	Estimated Dollar Value	Proc Plan	RFP	JNCP (3)	SEB	Pre-Neg	Contract Review	Current Status (4)	Remarks (5)

FY19 Documents Selected for Headquarters Review and Approval Not Yet Completed (6)

(1) Include 3 digit Unique Project Number (UPN) as listed in FMM 9130.
(2) Include N or FO to indicate new or follow-on procurement.
(3) Include name of firm under Remarks.
(4) Indicate current status and scheduled date for next event.
(5) Include data considered pertinent by installation and indicate expected date for placement of contract.
(6) List procurements from prior fiscal year(s) Master Buy Plans and amendments to Master Buy Plans that have not been completed (20.5103.1).

(Form should be prepared on legal size paper. Use separate sheets as necessary.)

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

1808.002 Use of other Government supply sources.
1808.002–70 Procurement of materials from Surplus, Strategic, and Critical Materials Stockpile.
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1808.802 Policy.

Subpart 1808.11—Leasing of Motor Vehicles

1808.1100 Scope of subpart.

Authority: 42 U.S.C. 2473(c)(1).

1808.002 Use of other Government supply sources.

1808.002–70 Procurement of materials from Surplus, Strategic, and Critical Materials Stockpile.

(a) The General Services Administration has responsibility for the disposition of strategic and critical materials which are in excess of national stockpile requirements. These materials are primarily metals, ores, chemicals, and similar raw material items and are listed and described in a GSA bulletin disseminated periodically to procurement officers.

(b) Prior to initiating procurements of materials which are listed as being available for transfer from the General Services Administration, the contracting office should screen the list to determine whether the requirement may be met through transfer of materials from the GSA. Due consideration should be given to the quantity, quality and location of the material and to the timeliness of its availability. Detailed information on these excess materials is available from the General Services Administration, Office of Stockpile Management, Room 5028, 18th & F Streets, NW., Washington, DC 20405.

1808.002–71 Acquisition of helium.

(a) NASA is required under the provisions of Pub. L. 86–777 (50 U.S.C. 167a et seq.) to obtain its major requirements for helium from the Department of the Interior.

(b) Each contracting office shall obtain its requirements for gaseous helium from the Department of the Interior (Bureau of Mines) or other Government support activity supplying Bureau of Mines helium.

(c) Requirements for (1) liquid helium or (2) gaseous helium of a quality not supplied by the Bureau of Mines may be procured from commercial sources, provided such sources are qualified by the Bureau of Mines and included in the Bureau of Mines publication, "List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies." Copies of this publication may be obtained from Bureau of Mines, Helium Operation, P.O. Box H4372, Herring Plaza, Amarillo, Texas 79101.

(d) Procurement documents for the commercial procurement of helium shall be annotated:

Pursuant to Parts 1 and 2, Subchapter A, Chapter 1, Title 30, Code of Federal Regulations, helium furnished under this contract (purchase order) shall be Bureau of Mines helium or shall be replaced by the supplier with an equivalent volume of helium purchased from the Bureau of Mines.

(e) A copy of each contract or purchase order for the supply of helium from commercial sources shall be forwarded to the Bureau of Mines, at the address in paragraph (c) above.

1808.002–72 Acquisition of radioisotopes.

(a) DOE Form EV 375, U.S. Department of Energy Isotope Order Blank, and NRC Form 313I, U.S. Nuclear Regulatory Commission Application for Byproduct Material License, shall be used for the acquisition of radioisotopes as stated on the back of DOE Form EV 375. No other type of order blank, purchase order, or contract shall be used in lieu of these forms.

(b) NRC Form 313I shall be filed with the Chief, Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, United States Nuclear Regulatory Commission, Washington, DC 20555. If the application meets all regulatory requirements and applicable standards, a license will be issued to the applicant by the Radioisotopes Licensing Branch, Nuclear Regulatory Commission. After receipt of the license, a complete DOE Form EV 375 (in duplicate, if the contracting office wants an accepted copy of the form back from the supplier), the license, and a Government bill of lading shall be sent to the appropriate DOE laboratory. If a bill of lading is not furnished, shipment shall be made collect on a commercial bill of lading, to be converted at destination.

(c) The "Terms and Conditions" on DOE Form EV 375 shall control all requisitions for radioisotopes purchased by NASA from Department of Energy Laboratories.

(d) NRC Form 313 and DOE Form EV 375 shall be requisitioned directly from: United States Nuclear Regulatory Commission, Attn: Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, Washington, DC 20555.

1808.002–73 Acquisition of liquid hydrogen.

(a) To ensure that adequate supplies of liquid hydrogen are readily available to meet current and future program requirements, NASA has established contractual arrangements with primary supply sources located in Louisiana and in California. These contracts will be used to the maximum extent practicable in supplying both in-house and contractor requirements for liquid hydrogen.

(b) Requests for liquid hydrogen shall be submitted to the Marshall Space Flight Center.

1808.002–74 Acquisition of propellants.

(a) *General.* The Department of the Air Force has assigned the operational authority and responsibility for the acquisition and distribution of missile propellants and related items to the San Antonio Air Logistics Center (SA–ALC), Kelly Air Force Base, Texas. Propellants (i.e., oxidizers and fuels), pressurants, and related materials are financed under a single Air Force appropriation designated the Missile Procurement Fund (MPF). Supplies are obtained by SA–ALC from Government-owned, contractor-operated plants and by consolidated acquisitions from industry. NASA and its contractors (where materials are Government-furnished) may acquire from SA–ALC the items listed in 1808.002–74(j) (except for liquid hydrogen, see 1808.002–73) on a reimbursable basis. The Air Force MPF shall be utilized as a supply source for propellants whenever there are economic or other advantages to the Government. Field installations and offices obtaining supplies from the MPF shall comply with the reporting requirements of 1808.002–74(f).

(b) *Requests for acquisition.* To obtain the materials listed in 1808.002–74(j) from the Air Force MPF, NASA contracting offices will execute a NASA-Defense Purchase Request (NASA Form 523) 1853.217–523 and forward it to Headquarters, SA–ALC, Kelly Air Force Base, Texas, Attention: SFS. The following additional information should also be provided on the form: (1) contract number (when material is required for use by a NASA contractor), (2) delivery address, and (3) mode of transportation, rail, trailer,

barge, etc. When the procurement request covers requirements for materials not previously forecast or covers significant changes to previously reported requirements, SA–ALC should be notified immediately of such requirements.

(c) *Delivery requests.* (1) A delivery request is a call on the Air Force, made against a purchase request (NASA Form 523), which specifies the time and place of delivery. On the basis of the estimated requirements, the Air Force will notify NASA field installations and contractors of the name and address of the Air Force office or producing contractor's plant to which requests for delivery of materials shall be made. Delivery requests may be placed by any means of communication that time justifies; however, all verbal requests for delivery must be confirmed by a written request within 24 hours. The delivery request, whether oral or written, must cite the NASA-Defense Purchase Request number under which the material is being ordered and contain the following information:

(i) Nomenclature and National Stock Number.

(ii) Quantity.

(iii) Program, project, and task.

(iv) Contract number (when material is required for use by a NASA contractor).

(v) Delivery address.

(vi) Dates of delivery.

(vii) Mode of transportation.

(viii) Location of weighing stations and scales (if weighing of the products prior to delivery is required).

(2) Each delivery request shall be numbered as follows to simplify identification and control. The number shall consist of the last two digits of the calendar year followed by a dash, and a numerical designator of the month submitted, a dash, and a consecutive number beginning with 1. Changes to a request would be identified by adding an alphabetical designator beginning with (A) to the number. This system is not intended to replace or to interfere with existing NASA purchase order numbering or internal budget or accounting numbering procedures.

(d) *Receiving procedures.* (1) *Receiving documents.* Receipt of materials will be evidenced by the signature of an individual authorized by NASA to receive materials from the Air Force on the receiving document received with the shipment. Every effort should be made to ensure that the NASA-Defense Purchase Request number is recorded on the receiving document prior to signing.

(2) *Weighing facilities.* Local weighing facilities (NASA-owned, contractor-owned, commercial, or State-operated) may be used to determine quantities of product received. If a discrepancy exists between the quantities shown on receiving documents and the quantities actually received—

(i) A certified weighing ticket evidencing actual weight at destination will be obtained; and

(ii) A copy of the receiving document (AF Form 857 or DD Form 250) and the original weighing ticket will be forwarded to Headquarters, SA–ALC, Kelly Air Force Base, Texas, Attention: ACFOM, identifying the discrepancy.

(3) *Distribution of receipts.* Copies of all receiving documents except the AF Form 857 shall be transmitted to the Headquarters, SA–ALC, Kelly Air Force Base, Texas, Attention: SACAOM. Receiving documents may be accumulated and submitted on the 10th, 20th, and last day of each month.

(e) *Billing.* The costs for materials obtained through the AMPF are reimbursable. After delivery, a Standard Form 1080 (Voucher for Transfers Between Appropriations and/or Funds (Disbursement)), supported by documentary evidence of delivery, will be submitted by Headquarters, SA–ALC to the NASA installation designated in the NASA Form 523.

(f) *Reporting requirements.* (1) Field installations shall submit periodic estimates of requirements for materials listed in 1808.002–74(j) for all programs under their cognizance, including in-house contractor requirements. Headquarters Program Offices shall submit periodic estimates of requirements for any existing or potential programs which may not be known to, or not under the cognizance of, a field installation. Reports shall be submitted in duplicate on NASA Form 558, Materials Requirement Report.

(2) The reports shall be forwarded so as to reach the Office of Space Flight (Code MOC–8) and HQ, SA–ALC, Kelly AFB, Texas, Attn: SFS, no later than June 1 and December 1. Supplemental reports which advise of additions to or significant changes in previous reports shall be submitted at any time. The reports, covering all materials listed in 1808.002–74(j) due in June and December shall begin with requirements as of the following July 1 and January 1, respectively, and shall cover a three-year period. Requirements shall be shown by month for the first six months, and by quarters for the remaining two and one-half year period.

(g) *Report content.* The reports shall be made using a separate report form for each material and shall provide the following information for each item of material:

(1) Contract number.

(2) Program and/or project.

(3) Specific task within project.

(4) End use when not associated with named program or project.

(5) Name of contractor.

(6) Specific location of use (shipping destination).

(7) Planned source of supply.

(h) *Basis for developing materials requirements.* In computing requirements, consideration shall be given to such elements as lead time, waste factors, transfer, and storage losses so that phased requirements reflect the total gross quantities required to be delivered to the use or storage site. Since the requirements estimates are being used by other Government agencies acting as supply sources to actually contract for materials, estimates must be as accurate as possible.

(i) *NASA headquarters review.* The NASA Office of Space Flight (Code MOC–8) shall be responsible for consolidating reports from installations and Headquarters Program Offices and for coordinating the review of all data with the Headquarters Program Offices. The data will then be used as the basis for NASA requirements reports to various Government agencies for planning and supply support.

(j) *Table of reportable materials.*

Ammonia, Technical (Anhydrous) (Low Oil Content) 99.97 percent purity, Spec 0–A–445

Argon Gas, 6000 PSI AFPID 6830–5

Propellant, Ammonia Liquid Anhydrous 99.5 percent purity, Spec MIL–P–27406

Propellant, Chlorine Tri-fluoride, Spec MIL–P–81399

Propellant, Deuterium, Gaseous, AFPID 9135–20

Propellant, Fluorine, gaseous, Spec MIL–P–27405

Propellant, Fluorine, Liquid, Spec MIL–P–27405

Helium, Technical Grade A, Spec BB–H–1168

Propellant, Isopropyl Alcohol, AFPID 9135–18

Propellant, Hydrazine, Standard Grade, Spec MIL–P–26536

Propellant, Hydrazine, Monopropellant Grade, Spec MIL–P–26536

Propellant, Hydrazine/Uns-Dimethylhydrazine, Spec MIL–P–27402

Propellant, Hydrogen Gaseous, Type I, Spec MIL–P–27201

Propellant, Hydrogen Liquid, Type II, Spec MIL–P–27201

Propellant, Hydrogen Peroxide, Spec MIL–P–16005

Propellant, Hydrogen Peroxide, Electrolytic process, Spec MIL–P–16005

Propellant, Jet Fuel, Grade RJ–1, Spec MIL–F–25558

Propellant, JPX, 50% UDMH–50% JP–4 Spec MIL–P–26694

Propellant, JPX, 17% UDMH-83% JP-4 Spec MIL-P-26694
Propellant, Kerosene Grade RP-1, Spec MIL-P-25576
Propellant, Monomethyl Hydrazine, Spec MIL-P-27404
Propellant, Neon, Liquid AFPID 9135-16
Propellant, Nitric Acid, Type IIIB, Spec MIL-P-7254
Propellant, Nitric Acid, Type IIILS, Spec MIL-P-7254
Propellant, Nitric Acid, Type IV (High Density Acid), Spec MIL-P-7254
Propellant, Nitrogen Tetroxide (NTO)(MON-1)(MON-3) Spec MIL-P-26539
Propellant, Nitrogen Tetroxide (NTO) Spec MIL-P-26539
Propellant, Nitrogen Tetroxide (MON-1) Spec MIL-P-26539
Propellant, Nitrogen Tetroxide (MON-3) Spec MIL-P-26539
Propellant, Oxygen, Grade B, Spec MIL-P-25508
Propellant, Oxygen, Grade A, Spec MIL-P-25508
Propellant, Oxygen, Grade F, Spec MIL-P-25508
Propellant, Pressurizing Agent, Helium, Spec MIL-P-27407, 99.995 Pct Min Assay
Propellant, Pressurizing Agent, Nitrogen, Type II, liquid Grade C, Spec MIL-P-27401
Propellant, Pressurizing Agent, Nitrogen, Type I, gaseous Grade A, Spec MIL-P-27401
Propellant, Pressurizing Agent, Nitrogen, Type I, Grade B, Spec MIL-P-27401
Propellant, Pressurizing Agent, Nitrogen, Type II, Grade A, Spec MIL-P-27401
Propellant, Pressurizing Agent, Nitrogen, Type II, Grade B, Spec MIL-P-27401
Propellant, Uns-Dimethylhydrazine, Spec MIL-P-25604
Propellant, Nitrogen Trifluoride
Propellant, Pressurizing Agent Argon, Liquid, AFPID 9135-19

1808.002-75 Acquisiton of mercury

(a) NASA is prohibited from purchasing mercury in quantities of 76 pounds or more from commercial sources without prior clearance from the General Services Administration.

(b) Mercury, minimum 99.9 percent pure (not triple distilled), in 76-pound flasks, is available for transfer from General Services Administration stocks at fair market value.

(1) Requests from mercury by NASA installations for their use or for use by their cost-reimbursement type contractors shall be made to the Project Manager, Mineral and Ores, Property Management and Disposal Services, General Services Administration, Washington, DC 20405. The Project Manager will furnish the current fair market value to NASA. The unit of issue is a 76-pound flask.

(2) Requests for clearance to purchase quantities of 76 pounds or more from sources other than the General Services Administration shall be submitted to the office referred to in paragraph (b)(1) above and must be accompanied by a statement of reasons that makes the available excess mercury unsuitable for use by the requesting field installation.

Subpart 1808.1—Excess Personal Property

1808.103 Information on available excess personal property.

In addition to the sources identified in FAR 8.103, Installation personnel shall review the availability of NASA property on lists—

(a) Maintained by the NASA Property Disposal Office, and

(b) Maintained by the NASA Equipment Visibility System (EVS) coordinator.

Subpart 1808.3—Acquisition of Utility Services

1808.301 Definitions.

"Multiple service locations" as used in this Subpart means the various locations or delivery points in the contractor's service area to which services are provided under a single contract.

"Utility suppliers" as used in this Subpart means quasi-public service corporations, private concerns, municipalities, associations, or cooperatives. They generally operate in a franchised territory without competition, so they may frequently be in a "sole source" position. Under common law, however, public utilities must render service at reasonable rates and without unjust discrimination. Furthermore, their operations, management, rates and profits are usually regulated by Federal, State, or local regulatory bodies, but absence of a regulatory body does not necessarily mean a complete lack of control. Administrative remedies pursuant to enabling statutes may be pursued or complaints may be taken to a court of competent jurisdiction.

1808.302 Applicability.

For procurement of utility services without a written document see 1808.304-5.

1808.303 General.

Requirements for utility services shall be determined by technically qualified personnel who will assist the contracting officer as required. Prior to soliciting technical assistance outside the agency (see FAR 8.303(b)), technical personnel will contact the Facilities Division (Code NX-2), NASA Headquarters.

1808.304 Acquiring utility services.

1808.304-2 GSA areawide contracts.

(a) A list of the utility services obtainable under GSA area-wide public utility contracts, including the area served and the name of the contracter involved, is contained in GSA Circular No. 61, Revised. GSA also has available copies of the area-wide public utility contracts which include the required order form. Copies of GSA Circular No. 61 and GSA area-wide public utility contracts may be obtained, upon request, from General Services Administration, Transportation and Communication Service, Public Utilities Division, Washington, D.C. 20405.

(b) In determining whether a GSA area-wide public utility contract is adequate to meet the requirements of the using installation, consideration should be given to (1) the area-wide contract rates viewed in light of the magnitude of the service required, (2) any unusual characteristics of the service required, (3) any special equipment or facility requirements, (4) any special technical contract provisions required, and (5) any other special circumstances.

(c) Where an installation considers that a separately negotiated contract is more advantageous to the Government than the GSA area-wide public utility contract, for a utility service other than communications, a request will be submitted to the Assistant Administrator for Procurement, NASA Headquarters (Code HS-1), for a waiver of the requirement to use the GSA area-wide public utility contract. The request shall explain why the separately negotiated contract is considered to be more advantageous to the Government than the area-wide contract.

1808.304-4 Consolidated purchase, joint use, or cross-service.

(a) The Department of Defense enters into area-wide fuel oil and other energy service contracts. DoD area-wide contracts provide that the contractor will upon receipt of an order in the form prescribed by the contract, furnish, without further negotiations as to rates and charges, the service involved in accordance with such of his established and filed rate schedules as are applicable to the service.

(b) A memorandum of understanding, specifying the services to be provided and the conditions under which they will be supplied, shall be used when procuring utility services from another Government agency by cross-servicing. A Utility Service Narrative shall be

submitted in accordance with 1808.307–70.

1808.304–5 Agency acquisition.

Unless a written document is required by FAR 8.304–5(e), utilities services may be procured without a written document (see FAR 8.304–5(g)) when all the following conditions apply:

(a) The services are to be furnished at rates, terms, and conditions based on an established rate schedule approved by a Federal, State, or other public regulatory body.

(b) The estimated annual cost of the services to be procured is $10,000 or less.

(c) A connection, termination, installation, or similar charge, or a deposit other than a meter deposit required of all customers, if involved, has a total cost that does not exceed $5,000.

(d) The utility supplier does not require the execution of a contract or application form.

(e) It is not deemed advantageous to the Government to negotiate and execute a contract.

1808.304–570 Renewal of contracts.

(a) It is permissible to provide that a contract may be renewed annually for a number of years upon the execution by the Government of a renewal notice, provided that the number of successive years for which the contract is in effect does not exceed five.

(b) In selecting the expiration date to be stated in the contract, consideration should be given to the selection of a date sufficiently past the end of the fiscal year to ensure that appropriations will be available for the renewal period of the contract at the time the renewal notice is issued. The exercise of the option is a new procurement and the contract file shall be documented accordingly. (See FAR Subpart 17.2.)

1808.304–571 Headquarters requirement for copies of contracts.

The contracting officer shall forward, promptly after execution, one copy of each contract, service authorization form, memorandum of understanding, or any modification thereto, to the Assistant Administrator for Procurement, NASA Headquarters (Code HS–1) and to the Facilities Division, NASA Headquarters (Code NX–2).

1808.304–572 Contents of a negotiated utility service contract.

(a) Except under the conditions in 1808.304–5 any negotiated utility service contract which involves an estimated annual cost of more than $2,500 shall consist of—

(1) *Standard Form* 26 (see FAR 53.215–1(b));

(2) (i) *Appendix A.* The rate schedule applicable to the contract, which shall consist of—

(A) The printed or otherwise published rate schedule of the contractor which has been approved or established by a Federal, State, or other regulatory body; or

(B) The rate schedule negotiated between the contractor and the Government.

(ii) The rate schedule shall bear the legend "Appendix A, attached to and made a part of Contract No. * * *," and be entitled "Rate Schedule." Each page shall indicate its numerical order in the total number of pages comprising Appendix A, as, for example, "page 1 of 3." In addition to stating the rate applicable to the contract, Appendix A shall include, where applicable, any rules or regulations (whether established by the regulatory body, the contractor, or by negotiation between the contractor and the Government), which pertain to the Rate Schedule. Appendix A may provide for payment to the contractor of a nonrecurring, nonrefundable fee of not more than $1,000 to cover the costs of connecting the contractor's facilities to, and disconnecting them from, the Government's facilities, whenever the contract period is less than six months. In all instances where a connection charge, other than the fee described above, is involved, the "Connection Charge" clause (1852.208–7009) and Appendix C (see paragraph (a)(4) below) shall be included in the contract.

(3) *Appendix B.* The service specifications applicable to the contract which shall consist of a specially drafted attachment to the contract, bearing the legend "Appendix B, attached to and made a part of Contract No. * * *," and the title of the appropriate service specifications. Each page shall indicate its numerical order in the total number of pages comprising Appendix B, as, for example, "page 1 of 3." Such appendix shall contain as a minimum—

(i) The premises to be served;

(ii) An estimate of the service requirements;

(iii) The point of delivery to the Government;

(iv) A description of the service;

(v) A statement of how the service is to be measured for purposes of billing;

(vi) A statement of the capacity and flow of the service.

(4) *Appendix C.* The connection charge schedule which is required whenever the contract includes the connection charge clause prescribed by 1852.208–7009 or the termination charge clause prescribed by 1852.208–7010 and which shall bear the legend "Appendix C, attached to and made a part of Contract No. * * *," and be entitled "Connection Charge Schedule." Each page shall indicate its numerical order in the total number of pages comprising Appendix C, as, for example, "page 1 of 3." The appendix shall contain as a minimum—

(i) A detailed description of the new facilities to be furnished by the contractor; and

(ii) The agreed salvage value of such facilities.

(5) Any contract clauses required by FAR 8.309 or by 1808.309.

(b) Except under the conditions in 1808.304–5, any negotiated utility service contract which involves an estimated annual cost of $2,500 or less shall consist of—

(1) Standard Form 26 (53.215–1(b)).

(2) An Appendix A (see (a)(2) above).

(3) Any contract clauses required by FAR 8.309 or by 1808.309.

1808.305 Rate increases.

(a) When the contractor furnishes written notice to the contracting officer of a filing of an application for rate changes, as provided for in the clause entitled "Public Regulation and Change of Rates" at 1852.208–7003, or whenever the contractor requests that rate changes be negotiated, as provided for in the clause entitled "Change in Rates" at 1852.208–7006, the contracting officer will notify the Assistant Administrator for Procurement, NASA Headquarters (Code HS–1) and the Facilities Division NASA Headquarters (Code NX–2). The notification shall include sufficient information to permit a determination of the monetary effect of the proposed changes, a recommendation of action to be taken under paragraph (a) (1) or (2) of this section, and the basis therefor.

(1) When a notice is received of a filing of an application for rate changes before the local regulatory body, the contracting officer will make a recommendation as to whether or not the Government should intervene in the hearing on the application. If it is recommended that the Government intervene in the hearing, the recommendation shall be accompanied by a statement containing the basis for such intervention and the extent to which the installation can support intervention through the presentation of testimony, preparation of exhibits, and the furnishing of legal counsel.

(2) When a notice is received that the contractor requests that rate changes be negotiated, the contracting officer will

make a recommendation as to the position to be taken by the Government regarding the rate changes and the extent to which installation personnel are available to support this position.

(b) The Assistant Administrator for Procurement, NASA Headquarters, with the technical assistance of the Facilities Division, NASA Headquarters, will furnish the contracting officer a recommendation concerning the proposed rate changes and the extent to which NASA Headquarters will participate in the intervention before the local regulatory body in negotiations with the contractor. Prior to recommending any action concerning the proposed rate changes, the Assistant Administrator for Procurement, NASA Headquarters will, as necessary, coordinate with other staff offices or divisions, or other Government agencies. The contracting officer shall await the recommendations of the Assistant Administrator for Procurement, NASA Headquarters for at least 30 calendar days prior to submitting the matter to GSA (see FAR 8.305(b)) or taking any other action concerning the proposed rate changes.

1808.307 Precontract acquisition reviews.

1808.307-70 Utility service narrative.

(a) When required by FAR 8.307-1(b) the contracting officer shall submit a Utility Service Narrative for proposed procurements for new utilities services, renegotiations or extensions of existing utility services, or existing contracts that require a negotiation for change of rate schedules, to the Assistant Administrator for Procurement (Code HS-1), NASA Headquarters, prior to initiating negotiation procedures. The Utility Service Narrative shall include—

(1) A brief technical description of the service required or being furnished;

(2) An analysis of the reasonableness of the proposed rate and/or the monetary extent of the rate change compared to the last typical year of service;

(3) A description outline of the field installation's proposed negotiation tactics, basis for position, and any alternate position;

(4) An estimate of the annual cost of service; and

(5) Other related items, as applicable, such as connection charges, termination liability, facilities charges, requirement for Government capital costs, or any other unusual factors affecting the procurement.

(b) The Assistant Administrator for Procurement (Code HS-1), with the coordination of the Facilities Division (Code NX-2), NASA Headquarters, will review the information submitted under paragraph (a) above. If NASA Headquarters participation in the negotiation proceedings, in an advisory capacity to the contracting officer, is considered desirable, the Assistant Administrator for Procurement (Code HS-1), NASA Headquarters, will inform the contracting officer not later than 30 calendar days from the receipt of the Utility Service Narrative.

1808.307-71 Contracts requiring Headquarters approval.

Contracts and supplemental agreements for utility services shall be submitted to the Assistant Administrator for Procurement, NASA Headquarters (Code HS-1) for approval as required by 1804.71.

1808.309 Contract clauses.

(a) The contracting officer shall, unless stated otherwise, insert the clauses prescribed below in negotiated utility service contracts which involve an estimated annual cost of more than $2,500 and, where specifically prescribed, in those with an estimated annual cost of $2,500 or less. Said clauses are in addition to those prescribed elsewhere in the FAR or this Regulation for inclusion in utility contracts.

(1) Insert the clause at 1852.208-7002, Rates (also include in contracts of $2,500 or less).

(2) Insert the clause at 1852.208-7003, Public Regulation and Change of Rates, in all contracts (regardless of estimated annual costs) except when the clause in paragraph (b)(2) below is applicable.

(3) Insert the clause at 1852.208-7004, Change in Class of Service.

(4) Insert the clause at 1852.208-7005, Contractor's Facilities (see paragraph (a)(6) below).

(5) Insert the clause at 1852.208-7006, Technical Provisions.

(6) Insert the clause at 1852.208-7012, Contractor's Facilities (Short Form), in lieu of the clause at 1852.208-7005 only when the estimated annual cost is $2,500 or less.

(b) When applicable in negotiated utility service contracts, the contracting officer shall also insert the clauses prescribed below:

(1) Insert the clause at 1852.208-7007, Renewal of Contract whenever it is desirable that the utility service be provided under the same terms and conditions for more than one year (see 1808.304-570).

(2) Insert the clause at 1852.208-7008, Change in Rates, in lieu of the clause in 1852.208-7003, when the rates applicable to the service furnished under the contract are negotiated between the contractor and the Government without recourse to the approval of any Federal, State, or local regulatory agency, or if the service to be furnished under the contract is otherwise not subject to regulation by any Federal, State, or local regulatory agency, or if the contractor also acts as the local public regulatory agency and its decisions are not subject to review by a higher regulatory agency.

(3) Insert the clause at 1852.208-7009, Connection Charge when (i) a connection charge is to be paid by the Government and (ii) the conditions permitting the incorporation of a nonrecurring, nonrefundable fee in Appendix A, the rate schedule applicable to the contract, do not exist. Also attach Appendix C (see 1808.304-572(a)(4)).

(4) Insert the clause at 1852.208-7010, Termination Charge, when payment is to be made to the contractor upon termination of service in lieu of a connection charge upon completion of the facilities. Use of this clause is subject to Master Buy Plan approval requirements (see Subpart 1804.71). Also attach Appendix C.

(5) Insert the clause at 1852.208-7011, Multiple Service Locations when it is desired to provide for possible alternative service location.

Subpart 1808.4—Ordering From Federal Supply Schedules

1808.404 Using schedules.

1808.404-3 Requests for waivers.

(a) The head of the NASA office initiating the purchase request or a designated representative shall furnish the NASA contracting office a signed statement identifying the supplies or services to be purchased. This statement shall state why similar items listed in the applicable schedule will not meet the specific requirement.

(b) If a waiver is not granted, the case will be referred to the Assistant Administrator for Procurement for a final decision as to whether the non-schedule item will be purchased. The Assistant Administrator for Procurement shall promptly notify the Commissioner, Federal Supply Service, GSA, and the contracting office of the decision reached.

1808.405 Ordering office responsibilities.

1808.405-1 Ordering from multiple-award schedules.

(a) If an opportunity arises for NASA to purchase an item from a schedule contractor at a price substantially more favorable to the Government than the price listed, *the procurement will be*

accomplished at the more favorable price. A copy of the order shall be forwarded to GSA in accordance with FAR 8.405–1(d).

(b) The following examples are additional factors to be considered when making a determination to purchase higher-priced items:

(1) Probable life of the item selected, as compared to that of a lower cost item, is sufficiently greater so that the additional purchase price is economically warranted.

(2) Warranty conditions of a higher-priced item are sufficiently advantageous to justify the added cost.

(3) Greater maintenance availability, lower overall maintenance costs, or the elimination of problems anticipated regarding machines or systems, especially at isolated use points, will produce long-run savings greater than the difference in purchase prices.

1808.405–2 Order placement.

Delivery orders may be placed on Optional Form 347 or an installation prescribed form as specified in FAR 8.405–2.

Subpart 1808.6—Acquisition From Federal Prison Industries, Inc.

1808.605 Clearances.

(a) NASA purchase orders or contracts written pursuant to a general or blanket clearance need not be supported by a copy of the clearance, but the clearance number must be cited on the purchase order or contract as well as on the initial voucher.

(b) Where a formal clearance has been requested, the contracting officer shall not consummate the purchase before the issuance of the formal clearance. A copy of the clearance certificate must be attached to the initial voucher.

(c) When disputes under FAR 8.605(c) occur, the contracting officer shall refer the matter to the Assistant Administrator for Procurement (Code HP–1), for review and any further action. Such referrals shall include a complete statement of the attempts made to resolve the matter.

Subpart 1808.8.7—Acquisition From the Blind and Other Severely Handicapped

1808.705 Procedures.

1808.705–1 General.

(a) When supplies (1) require overseas packaging or packing or (2) are required in carload lots, as described in the Consolidated Freight Classification for the commodity concerned, procurement shall follow the procedure in FAR 8.705–3(b)(1).

(b) The Federal Standard Requisitioning and Issue Procedure (Federal Property Management Regulation, Subpart 101–26.2) shall be used to obtain blind-made and severely handicapped made supplies from General Services Administration supply distribution facilities.

1808.705–4 Compliance with orders.

If a workshop fails to comply with the terms of an order and the problem cannot be resolved with the workshop, the matter shall be forwarded to the central nonprofit agency and/or the Committee, as necessary.

1808.711 Quality complaints.

If a problem related to the quality of an item or of performance of a service cannot be resolved with the workshop, the matter will be referred for resolution to the central nonprofit agency and the Committee.

Subpart 1808.8—Acquisition of Printing and Related Supplies

1808.802 Policy.

Approval of printing supplies or services in contracts shall be in accordance with NPD–1490.1, NASA Printing Management Program.

Subpart 1808.11—Leasing of Motor Vehicles

1808.1100 Scope of subpart.

NASA procedures for leasing motor vehicles from GSA or commercial sources are contained in NASA Management Instruction NMI 6720.1, NASA Motor Vehicle Management.

PART 1809—CONTRACTOR QUALIFICATIONS

Sec.

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Subpart 1809.5—Organizational Conflicts of Interest

1809.500 Scope of subpart.
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1809.508 Solicitation provision and contract clause.
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Authority: 42 U.S.C. 2473(c)(1).

Subpart 1809.1—Responsible Prospective Contractors

1809.102 Applicability.

1809.102–70 Procurements from Canadian sources of supply.

Awards to Canadian sources of supply are subject to FAR Subpart 9.1. A Canadian firm proposed by the Canadian Commercial Corporation (CCC) as its subcontractor generally shall be accepted by the contracting officer under the provisions of FAR 9.104–4 as the basis for his determination under FAR 9.103(b). In cases where the firm proposed by CCC is so accepted, preaward survey forms need not be completed. The contracting officer, when the CCC proposal is not consistent with other information which may be available shall request from CCC and any other sources additional information or plant surveys deemed necessary to make the determination of responsibility. Such additional data may be requested on the preaward survey forms or on any other forms. Upon request, CCC shall be furnished an explanation of the reasons for rejection of its proposed firm.

1809.106 Preaward surveys.

1809.106-1 Conditions for preaward surveys.

In addition to the circumstances enumerated in FAR 9.106-1(a) (1) and (2) preaward surveys normally are not required when—

(a) The contract is for study or research only.

(b) The data, necessary for a responsibility determination, is available from other sources.

(c) The pending contract will be a definitive contract superseding a letter contract.

(d) An order is placed under an existing contract.

(e) The source has been recommended by the NASA Source Evaluation Board.

1809.106-7000 Preaward survey procedures.

All preaward surveys shall be conducted in compliance with FAR Subpart 9.1 and Subparts 1809.7000.

1809.106-7001 General.

Subsections 1809.106-7001 through 1809.106-7205 establish procedures for conducting preaward surveys (except for construction contracts). They include preaward surveys conducted by NASA, those conducted by another agency for NASA, and those jointly conducted.

1809.106-7002 Definitions.

"Monitor" as used in this section, means the person designated to administer the preaward survey from the receipt of the request through the issuance of the final report.

"Pre-Award Survey Review Board" means a board established to review and approve or disapprove preaward survey reports.

"Team Coordinator" as used in this section means the person designated by the monitor to coordinate the on-site survey, make arrangements for plant visits, and conduct team conferences as necessary before, during, or after the plant visit.

1809.106-7101 Procedure for requesting preaward survey.

(a) A preaward survey shall be requested on Standard Form 1403, Pre-Award Survey of Prospective Contractor (General), indicating in Section III thereof, the scope of the survey desired. Factors requiring emphasis not enumerated in Section III should be listed under block "20.G." of that Section. The "Walsh-Healey Public Contracts Act" block of Section I is for information purposes only. If information is needed on the offeror's eligibility under the Walsh-Healey Act, it must be specifically requested in block "20.G." of Section III. A survey may be requested by telegraphic communication containing the data required by Sections I, II, and III of the Form. A survey may be requested by telephone but shall be immediately confirmed on SF 1403. Unless previously furnished, a copy of the solicitation and such drawings and specifications as deemed necessary by the contracting office, shall be supplied with the preaward survey request.

(b) Any information indicating previous unsatisfactory contract performance shall be furnished the survey activity with the preaward survey request, except where it is known that the survey activity already has this information.

(c) The request for preaward survey shall be forwarded in an original and three copies to the responsible survey activity. If the survey activity is a DoD agency, the request is to be sent to the appropriate office shown in the DoD Directory of Contract Administration Services Components, DoD 4105.59-H, Attn: Pre-Award Survey Monitor. The date on which the completed survey report is desired should be indicated; however, the DoD normally allows seven working days in which to conduct a full survey and submit the report to the requesting agency.

§ 1809.106-7102 Scope of survey.

(a) A complete survey encompasses investigation, to the extent applicable to the proposed contract, of the factors listed in Section III of SF 1403, together with other requirements of special inquiry as requested by the contracting officer, and submission of appropriate findings thereon.

(b) A partial survey encompasses investigation of those factors referenced in (a) above which are specifically requested by the contracting officer and any other factors considered advisable by the activity conducting the survey, and submission of appropriate findings thereon.

(c) The activity conducting the survey may execute and transmit to the contracting officer a short form preaward survey report in those cases where sufficient current favorable information is available to recommend award without a formal survey. The SF 1403 will be used as the survey report in accordance with procedures outlined in 1809.106-7103(a)(4). If the contracting officer has reason to need additional information on contractor capability, the activity conducting the survey may be so advised, and a detailed survey report will be provided.

1809.106-7103 Contracting office procedure.

(a) *General.* (1) Preaward surveys will be conducted within the normal time frame of seven working days after receipt of request and in the detail requested by the contracting officer. In unusual procurement situations, reports of such surveys may be requested in a shorter time if the situation so warrants. Qualified specialists responsible for the factors referenced in 1819.106-7102(a) shall participate as required.

(2) Representatives of the contracting office and other activities will participate in preaward surveys when requested by the contracting officer or as desired by the contracting office.

(3) If the preaward survey cannot be accomplished within the time allowed, the contracting officer shall be so notified. If the date is not extended the preaward survey monitor shall supply a definite recommendation by the date required, based on the material at hand or developed by that time. The basis for the recommendation and the factors for which no data or only partial data could be obtained, shall be indicated.

(4) When the activity conducting the survey possesses sufficient current favorable information about an offeror to recommend complete award without performing a formal survey, a short form preaward report may be executed and forwarded to the contracting officer unless the contracting officer has requested additional information as required by 1809.106-7102. The "short-form" preaward survey report will consist of only SF 1403. Sections III and IV of the SF 1403 will be completed and the following statement will be stamped in block 23, the "Remarks" portion of Section III:

Short Form Pre-Award Report Pursuant to 1809.106-7102(a), complete award is recommended.

(b) *Designation of preaward survey monitor.* An individual within each procurement office performing preaward surveys shall be designated as the preaward survey monitor. The monitor shall administer the preaward survey from the receipt of the request through the issuance of the final report to assure appropriate coverage and maximum efficiency. The monitor shall:

(1) Receive all incoming preaward survey requests;

(2) Ascertain whether the prospective contractor is included on the Consolidated List of Debarred, Ineligible, and Suspended Contractors for any reason, including those attributable to equal employment opportunity practices. (Where the prospective contractor is so listed, the

contracting officer shall be promptly advised and the preaward survey shall not be completed, unless specifically requested by the contracting officer);

(3) Compare the survey request with the requirements of the solicitation;

(4) Determine the need for an on-site survey after reviewing the type and quantity of items or services involved; previous experience with the firm; technical and schedule requirements; and the extent of other information currently available. (If an on-site survey has been requested and sufficient data is already available in the contracting or other offices (e.g., DoD Contract Administration Officer), the monitor shall ask the contracting officer whether an on-site survey must nevertheless be conducted, and for the specific elements to be covered);

(5) Determine and advise the organizational segments of the installation (e.g., Engineering, Production, Reliability and Quality Assurance, and Contract Administration), that will furnish team members;

(6) Provide team members the following information:

(i) The date on which the information is required from each organizational segment;

(ii) The portion of the survey for which each organizational segment is responsible;

(iii) Whether an on-site survey of the prospective contractor's facility is contemplated. (This is subject to later modification based on information supplied by team members.);

(iv) Any special terms and conditions noted in the solicitation; and

(v) Any other information or guidance the particular request may require;

(7) After discussion with appropriate organizational segments, designate the team coordinator;

(8) Arrange for required audit and other external assistance. (For example, in those cases where contract award is dependent upon the contractor having an adequate cost accounting system for proper post-award administration of the contract, the cognizant audit agency shall be responsible for the system review, evaluation, and conclusive recommendation (SF 1408 is provided for this purpose);

(9) Coordinate any participation where the preaward survey is being performed for another NASA installation;

(10) Receive and review reports of the individual team members for completeness and adequate substantiation;

(11) Resolve questions regarding technical details with responsible specialists;

(12) Report those applicable procedures of the prospective contractor which have been reviewed by Government personnel (e.g., procurement system, estimating system, accounting system, control of Government property, and quality program); and

(13) Assemble all necessary survey data into a report, including a recommendation as to award, and submit it to the Chairman of the Pre-Award Survey Review Board.

(c) *Designation and responsibilities of team coordinator and members.* (1) When an on-site survey by a team is necessary, members should include specialists qualified to evaluate all appropriate phases of the firm's capabilities. The team coordinator shall:

(i) Arrange for the team's visit to the site;

(ii) Conduct team conferences for the purpose of

(A) Arriving at uniform interpretations prior to holding discussions with the prospective contractor's management;

(B) Briefing team members on their interviews and discussions with officials of the firm prior to making an on-site survey. (Members shall not make reference or comment relative to the possibility that the award will or will not be made to the prospective contractor. This does not preclude discussion with a prospective contractor of questionable areas which in the opinion of the team member require clarification. Information obtained during the survey will be treated in strict confidence and divulged only to those Government representatives having a need to know); and

(C) Arranging for discussions among members during and after the on-site survey to assure that evaluations by individual specialists are integrated, coordinated, and complete; and

(iii) Otherwise direct the efforts of the team.

(2) When an on-site survey is required for only one aspect of the prospective contractor's capability, a qualified specialist will be designated to conduct the on-site portion of the survey. One specialist may be designated to investigate more than one aspect when it is within his capability.

(d) *Preaward survey review board.* (1) A Pre-Award Survey Review Board shall be formally established to review and approve survey reports prior to transmittal to the contracting officer.

(2) The Board shall be composed of senior specialists from each of the major functions normally concerned with preaward surveys, one of whom shall be designated Chairman. Flexibility of membership shall be provided by designating alternates for membership and by establishing the criteria or conditions governing the need for occasional special technical representation. Membership on the Board shall be in addition to the members' regular duties.

1809.106-7201 Steps for survey performance.

The three steps in performing a preaward survey are the:

(a) Preliminary analysis;

(b) Development and evaluation of information; and

(c) Preparation and review of the preaward survey report.

1809.106-7202 Preliminary analysis.

The request (SF 1403, Sections, I, II, and III) shall be reviewed to establish basic administrative information and the factors to be investigated. The solicitation shall then be reviewed to ascertain those general and special requirements which have a significant bearing on determining contractor responsibility. Examples are the nature of the product or services, applicable specifications, delivery schedule, documentation requirements, property control requirements and financing aspects.

1809.106-7203 Development of information.

(a) *Review of available data.* The information already available in the contracting office pertaining to the prospective contractor and his past performance shall be reviewed. Prior preaward survey reports and contractor performance records shall be examined and considered in support of preaward survey recommendations. If the prospective contractor has current or contemplated Government contracts, the files should be checked for information regarding similarity of product, current status of contracts, quality control experience, and financial status.

(b) *Development of additional data.* (1) When appropriate, the contracting office shall supplement the data on hand with any additional information required from other Government sources and from commercial sources, such as banks, business associates, and credit rating and reporting agencies.

(2) An on-site survey shall be performed when required by FAR 9.106-1(a), or when sufficient information is not developed as a result of (a) and (b)(1) above.

(3) A narrative discussion shall be referenced in Section III of SF 1403 and

appended to the form covering each factor investigated. This narrative shall include detailed discussion supporting both satisfactory and unsatisfactory conditions and shall include reasons for all stated conclusions. When review discloses previous unsatisfactory contractor performance in any regard, the preaward survey shall specifically cover the extent to which action has been taken or planned by the contractor to avoid repetition. Lack of evidence that the contractor was responsible for a failure to meet past contractual requirements does not necessarily indicate satisfactory performance. A persistent pattern of the contractor's need for costly and burdensome Governmental assistance (engineering, inspection, testing) that was provided in the Government's interest but not contractually required, shall be treated in the preaward survey as an element for separate narrative discussion to be appended to the Form.

(4) When a prospective contractor proposes to acquire additional resources essential to performance of the proposed contract, the activity conducting the survey shall as a minimum obtain and evaluate:

(i) An itemized list of the required resources;

(ii) A planned method of acquisition; and

(iii) A schedule for acquisition of resources.

Failure to meet commitments on previous contracts shall be documented in the current preaward survey report and considered in the final recommendation.

1809.106-7204 On-site surveys.

(a) *Interview, investigation and review.* (1) *General.* An on-site survey will consist of an interview with representatives of the prospective contractor and, normally, an investigation of his resources and procedures.

(2) *Interview with management.* Management officials of the appropriate level authorized to represent the prospective contractor should be interviewed. The prospective contractor's background shall be reviewed and as much history recorded as necessary to reflect the soundness and reputation of the firm's operation.

(i) The organizational structure of the facility is the basis for management's control and must be reviewed. Assignment of definite tasks and responsibilities should be checked.

(ii) Lack of understanding or misinterpretation of the solicitation often results in delinquent contracts and leads to default actions. Therefore, the solicitation shall be discussed with the prospective contractor to assure that he understands its requirements, including its technical aspects, such as drawings, specifications, prototype, technical data, testing, and packaging, and Government's right to use technical data in accordance with the terms of the solicitation (Ref. clauses in 1827.473). Any misinterpretations of the requirements of the solicitation which could adversely affect performance, or refusal by the prospective contractor to furnish required data, should be brought to the immediate attention of the monitor by the team coordinator. The monitor shall, in turn, promptly advise the team coordinator. The monitor shall, in turn, promptly advise the contracting officer.

(3) *Investigation of resources and review of procedures.* The resources which the prospective contractor intends to utilize shall be inspected, analyzed, and compared with his overall plans for performing. His procedures relating to performance of the proposed contract shall be reviewed for adequacy.

(4) *Specific factors to be considered.* In the course of developing information, those factors described in (b), (c), and (d) below and all others needed to provide the report and recommendations in detail and to the extent required by the contracting officer shall be considered.

(b) *Production.* (1) *General.* The production portion of the on-site survey consists of an evaluation of the prospective contractor's ability to manufacture the product(s) or accomplish the tasks in accordance with the specifications and delivery schedule of the proposed contract. To achieve the objectives of this portion of the on-site survey, the production plan shall be reviewed, production resources ascertained, and the plan related to such resources.

(2) *Obtaining the production plan.* The prospective contractor's production plan for meeting the delivery schedule specified in the proposed contract shall be ascertained. The principal milestones within the production plan shall be established, along with target dates for achievement. These target dates must support the delivery schedule of the proposed contract. The controls which will be utilized in order to gear and hold the manufacturing effort to the target dates for the principal milestones shall be analyzed for suitability.

(3) *Ascertaining production resources.* The information necessary to prepare SF 1404 and SF 1405 shall be obtained by discussion with appropriate management personnel of the prospective contractor. This information shall be verified, when necessary, by physical inspection of the manufacturing plant and evaluated in terms of suitability to manufacture the required item(s).

(4) *Relating production plans to production resources.* When necessary, representatives of the prospective contractor shall be requested to advise how the production resources described in Sections II, III, IV, and VI of SF 1405 will be allocated and utilized in order to achieve the target dates for the principal milestones. This shall include both in-house and subcontractor production resources. Pertinent to this is an analysis of projects and contracts which will compete for utilization of those resources within the same time frame as that specified by the prospective contractor's production plan. The information developed as a result of equating the production plan and production resources of the prospective contractor should enable the procurement office to:

(i) Conclude whether the resources which the prospective contractor is planning to use are suitable for the job;

(ii) Determine whether the prospective contractor will be capable of properly controlling, maintaining, protecting and using Government property;

(iii) Determine whether the planning and scheduling of effort will result in timely accomplishment of the principal milestones; and

(iv) Conclude whether achievement of the principal milestones will result in timely delivery.

(c) *Quality assurance.* (1) The standing of the quality assurance organization in the prospective contractor's overall organization must be evaluated. An inspection or quality control function which reports to some other organizational segment (such as production) instead of top management may be undesirable. The experience of the company inspection or quality control personnel with the same or similar items shall be evaluated.

(2) To evaluate the prospective contractor's ability to comply with quality control or inspection requirements, the following areas shall be reviewed:

(i) Methods currently utilized to control product quality as reflected by a documented or verifiable inspection system or quality program plan;

(ii) Personnel on hand and available (report both trained and untrained);

(iii) Inspection and test equipment on hand and available;

(iv) Quality, identification, and storage of materials;

(v) Physical arrangement of plant;

(vi) Tool and gauge control; and
(vii) Test and inspection records.

(d) *Financial.* (1) *General.* The normal procedure for determining a prospective contractor's financial capability shall be initial pre-survey planning, followed by verification of financial data as required. The extent of the review and analysis of financial matters shall be governed by the nature of the proposed contract. In certain instances, a sound decision may be possible after a relatively simple review of a company's financial position and production commitments. Under other circumstances, a more comprehensive review and analysis will be required.

(2) *Procedure.* Aspects to be considered in determining the prospective contractor's financial capability (SF 1407) include the following:

(i) The latest balance sheet and profit and loss statement shall be reviewed. The following are indicative of the soundness of the prospective contractor's financial structure:

(A) Rates and ratios;

(B) Working capital as represented by current assets over current liabilities; and

(C) Financial trends such as net worth, sales and profit.

(ii) The method of financing the contract shall be evaluated. Where sources of outside financing, other than the Government, are indicated, their availability should be verified.

(iii) When financial aid from the Government is to be obtained, the necessity should be verified. Review shall be made concerning the applicability of such financing as progress payments or guaranteed loans.

1809.106-7205 Evaluating data and preparing the report.

(a) *Findings of team members.* When the required information has been gathered, each individual participant shall analyze it and evaluate the prospective contractor's capability to perform with respect to the functions element(s) investigated. Each participant shall then provide his findings to the monitor on one or more of the appropriate forms (see FAR 9.106-4(a)) or an attachment or attachments thereto. Where a negative reply is recorded, or where doubt exists, an explanation must substantiate the entry. If a detailed analysis is needed or additional significant information is pertinent, the Form should be supplemented by a narrative report.

(b) *Monitor's evaluation and recommendation.* Based on all the information received from the team members, the monitor shall thoroughly review and evaluate the findings and recommendations, and forward the report to the Chairman of the Review Board with (1) a summary of his findings, and (2) his recommendation concerning award. A recommendation shall be supported by a statement of justification and shall, where the prospective contractor is a small business concern, be coordinated with the cognizant small business specialist.

(c) *Review board action.* Upon receipt of each preaward report, the Chairman of the Review Board shall determine the extent of Review Board action. The requirements of 1809.106-7103(d) above may be satisfied at the discretion of the Chairman by any of the following:

(1) Action by the Chairman alone;

(2) Informal contact by the Chairman with one or more of the Board members; or

(3) Formal action by the entire Board.

(d) *Final actions.* Following the action by the Review Board, the monitor shall forward the report direct to the contracting officer. When advance reports are made by telegraphic communication or telephone, they shall be confirmed by mail without delay. The monitor shall follow up on any requirements for the submission of supplemental reports.

Subpart 1809.2—Qualified Products

1809.200 Scope of subpart.

This subpart prescribes policies and procedures which, like those of FAR Subpart 9.2, are to be followed only in the use of Qualified Products Lists for procurement of microcircuits as authorized by NPD 5320.5, Basic Policy for Electronic Parts and, NMI 5320.6, Implementation of NASA Standard Parts Program.

1809.203 Responsibilities of a specification preparing activity (SPA).

1809.203-70 General.

(a) NASA Headquarters Office of Reliability and Quality Assurance is responsible for justifying, determining, and approving NASA's need for inclusion and continued usage of qualification requirements in specifications under the NASA Microelectronics Reliability Program.

(b) Prior to the procurement of Class "A" microcircuits, as defined in NHB 5300.4(3F), the determination required by paragraph 3F103-2 of that handbook shall be made in writing by an authorized NASA field installation official.

(c) Copies of NHB 5300.4(3F) may be purchased by the public from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

1809.203-71 Waiver of qualification requirements.

When procuring a product under a specification which includes qualification requirements either for the end item or for components of the end item, such qualification requirements can be waived by the NASA installation conducting the procurement. Directing a waiver of the end item qualification requirement, constitutes adequate authorization for waiver of product qualification requirements. Where waivers have been granted, solicitations shall specifically indicate that the qualification requirement is inapplicable. Such information shall also be included in any synopsis of the procurement (see FAR Subpart 5.2).

1809.206 Acquiring qualified products.

1809.206-70 Small businesses.

Where a small business, otherwise eligible for award, has been placed in a special status of a Qualified Products List (see NHB 5300.4(3F)) established as a part of the NASA Microelectronics Reliability Program and the contracting officer has determined that the small business does not appear to have the capacity to perform, the certificate of competency procedures in FAR Subpart 19.6 are applicable.

1809.206-71 Contract clause.

When qualified products are being procured, insert the clause at 1852.209-70 in both the solicitation and resulting contracts.

Subpart 1809.4—Debarment, Suspension, and Ineligibility

1809.402 Policy.

For purposes of FAR Subpart 9.4 and this Subpart, the Assistant Administrator for Procurement is the "debarring official," the "suspension official," and the agency head's "designee."

1809.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

(a) The Office of Procurement (Code HP-1) is responsible for taking the actions enumerated under FAR 9.404(c).

(b) In compliance with FAR 9.404(c)(5), contracting officers shall consult the Consolidated List to ensure that they do not solicit offers from, award contracts to, or consent to subcontracts with listed contractors, except as otherwise provided in FAR 9.405.

1809.405 Effect of listing.

If it is believed that a new contract or subcontract with a debarred or suspended contractor must be awarded, the contracting officer shall prepare a determination as set out in 1809.405–1(b) below, and forward it to the Assistant Administrator for Procurement (Code HP–1).

1809.405–1 Continuation of current contracts.

(a) The contracting officer may terminate a contract under FAR 9.405–1(a) if it is in the best interest of the Government to do so, unless directed otherwise by the Assistant Administrator for Procurement.

(b) If it is believed that an existing contract or subcontract with a debarred or suspended contractor must be renewed or otherwise extended, the Procurement Officer shall prepare a determination with all necessary support documentation and forward it to the Assistant Administrator for Procurement (Code HP–1) for approval. If approved, the Assistant Administrator shall forward a notice describing the decision to the GSA Office of Acquisition Policy. Some examples of circumstances that may constitute a compelling reason under FAR 9.405–1(b) for award, renewal, or extension include—

(1) The property or services to be acquired are available only from the listed contractor;

(2) The urgency of the requirement dictates that NASA deal with the contractor;

(3) The contractor and NASA have entered into an agreement covering the same events which resulted in the listing, and the agreement includes a decision by NASA not to debar or suspend the contractor; and

(4) For such other reasons related to the national defense or program requirements which necessitate continued business dealings with the listed contractor.

1809.405–2 Restrictions on subcontracting.

When a subcontract must be awarded the procurement officer shall prepare a determination, with all support documentation, and forward it to the Assistant Administrator for Procurement (Code HP–1) for approval. Some examples of circumstances that may constitute compelling reasons are in 1809.405–1(b) above.

1809.406 Debarment.

1809.406–3 Procedures.

The report required by FAR 9.406–3 shall be forwarded by the Procurement Officer to the Assistant Administrator for Procurement (Code H) in accordance with 1809.470, below.

1809.407 Suspension.

1809.407–3 Procedures.

The report required by FAR 9.407–3 shall be forwarded by the Procurement Officer to the Assistant Administrator for Procurement (Code H) in accordance with 1809.470, below.

1809.470 Reporting of suspected causes for debarment, suspension, or evasive actions.

1809.470–1 Situations where reports are required.

A report incorporating the information required by 1809.470–2 below shall be forwarded by the Procurement Officer to the Assistant Administrator for Procurement (Code H) when—

(a) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406–2 and FAR 9.407–2; or

(b) A contractor is suspected of attempting to evade the prohibitions of debarments or suspensions imposed under this Regulation by changes of address, multiple addresses, formation of new companies, or by other devices.

1809.470–2 Contents of reports.

Each report prepared under 1809.470 shall be coordinated with local counsel and shall include substantially the following information, where available:

(a) Name and address of contractor.

(b) Names of the principal officers, partners, owners, or managers.

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.

(d) Description of the contract or contracts concerned, including the contract number, and office identifying numbers or symbols, the amount of each contract, the amount paid the contractor and the amount still due, and the percentage of work completed and to be completed.

(e) The status of vouchers.

(f) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and, if so assigned, the name and address of the assignee and a copy of the assignment.

(g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, the amount of such contracts, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on such contracts.

(h) A complete summary of all pertinent evidence.

(i) A recommendation as to the continuation of current contracts.

(j) An estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate.

(k) The comments and recommendations of the contracting officer and local counsel as to (1) whether the contractor should be suspended or debarred, (2) whether any limitations should be applied to such action, and (3) the period of any debarment.

(l) As an enclosure, a copy of the contract(s) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation.

1809.470–3 Addresses and copies of reports.

Reports, including enclosures, shall be submitted in duplicate to the Assistant Administrator for Procurement (Code HP–1) with an additional copy to the Office of General Counsel, NASA Headquarters (Code G).

Subpart 1809.5—Organizational Conflicts of Interest

1809.500 Scope of subpart.

The Assistant Administrator for Procurement has authorized the Procurement Officer to take those actions reserved in FAR Subpart 9.5 for the Head of the Contracting Activity. However, see 1809.503 regarding waivers.

1809.503 Waiver.

The Administrator has designated the Assistant Administrator for Procurement as the approval authority for waivers under FAR 9.503. A request for waiver under FAR 9.503 will be forwarded from the Procurement Officer to the Assistant Administrator for Procurement (Code HS–1) for action.

1809.507 Procedures.

(a) The draft solicitation and contract provision required by FAR 9.507(a) (2) and (3) shall be approved by the Procurement Officer in those cases where the installation has final authority for contractor source selection and by the Assistant Administrator for Procurement (Code HS–1) for NASA Headquarters selection.

(b) The Assistant Administrator for Procurement (Code HS–1) will make the final decision required by FAR 9.507(c)(4).

1809.508 Solicitation provision and contract clause.

1809.508-2 Contract clause.

The contracting officer may insert a clause substantially the same as the clause at 1852.209-71, Limitation of Future Contracting, in solicitations and contracts in compliance with FAR 9.508.

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
1810.001 Definitions.
1810.002-70 NASA policy.
1810.004 Selecting specifications or descriptions for use.
1810.004-70 Additional requirements.
1810.004-71 Brand name or equal purchase descriptions.
1810.007 Deviations.
1810.008 Identification and availability of specifications.
1810.008-70 Brand-name or equal awards.
1810.011 Solicitation provisions and contract clauses.

Authority: 42 U.S.C. 2473 (c)(1).

1810.001 Definitions.

"Brand name product" means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer, or distributor.

1810.002-70 NASA policy.

(a) Each solicitation shall be accompanied by the applicable specifications, standards, plans, drawings, and other pertinent documents, or shall state where such documents may be obtained or examined.

(b) Whenever a specification is deemed inadequate, immediate action shall be taken to effect the issuance of an amendment or a revision in accordance with established procedures to obviate the necessity for repeated departures from the specification.

1810.004 Selecting specifications or descriptions for use.

(a) As required by FAR 10.004(e), appropriate preservation, packaging, packing, and marking requirements will be included in contracts as applicable. The services of packaging technicians shall be used to the maximum extent practicable, for example, for the following purposes:

(1) Development or establishment of preservation, packaging, packing, and marking requirements for individual procurements.

(2) Assistance in evaluating the reasonableness of contractors' packaging, packing, and marking cost estimates or charges.

(b) Unrealistic preservation, packaging, packing, and marking requirements should be reported and changes recommended to the activity originating the requirement and to the contracting officer.

1810.004-70 Additional requirements.

(a) Drawings and data furnished with solicitations shall be clear and legible (see also FAR 10.008).

(b) Many specifications cover several grades or types and provide for several options in methods of inspection. When such specifications are used, the solicitation shall state specifically the grade, type, or method of inspection, on which offers are to be based.

1810.004-71 Brand name or equal purchase description.

(a) Purchase descriptions which contain references to one or more brand name products followed by the words "or equal" may be used only when authorized by FAR 10.004(b)(3) and in accordance with this Subpart (see 1810.001 and 1852.210-70).

(b) The words "or equal" should not be added when it has been determined under paragraph (a) above that only a particular product meets the essential requirements of the Government, as, for example, (1) where the required supplies can be obtained only from one source (see FAR 15.210(b)(1) and 1815.105-70) or (2) procurements negotiated under FAR 15.207 for specified medicines or medical supplies where it has been determined that only a particular brand-name product will meet the essential requirements of the Government.

(c) Where feasible, all known acceptable brand-name products should be referenced. Where a "brand-name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced.

(d) "Brand-name or equal" purchase descriptions should set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the needs of the Government. For example, where interchangeability of parts is required, such requirement should be specified. Purchase descriptions should contain the following characteristics, in addition to those at FAR 10.004(b)(1), to the extent available, and include such other information as is necessary to describe the item required:

(1) Complete common generic identification of the item required;

(2) Applicable model, make, or catalog number for each brand-name product referenced, and identity of the commercial catalog in which it appears;

(3) Name of manufacturer, producer, or distributor of each brand-name product referenced (and address if company is not well known).

(e) When necessary to describe adequately the item required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used if such description is identified in the solicitation as being that of the particular-named manufacturer, producer, or distributor. The contracting officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on request for review by offerors at the contracting office.

(f) When a solicitation contains "brand-name or equal" purchase descriptions, bidders who offer brand-name products referenced in such descriptions shall not be required to furnish bid samples of the referenced brand-name products; however, solicitations may require the submission of bid samples in the case of offerors proposing "or equal" products.

(g) Proposals offering products which differ from brand name products referenced in a "brand-name or equal" purchase description shall be considered for award where the contracting officer determines in accordance with the terms of the clause in 1852.210-70 that the offered products meet fully the salient characteristics requirements referenced in the solicitation. Solicitations shall not be rejected because of minor differences in design, construction, or features which do not affect the suitability of the products for their intended use.

(h) Except as provided in paragraph (i)(1) below, when a "brand-name or equal" purchase description is included in a solicitation, the following shall be inserted after each item so described in the solicitation for completion by the bidder:

Bidding on:
Manufacturer's Name_____
Brand_____
No._____

(i)(1) Where component parts of an end item are described in the solicitation by a "brand-name or equal" purchase description and the contracting officer determines that application of the clause in 1852.210-70 to such component parts would be impracticable, the requirements of paragraph (h) above

shall not apply with respect to such component parts. In such cases, if the clause is included in the solicitation for other reasons, a statement substantially as follows also shall be included:

The clause entitled Brand-Name or Equal does not apply to the following component parts: (List the component parts to which the clause does not apply.)

(2) In the alternative, if the contracting officer determines that the clause in 1852.210-70 should apply to only certain such component parts, the requirements of paragraph (h) above shall apply to such component parts and a statement substantially as follows also shall be included:

The clause entitled Brand-Name or Equal applies to the following component parts: (List the component parts to which the clause applies.)

(j) The policies and procedures prescribed in paragraphs (a) through (g) above for formally advertised procurements shall be generally applicable to negotiated procurements. If use of the clause is not practicable (as may be the case in exigency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that such offered products are equal in all significant and material respects to the products referenced.

1810.007 Deviations.

(a) If an exception or deviation from a Federal or military specification is required—

(1) The contracting officer shall, before issuance of the solicitation, submit a fully documented and justified request for the deviation to the Procurement Officer; and

(2) The Procurement Officer shall comply with FAR 10.007(a).

1810.008 Identification and availability of specifications.

1810.008-70 Brand-name or equal awards.

Award documents shall identify or incorporate by reference an identification of the specific products which the contractor is to furnish. Such identification shall include any brand name and make or model number, descriptive material, and any modifications of brand-name products specified in the solicitation. Included in this requirement are those instances where (a) the description of the end item contains "brand-name or equal" purchase descriptions of component parts or of accessories related to the end item and (b) the clause at 1852.210-70 was applicable to such component parts or accessories (see 1810.004-70(i)).

1810.011 Solicitation provisions and contract clauses.

The contracting officer shall, when a "brand-name or equal" purchase description is included in a solicitation, insert the provision at 1852.210-70, Brand-Name or Equal. The provisions may be modified for use in negotiated contracts.

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

Subpart 1812.1—Delivery or Performance Schedules

Sec.
1812.102 Contract clauses.

Subpart 1812.2—Liquidated Damages

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1812.302 General.
1812.302-70 NASA program.
1812.370 DO/DX priority rating system.
1812.370-1 Scope of section.
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1812.372-5 Action by NASA Headquarters.
1812.373 Priority ratings for automatic data processing equipment.

Subpart 1812.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

1812.505 Contract clauses.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1812.1—Delivery or Performance Schedules

1812.102 Contract clauses.

(a) The contracting officer may use the clause at 1852.212-70, Notice of Delay, when it is desirable to provide for contractor notice of anticipated delays in performance.

(b) The contracting officer shall insert the clause at 1852.212-71, Reports of Works, in all fixed-price research and development contracts and may insert it in cost-reimbursement type contracts. Modifications to this clause may be made to meet the particular requirements of a procurement. Consideration should be given in each case to the desirability of providing for reports on the completion of significant units or phases of the work, in addition to periodic reports and reports on the completion of the entire contract.

Subpart 1812.2—Liquidated Damages

1812.202 Policy.

The contracting officer shall forward recommendations concerning remission of liquidated damages via the head of the contracting activity to the Assistant Administrator for Procurement for submission to the Administrator.

Subpart 1812.3—Priorities, Allocations, and Allotments

1812.302 General.

1812.302-70 NASA program.

(a) It is national policy to require contractors to use ratings and allotment authority to support NASA acquisition to the extent required by the Office of Industrial Resource Administration (OIRA). In addition to the procurement and construction of the Department of Defense (DOD), the Federal Emergency Management Agency (FEMA) has authorized OIRA to provide priorities authority for all procurement and construction programs of NASA. The DOD is the claimant agency to FEMA for NASA.

(b) DOD implementation of all rules and regulations published by OIRA for which the DOD is delegated administrative responsibility is contained in the DOD Priorities and Allocations Manual (PAM).

(c) NASA installations shall comply with the priorities and allocations program as set forth in—

(1) The DOD PAM;

(2) The rules and regulations published by OIRA; and

(3) Sections 1812.370 through 1812.372.

1812.370 DO/DX priority rating system.

1812.370-1 Scope of section.

This section prescribes procedures for the administration of the priority rating system regarding products and equipment, including automatic data processing equipment (see 1812.373), other than controlled materials, required for NASA programs.

1812.370-2 General.

With minor exceptions, the use of priority ratings on both NASA contracts

and purchase orders and on all contractor purchase orders is mandatory. Priority ratings are assigned on individual contracts and purchase orders by NASA personnel to whom authority has been delegated under NMI 5101.8, Delegation of Authority—To Take Actions in Procurement and Related Matters (Assistant Administrator for Procurement). Complete information regarding the use of ratings, method of assignment, items not otherwise eligible for ratings (see 1812.370–4), and additional instructions are set forth in section 2 of the DOD PAM.

1812.370–3 Application of ratings.

A NASA contract or purchase order is "rated" by writing on the contract or order or on a separate paper specifically identified with the contract or order, the following:

(a) DO or DX-(appropriate program code symbol).

(b) The certification prescribed in FAR 12.303(b)(3).

(c) The required delivery date(s).

(d) Signature and title of authorized official.

1812.370–4 Non-rateable items.

(a) Priority rating will not be issued for—

(1) Direct procurement of "controlled materials" (i.e., steel, copper, aluminum, and nickel alloys);

(2) Contracts for services, except those relating to deliveries of materials; or

(3) Items ordered or requisitioned from GSA Federal Supply Service.

(b) In addition to the above, a complete list of non-rateable items and classes of items is contained in Exhibit 1, section 2–1 of the PAM.

1812.371 Reporting of controlled materials requirements.

1812.371–1 Scope of section.

This section contains the procedures for the furnishing by installations of quarterly reports of estimates of requirements for Defense Materials System controlled materials. The installation quarterly reports described in this section are the basis of NASA's consolidated estimates to DOD and to FEMA.

1812.371–2 Reporting responsibility.

(a) *Scope of report.* Installations shall submit quarterly estimates of controlled materials requirements by the codes, forms, shapes, and subdivisions as listed in 1812.371–7 for the applicable claimant programs as described in PAM 2–2. Reports will be submitted on DD Form 614, Materials Requirements—Steel and Nickel Alloys, and DD Form 614–1, Materials Requirements—Copper and Aluminum.

(b) *Report due dates.* Reports for the first quarter of each calendar year shall be forwarded to reach the Office of Procurement, NASA Headquarters (Code HP–1) by the preceding September 1, for the second calendar quarter by the preceding December 1, for the third calendar quarter, by the preceding March 1, and for the fourth calendar quarter by the preceding June 1.

1812.371–3 Report content.

The report required by 1812.371–2 above shall include—

(a) For each separate claimant program, the controlled materials needed for all procurements to be made by the reporting installation showing (1) the materials to be purchased by contractors for producton of Class A products, including construction, and materials for research and development and (2) the materials to be purchased by installations for in-house operations. Materials required for production of Class B products are *not* to be reported; (section 1–4 of the PAM contains the definition of Class A and B products);

(b) A summary or total of the requirements reported in paragraph (a) above; and

(c) A breakout from the data called for in paragraph (a) above and the totals in (b) of estimates for the materials required for items and projects which are of highest national priority. Such programs as are authorized for the special DX priority rating may be found in the DOD Master Urgency List.

1812.371–4 Basis for developing controlled-materials requirements.

The reports submitted in accordance with this section shall be based on the research and development, end-item, and construction programs which take into consideration all funds available or anticipated to become available. Estimates shall reflect the best judgment of the installations, and should, if possible, be derived by multiplying unit weight per item by scheduled production, with due consideration of production and purchasing lead times. When this approach is not feasible, other methods, such as factoring a relationship of materials to dollar value, engineering estimates, contractor estimates, or actual past usage of materials, may be utilized in preparing the requirements. Installations shall maintain records of the methods and data used in preparing the reports for review upon request by the Office of Procurement, NASA Headquarters (Code HP–1).

1812.371–5 Requirements coordination with other Government agencies.

Installations shall *not* report materials requirements for those items purchased by other Government agencies for NASA use. However, end-item quantitative requirements for Class A products will, if requested, be furnished to the contracting office so that it can compute and include the required materials in its submission of reports to the DOD.

1812.371–6 Requirements review, assembly, and submission to DOD.

The Office of Procurement, NASA Headquarters (Code HP–1), will—

(a) Review field installation reports for accuracy of computations and reasonableness of computed quantities in relation to authorized program procurements;

(b) Summarize data received from field installations into an overall NASA report for submission to the DOD; and

(c) Justify and defend NASA estimates as may be necessary before DOD and FEMA.

1812.371–7 List of controlled materials—Defense Materials System Regulation 1.

DOD Code and Material

1200 *Carbon Steel (including wrought iron) Total*
1212 Ingots, billets, etc. (excluding 1215)
1215 Billets, stock for shell bodies
1221 Bars, cold finished
1222 Bars, hot rolled (excluding 1223 and 1225)
1223 Bars, reinforcing
1225 Bars, stock for shell bodies
1231 Structural shapes
1232 Piling
1240 Pipe and tubing, including threaded couplings
1251 Plates
1252 Sheet and strip (excluding 1261)
1261 Sheet, galvanized
1262 Tin, terne, tin mill black plate
1270 Rails and track accessories
1280 Wheels, tires and axles
1290 Wire rods, wire and wire products
1300 *Alloy Steel (excluding 1000 and 1400) Total*
1312 Ingots, billets, etc.
1314 Castings, armor
1321 Bars, cold finished
1322 Bars, hot rolled
1331 Structural shapes
1340 Pipe and tubing, including threaded couplings
1351 Plates (excluding 1355)
1352 Sheet and strip
1355 Plates, rolled armor
1370 Track accessories
1380 Wheels, tires, and axles
1390 Wire rods, wire and wire products
1000 *Stainless Steel—Non-Nickel Bearing—Total*

1400 *Stainless Steel—Nickel Bearing—Total*
0600 *Nickel Alloys—Total*
0601 5% through 29.9% nickel content
0602 30% through 49.9% nickel content
0603 50% through 100% nickel content
1510 *Brass Mill Copper Base Alloy Products—Total*
1511 Plate, sheet and strip (except 1514)
1512 Rods, bars and wire
1513 Tube and pipe
1514 Ammo cups and discs
1520 *Brass Mill Unalloyed Copper Products—Total*
1521 Plate, sheet and strip
1522 Rods, bars and wire
1523 Tube and pipe
1510 and 1520 *Brass Mill Products—Total (sum lines 1510 and 1520)*
1530 *Wire Mill Products (copper content)*
1540 *Foundry Products*
1550 *Powder—Total*
1551 Powder, copper, unalloyed
1552 Powder, copper base alloys
1600 *Aluminum—Total*
1610 Rods and bars, porcelain coated
1611 Rods and bars, rolled (excluding 1610 and 1612 and excluding stock for 1620, 1630 and 1661)
1612 Rods and bars, rolled, forging and impact extrusion stock
1620 Wire and cable (excluding 1630)
1630 Rivets and rivet wire
1651 Sand castings
1652 Mold castings
1653 Die Castings
1654 Other castings
1661 Shapes, rolled structural
1662 Shapes, extruded (excluding 1663 and 1664)
1663 Shapes, extruded forging stock
1664 Shapes, extruded, porcelain
1670 Sheet, strip and plate (excluding 1671 and stock for 1693)
1671 Sheet, strip and plate, porcelain coated
1680 Tubing
1691 Powder
1692 Ingot
1693 Foil (.005" and thinner)

1812.372 Special priorities assistance.

1812.372-1 Scope of section.

This section contains procedures whereby field installations and contractors may obtain special assistance in expediting delivery of raw materials, supplies, and equipment from commercial sources on NASA programs.

1812.372-2 General.

In most instances, with the use of a priority rating and timely acquisition, it is possible to obtain satisfactory deliveries of materials and equipment to meet program schedules. However, conflicts occasionally occur among priority-rated programs competing for the same resources. A number of factors may cause such a conflict, such as a shortage of capacity to produce a material or product or placement by different sources of similar orders on a supplier which require delivery within the same time period. Resolution of problems of this type is accomplished by using the special priorities assistance procedure described herein if not resolved at the field level. Detailed explanation regarding the special priorities assistance procedure is contained in section 7 of the PAM and the Defense Priorities Regulation 1.

1812.372-3 Criteria for special priorities assistance requests.

(a) Requests for special priorities assistance may be submitted by field installations if there is, as a minimum, a clear demonstration—

(1) Of the relationship and importance of the applicant's requirements to NASA programs;

(2) Of the inability of the applicant to divert materials or equipment from other production to meet requirements;

(3) That failure to obtain the supplies will delay NASA program schedules; and

(4) That satisfactory arrangements cannot be accomplished by the field installation.

(b) Requests may be submitted for assistance in placement of orders as well as to improve deliveries of orders already placed.

1812.372-4 Form, preparation, and routing of requests.

(a) Form ITA–999 shall be used for all special priorities assistance requests. Copies of this form may be obtained from Department of Commerce field offices listed in section 9 of the PAM.

(b) The form shall be prepared in accordance with the instructions in section 7–2, Exhibit 2, of the PAM. Blocks 18 and 19 of the form should be left blank for use of NASA Headquarters and DOD officers. The form may be prepared by any authorized field installation representative or by the prime contractor or subcontractors. Prime contractors may prepare forms for their subcontractors, if expedient. However, all forms prepared by contractors must be endorsed by a NASA representative who preferably shall be the DMS/DPS Officer of the installation administering the contract. Technical offices of field installations having need for expediting assistance are urged to utilize the services of their local DMS/DPS Officer in preparing and processing special-priorities assistance requests.

(c) Special-priorities assistance requests on ITA–999 shall be transmitted in quintuplicate to the Office of Procurement, NASA Headquarters (Code HP–1). For emergency cases involving programs of highest national priority (DX) which warrant special handling to obtain immediate deliveries, requests will be accepted by telephone. Data transmitted by telephone shall be confirmed by submission of a Form ITA–999 through regular mail channels.

1812.372-5 Action by NASA Headquarters.

(a) After receipt of the Form ITA–999 a thorough exploration of the case will be unertaken with a view toward determining the specific deficiency (e.g., lack of capacity, prior higher priority orders, shortage of materials or parts). On the basis of the information developed, action will be taken through the DOD to resolve the case by informal arrangements with the supplier and applicant. If this action is unsuccessful, the case will be endorsed by DOD to OIRA. In either case, one of the following actions will result:

(1) Arrangement for improved delivery dates by informal agreement with the supplier.

(2) Issuance of a one-time only, bottle-neck breaking DX rating—not to be confused with those DX ratings assigned programs of highest national priority.

(3) Issuance of a directive requiring the supplier to produce or deliver the specified item by a specific date.

(b) The Office of Procurement, NASA Headquarters (Code HP–1) will maintain a follow-up of all cases received and notify field installations as to final disposition of individual cases.

1812.373 Priority ratings for automatic data processing equipment.

(a) Industrial priority ratings shall be used when the computer systems or peripheral equipment (1) will be used in direct or logistic support of military operations or (2) is necessary for R&D, production, testing or construction at Government-owned facilities.

(b) Industrial priority ratings shall not be used when the primary function of the equipment will be for administrative or business purposes such as financial management (payroll, budget), insurance programs, or personnel/education/training programs.

(c) Contractor requests to use industrial priority ratings for the acquisition of computers and peripheral equipment as privately-owned capital equipment shall be processed on DD Form 691 (reference DOD Priorities and Allocations Manual). Authorization shall not be granted until the request is thoroughly evaluated to assure that the equipment:

(1) Is to be used for NASA related R&D, production, or construction purposes (i.e., computer-aided design, testing, production process control, etc.);

(2) Is needed to insure timely deliveries on priority rated NASA contracts and purchase orders for approved programs; and

(3) Has the smallest capacity available which is sufficient to meet NASA related requirements.

Subpart 1812.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

1812.505 Contract clauses.

The Stop-Work Order clause at FAR 52.212–13 is not authorized for use in research contracts with educational or other nonprofit institutions.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACTING TYPES

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1813.1—General

Sec.
1813.104 Procedures.

Subpart 1813.2—Blanket Purchase Agreements

1813.203 Establishment of Blanket Purchase Agreements.
1813.203–1 General.

Subpart 1813.3—Fast Payment Procedure

1813.303 Preparation and execution of orders.

Subpart 1813.4—Imprest Fund

1813.403 Agency responsibilities.
1813.403–70 Establishment of imprest funds.
1813.404 Conditions for use.
1813.405 Procedures.

Subpart 1813.5—Purchase Orders

1813.502 Unpriced purchase orders.
1813.505 Purchase order and related forms.
1813.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

Subpart 1813.70—Procurement Request Overlay Method

1813.7001 General.
1813.7002 Limitations on use.
1813.7003 Procedures.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1813.1—General

1813.104 Procedures.

(a) When bulk funding is deemed appropriate see Financial Management Manual 9030–5e and 9040–4b.

(b) See FAR 15.203 for appropriate negotiation authority.

Subpart 1813.2—Blanket Purchase Agreements

1813.203 Establishment of Blanket Purchase Agreements.

1813.203–1 General.

Blanket Purchase Agreements shall be prepared and issued on any Center-prescribed purchase order form.

Subpart 1813.3—Fast Payment Procedure

1813.303 Preparation and execution of orders.

Orders incorporating the fast payment procedure may be issued on Optional Form 347, Order for Supplies or Services, or on other Center-prescribed purchase order form.

Subpart 1813.4—Imprest Fund

1813.403 Agency responsibilities.

1813.403–70 Establishment of imprest funds.

(a) *Authority.* The Director of Financial Management, NASA Headquarters, may authorize, upon approval of the Chief, Disbursing Office of the Treasury Department, the establishment of imprest funds and any required subsequent increases thereto. The number of imprest funds at an installation is generally restricted to the minimum number necessary to assure efficiency in small purchase transactions. Financial Management Manual paragraphs 9650–2 through 9650–15 should be used in conjunction with this Subpart.

(b) *Amount of imprest funds.* The amount of each fund shall be established on the basis of the estimated monthly payments therefrom and the need for replenishment without undue administrative burden. A fund level review shall be made at least semi-annually (see FAR 13.403(a)).

(c) *Imprest fund cashiers.* (1) Imprest fund cashiers are appointed in accordance with Financial Management Manual paragraph 9650–5 and are authorized to make cash payments for materials and nonpersonal services, maintain custody of funds, and file periodic vouchers to account for and replenish the imprest fund. Financial management or fiscal officers and others having access to accounting records or responsibility for originating, approving, processing, or receiving requirements are not eligible for appointment as imprest fund cashiers. In no event shall an imprest fund cashier have access to or control of more than one imprest fund.

(2) An alternate imprest fund cashier may be appointed where (i) the volume of work requires an alternate to the principal cashier or (ii) to provide sevice during the absence of the principal cashier. Appointment requirements for principal cashiers shall apply to alternate cashiers. In planned short-term absences of the principal cashier, cash may be advanced by the principal to the alternate in an amount not to exceed the alternate's limit of the fund. Upon resumption of duties, the principal cashier shall return the cash receipt to the alternate after obtaining paid receipts, subvouchers, and residual cash. In the absence of the principal cashier for more than 15 working days or for a period of time which will require the submission of a reimbursable voucher before the return of the principal, the transfer of funds from the principal to the alternate cashier shall be accomplished as prescribed by Financing Management Manual paragraph 9650–10(c).

1813.404 Conditions for use.

(a) Imprest funds may be used for small purchases when the transaction does not exceed $300 ($500 under emergency conditions).

(b) Imprest funds may also be used for small purchases when—

(1) The supplies or services are available for delivery within 60 days, whether at the supplier's place of business or at destination;

(2) The purchase does not require detailed technical specifications or technical inspection;

(3) Charges for local delivery, parcel post (including c.o.d. postal charges) and line-haul or inter-city transportation charges of $75.00 or less for supplies ordered for payment from imprest funds when the vendor is requested to arrange for delivery; and

(4) C.O.D. charges for supplies ordered for payment from imprest funds.

(c) The conditions for use specified in paragraph (b) above do not preclude the use of imprest funds for other expenditures not related to small purchases (*e.g.*, travel advances, travel expenses, transportation charges, and purchases of postage stamps and transportation tokens or passes) when such expenditures are authorized by other regulations governing the use of imprest funds.

(d) Imprest funds shall not be used for—

(1) Payments of salaries and wages;

(2) Advances, other than those authorized in 1813.405(b); or

(3) Cashing of checks or other negotiable instruments.

1813.405 Procedures.

(a) *Receipt of material.* (1) All material purchased through the imprest fund shall be delivered to a designated receiving activity. The receiver shall examine the material to ascertain that the quantities and items described on the purchase request document and the supplier's sales document are present and in satisfactory condition. If the material is acceptable, the receiver shall stamp the supplier's sales documents "Received and Accepted," date and sign the document, and pass it to the imprest fund cashier for payment. In the absence of a supplier's sales document, a receipted Standard Form 1165, Receipt for Cash-Subvoucher, will be used to record the receipt of purchases made from the imprest fund and shall be processed in the same manner.

(2) When it is not practicable to obtain delivery of material at destination on a c.o.d. basis, advanced arrangement may be made for the material to be picked up. The imprest fund cashier may then advance cash to an authorized individual to pick up and pay for the material. Necessary certifications of receipt and acceptance of material shall be obtained on one of the documents as indicated in paragraph (a)(1) above. Receipt for cash payment (see paragraph (c) below) shall be made on the same document, which will serve as the imprest fund receipt.

(3) When prior arrangements for pick up of material are not practicable, the imprest fund cashier may advance cash to an authorized individual to make a proposed purchase.

(b) *Advance of funds.* Individuals receiving a cash advance from the imprest fund cashier shall be required to sign the "Interim Receipt for Cash" portion of Standard Form 1165. After purchase has been made, the individual will return any unused cash to the imprest fund cashier with the necessary certifications of receipt, acceptance, and cash payment, at which time the imprest fund cashier shall "void" the interim receipt for cash. Cash so advanced should generally be accounted for daily, but cash may be advanced for a period not to exceed five consecutive work days.

(c) *Certification of cash payment.* (1) The original receipt document (or a copy tendered as the original) presented to the imprest fund cashier for payment shall be stamped with a certification containing the following information:

(i) Statement that cash payment was received in full.

(ii) Amount paid.

(iii) Date of payment.

(iv) Signature and title of supplier or his agent receiving the cash payment.

(2) Alterations or corrections to documents tendered for payment shall be initialled by the person making the change. Changes in the amount paid shall be initialled by the individual receiving payment.

(d) *Responsibilities of imprest fund cashier.* Pending receipt of material, the imprest fund cashier shall keep a file of purchase request documents covering imprest fund purchases. Prior to payment or acceptance of the document tendered for settlement of an advance, the cashier shall verify the necessary certification of receipt and the supplier's billed price or the price paid. If the supplier's receipt for cash payment is not obtained for purchase of $15.00 or less, the person making the purchase shall complete and sign the cash receipt document indicating receipt of funds from the imprest fund.

(e) *Payments.* (1) *C.O.D.* Upon presentation of an authorized document with the necessary certification of receipt for supplies or services, the imprest fund cashier or other authorized individual shall pay the supplier or agent and obtain the certification of cash payment as required in 1813.405(c).

(2) *Receipt from common carrier or post office.* When c.o.d. shipments are received or picked up from a common carrier or post office, the certification of cash payment may be accomplished on a list of the packages provided by the post office or common carrier. Such receipt will be supported by copies of the applicable sales document if available.

(3) *Periodic payment.* When a blanket purchase agreement is not suitable and it is administratively convenient and agreeable to the supplier, periodic payments from the imprest fund may be made for supplies delivered on a repetitive basis, provided that the accumulated amount of the deliveries for the specified period does not exceed the dollar limitation imposed on the imprest fund method by 1813.404.

(4) *Failure to ship c.o.d.* When material is ordered c.o.d. but is shipped by the supplier subject to payment by check, Standard Form 1034, Public Voucher for Purchases and Services Other than Personal, may be used to make payment. Under these circumstances, the receiver shall prepare the necessary certification of receipt and forward the receipted document through the imprest fund cashier for attachment of the supporting documents which authorized the shipment and submission to the disbursing officer for payment.

(f) *Reimbursement of imprest funds.* (1) The imprest fund shall be reimbursed in accordance with Financial Management Manual paragraph 9650–9.

(2) When a supplier refunds cash prior to the submission of Standard Form 1129, Reimbursement Voucher, covering such payment, the imprest fund cashier shall accept the refund, return the money to the imprest fund, and enter the amount of the refund on the original of the supplier's receipt. When the refund is made subsequent to the submission of the applicable Standard Form 1129, the imprest fund cashier shall enter the amount of the refund on the retained copy of the reimbursement voucher, promptly submit the refund to the disbursing officer, or by otherwise depositing directly such funds on Standard Form 209, Certificate of Deposit.

(g) *Accounting.* Record keeping shall be based on simplified memorandum records to permit frequent reconciliation of funds and should show (1) the amount of cash received, (2) the amount paid out, and (3) the balance on hand at the close of each day. It is permissible to group numerous small payments by numbering payment documents and affixing to them an adding-machine tape showing the total applying to each grouping of payment documents.

(h) *Review.* The imprest fund cashier shall be required to account for the established fund at any time by cash on hand, paid supplier's receipts, unpaid reimbursement vouchers, and interim receipts for cash. Unannounced reviews, including cash counts, are required to be made of each imprest fund at least quarterly by qualified individuals who are under the jurisdiction of the financial management or fiscal officer of the installation maintaining the imprest fund.

Subpart 1813.5—Purchase Orders

1813.502 Unpriced purchase orders.

(a) NASA contracting officers shall assure that suppliers receiving unpriced purchase orders are carefully selected.

(b) Orders shall not contain an estimated target unit price.

(c) Suitable local records and controls of outstanding unpriced purchase orders shall be maintained to assure regular followup with suppliers until the order is priced. These records should include any information available to support the fairness and reasonableness of the proposed monetary limitation.

1813.505 Purchase order and related forms.

1813.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

Optional Forms 347, 348, or Center-prescribed forms may be used.

Subpart 1813.70—Procurement Request Overlay Method

1813.7001 General.

This method is an acceptable adjunct to other simplified purchase methods and may be used in placing oral orders when BPA's do not exist or, if existing, their use is considered too cumbersome in the instant circumstance. Each transaction is recorded on a small form which attaches to, becomes a part of, and overlays a portion of the procurement request. Suppliers' delivery tickets are used as additional supporting documentation. This method eliminates the administrative requirements for preparing and mailing individual purchase orders. This method may be used where suppliers are willing to accept oral orders and can be reasonably relied upon to fill such orders in accordance with the terms of the oral transaction.

1813.7002 Limitations on use.

This method is *not* to be used where—

(a) The requirements of more than one procurement request are to be combined in a transaction;

(b) More than one delivery will be required (except that where the requirements of a single procurement request are to be equitably divided among several qualified suppliers, a single delivery per supplier shall be required);

(c) An installation prescribed form or Optional Form 347 has been utilized;

(d) It is necessary or desirable to incorporate specifications or other terms and conditions in a written purchase order;

(e) GSA Federal Supply Schedules are to be used; or

(f) Where purchases are to be made from or through other Government agencies.

1813.7003 Procedures.

(a) After competitive selection of the source (see FAR 13.106) the order may be placed by telephone. Particular care is to be taken to ensure that the supplier agrees to accept the order without written confirmation and that the order number, item descriptions, quantities, prices, and other terms and conditions are clearly understood. If the amount of the purchase does not exceed $300 (or $500 under emergency conditions) the supplier should be encouraged to deliver c.o.d. (see FAR 13.404).

(b) The supplier will be given all pertinent and specific instructions at the time of placing the order, including the installation's methods of handling charge purchases to be billed within a period of one month or less.

(c) Upon placing the order, the contracting officer will assure that a preprinted overlay form is affixed to the procurement request, and will, if necessary, after the overlay is filled in, adjust the estimated unit and total cost figures of the procurement request to reflect the actual purchase price. This will be done by lining through the original procurement request figures so that they remain legible. Any other changes in the original information of the procurement request to make it conform to the facts of the purchase will be made in like manner. The preprinted overlay form will contain at least the following information:

Order No _____
Supplier (Name) _____
(Address, City) _____
(State, Zip) _____
Discount Terms _____
Deliver Date _____
Buyer _____
FOB Destination _____
Procurement _____
Placement _____
Code _____
Action: purchase request line items ( ), ( ), (etc.) complete*
Total procurement request action: partial,* complete*
Payment: cash,* charge*

_____
(Contracting Officer Signature) _____
Date Signed _____

(*Circle as appropriate.)

(d) The contracting officer will sign and date the completed overlay form on the procurement request.

(e) The procurement request with overlay will be reproduced and distributed internally in accordance with the installation's local instructions to provide copies to the offices or activities which will be responsible for receiving and accepting the merchandise, making cash payment, or processing charge purchases.

(f) In accordance with local instructions, copies of the supplier's delivery ticket received with the merchandise will be distributed to establish receipt and acceptance of merchandise and serve as a basis for cash payment or obligation of funds and subsequent payment of charge purchases.

PART 1814—FORMAL ADVERTISING

Subpart 1814.2—Solicitation of Bids

Sec.
1814.201 Preparation of invitation for bids.
1814.201-2 Part I—The Schedule.
1814.201-5 Part IV—Representations and instructions.
1814.201-6 Solicitation provisions.

Subpart 1814—Opening of Bids and Award of Contract

1814.406 Mistakes in bids.
1814.406-3 Other mistakes disclosed before award.
1814.406-4 Mistakes after award.
1814.407 Award.
1814.407-8 Protests against award.

Subpart 1814.5—Two-Step Formal Advertising

1814.503 Procedures.
1814.503-1 Step one.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1814.2—Solicitation of Bids

1814.201 Preparation of invitations for bids.

1814.201-2 Part 1—The Schedule.

The contracting officer shall include in this section of the Schedule the data specified—

(a) In FAR 14.201-2;

(b) Elsewhere in the FAR; and

(c) Elsewhere in this Regulation.

1814.201-5 Part IV—Representations and instructions.

(a) *Section L.—Instructions, conditions, and notice to bidders.* In procurements involving mission-critical positions in connection with the Space Transportation System, include a statement that the selected contractor will comply with the provisions of NASA Management Instruction 8610.13, Space Transportation System Personnel Reliability Program. The statement will not be required in procurements for flight crew members or payload specialists when covered by other NMI's which have equivalent screening requirements to NMI 8610.13. See, for example, NMI 7100.16, Payload Specialists for NASA-Related Projects.

(b) *Section M.—Evaluation factors for award.*

(1) If no award will be made for less than the full quantities advertised, include a statement to that effect.

(2) If award is to be made by specified groups of items or in the aggregate, include a statement to that effect.

(3) In unusual cases, where bidders are required to have special technical qualifications due to the complexity of the equipment being purchased or for some other special reason, include a statement of such qualifications.

1814.201-6 Solicitation provisions.

The Assistant Administrator for Procurement, under the deviation authority in FAR 1.404(c) has authorized use of the NASA deviation (see 1852.214-23) to the provision at FAR 52.214-23, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Formal Advertising in step one of all two-step formally advertised procurements (see FAR 14.201-6(r)). This deviation allows the contracting officer to accept late technical proposals or proposal modifications if in the contracting officer's judgment, it is in the Govenment's best interest to do so.

Subpart 1814.4—Opening of Bids and Award of Contract

1814.406 Mistakes in bids.

1814.406-3 Other mistakes disclosed before award.

(a) Under the authority delegated by the Administrator in NMI 5101.8, Delegation of Authority—To Take Actions in Procurement and Related Matters (Assistant Administrator for Procurement), the Assistant Administrator for Procurement is authorized to permit the correction of bids under FAR 14.406-3 (a) and (b), and the award of a contract under FAR 14.406-3(d). The Assistant Administrator for Procurement has, in turn, authorized Procurement Officers to permit withdrawal of bids when the conditions in FAR 14.406-3(c) are met. When the Procurement Officer permits withdrawal of a bid, a copy of the determination shall be forwarded to the Office of Procurement, Code HP-1.

(b) When a contractor requests correction of a bid under FAR 14.406-3(a) and it is determined that a mistake has been made but correction is denied and, as an alternative, the contractor requests award under its bid as submitted, the contracting officer must refer the file to the Assistant Administrator for Procurement for determination.

(c) Any doubtful case under FAR 14.406-3 should be forwarded to the Assistant Administrator for Procurement.

1814.406-4 Mistakes after award.

(a) The determination required by FAR 14.406-4 (b) and (c) shall be made by the contracting officer after obtaining concurrence from the Center's Office of Chief Counsel in accordance with FAR 14.406-4(d).

(b) A copy of the determination made under FAR 14.406-4 (b) and (c) shall be forwarded to the Office of Procurement, Code HP-1.

1814.407 Award.

1814.407-8 Protests against award.

(a) For protests filed with NASA Headquarters, a member of Congress, or the General Accounting Office, contracting officers will forward the report required by FAR 14.407-8(a)(2) to the Office of Procurement, Code HP-1. The agency's decision or its Administrative Report to a member of Congress or the General Accounting Office will be signed by the Assistant Administrator for Procurement (Code H).

(b) The notice to other persons required by FAR 14.407-8(a)(3) and the notice to the General Accounting Office required by FAR 14.407-8(a)(5) are the responsibility of the Office of Procurement Code HP-1.

(c) The determination authorizing award of a contract prior to resolution of a protest (FAR 14.407-8(b) (3), (4) and (5)) is the responsibility of the Assistant Adminstrator for Procurement (Code H).

(d) Notice to the protester and others (FAR 14.407-8(b)(5)) is the responsibility of the Assistant Administrator for Procurement (Code H).

(e) Protests filed after award (FAR 14.407(c)) with the contracting officer will be decided by the contracting officer in the same manner as protests filed with the contracting officer before award. Protests filed after award with the General Accounting Office or a member of Congress will be decided by the Assistant Administrator for Procurement. A report from the Contracting Officer, as required by FAR 14.407-8(a)(2), will be forwarded to the Office of Procurement (Code HP-1).

Subpart 1814.5—Two-Step Formal Advertising

1814.503 Procedures.

1814.503-1 Step one.

In addition to FAR 14.503-1(h) and FAR 15.412, see also 1814.201-6 and 1852.214-23 regarding the handling of late technical proposals.

PART 1815—CONTRACTING BY NEGOTIATION

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Authority: 42 U.S.C. 2473(c)(1).

Subpart 1815.1—General Requirements for Negotiation

1815.103 Use of negotiation.

Among the factors to be considered in determining whether formal advertising is feasible and practicable are—

(a) The number and location of potential suppliers;

(b) The adequacy of the specifications for advertising;

(c) The nature of the items being purchased;

(d) The time available; and

(e) The type of contract contemplated.

1815.105 Competition.

1815.105-70 Noncompetitive procurement.

(a) While competition must be obtained whenever possible, there are circumstances where one institution or company has exclusive or predominate capability by reason of experience, specialized facilities, or technical competence to perform the work within the time required and at reasonable prices. In such a circumstance, the initiating technical office may recommend, for approval by the appropriate authority listed in paragraph (d) below, that only one institution or company is qualified to perform the work or services and that a proposal be solicited only from this source. This recommendation shall be in writing in a separate document entitled Justification for Noncompetitive Procurement (JNCP) and shall contain full and complete justification for the selection in accordance with paragraph (c) below, except as otherwise authorized by paragraph (d)(1) below. In those cases where the initiating technical office does not make such a recommendation, the recommendation may be made by the contracting office, if deemed appropriate. In such a case, the recommendation will be prepared for the signature of an appropriate individual, consistent with the approval requirements of paragraph (d) below, and shall have the concurrence of the cognizant technical office before submission to the approving authority specified in paragraph (d) below, except that such concurrence may be waived in the case of small purchases.

(b) The provisions of this subsection 1815.105-70 do not apply to procurements—

(1) Of $500 or less;

(2) From or through other Government agencies;

(3) Of utility services where the services are available from only one source;

(4) Of industrial facilities required in support of related procurement contracts;

(5) Of flight payloads and/or programs of investigation where source selection is made pursuant to the procedures of NHB 8030.6, Guidelines for Acquisition of Investigation; or

(6) Based on unsolicited proposal where a Justification for Acceptance of Unsolicited Proposal is provided in accordance with Subpart 1815.5.

(c) *Justification for noncompetitive procurement.*

(1) The Justification for Noncompetitive Procurement (JNCP). The JNCP shall—

(i) Fully express the circumstances which make competitive negotiation impractical or not feasible;

(ii) Explain with particularity the exclusive or predominant capability the proposed contractor possesses which meets the requirements of the procurement; and

(iii) Contain in the first sentence an appropriate recommendation *(e.g.,* "I recommend that NASA negotiate only with the *(name of company)* * * * for the detailed documentation and fabrication of *(item being procured)* * * *").

(2) Each JNCP shall reflect the degree of consideration which has been given to other sources in the particular field and the reasons they lack the capability which the proposed contractor evidences. The following illustrations represent factors which should be considered, as appropriate, in preparing the JNCP:

(i) What capability, important to the specific effort, does the proposed contractor have which makes it clearly more desirable than another firm in the same general field?

(ii) What prior experience of a highly specialized nature does the contractor possess which is vital to the proposed effort?

(iii) What facilities and test equipment does the contractor have which are specialized and vital to the effort?

(iv) Does the contractor have a substantial investment of some kind which would have to be duplicated at Government expense by another source entering the field?

(v) If schedules are involved, why are they critical and why can the proposed contractor best meet them?

(vi) If lack of drawings or specifications is a guiding factor, why is the proposed contractor best able to perform under these conditions? Why are drawings and specifications lacking? What is the leadtime required to get drawings and specifications suitable for competition?

(vii) Are Government-owned facilities involved?

(viii) State whether the procurement is/is not a continuation of previous effort performed by the proposed contractor. If a continuation, include the following.

(A) The basis on which the initial selection was made (*i.e.*, competitive or noncompetitive and, if noncompetitive, the reasons therefor), contract period, dollar value, and a brief description of the scope of work.

(B) A résumé of all subsequent awards up to the current action containing detail as described in paragraph (c)(2)(viii)(A) above.

(ix) Does the proposed contractor have personnel considered predominant experts in the particular field?

(x) Is competition precluded because of the existence of patent rights, copyrights, or secret processes?

(xi) Are parts or components being procured as replacement parts in support of equipment specially designed by a manufacturer where data available are not adequate to assure that the parts or components will perform the same function in the equipment as those parts or components being replaced?

(xii) State if the potential for continuation of the procurement does/does not exist. If the potential exists, state whether it will be competitive or noncompetitive, and identify the contemplated performance period.

(d) *Review and approval.* The original and 10 copies shall be submitted, and the position title will be shown for each individual signing the JNCP. The JNCP shall, as a minimum, be reviewed and approved as follows:

(1) For purchases of $1,000 or less but not in excess of the ——— small purchase limitation, the JNCP may be in the form of a statement and shall be submitted for the approval of the contracting officer, except as provided in paragraph (d)(6) below.

(2) For procurements in excess of the small purchase limitation, but not in excess of $100,000, the JNCP shall be submitted for the approval of the Procurement Officer, except as provided in paragraph (d)(6) below, or designees after prior review and written concurrence by the initiating technical individual's immediate superior. Such authorization shall be in writing and shall not be delegated beyond the first level of supervision below the Procurement Officer.

(3) For procurements in excess of $100,000, but less than the dollar amount set forth below for the installation concerned, the JNCP shall be submitted for the approval of the Procurement Officer, except as provided in paragraph (d)(6) below, or a designee after prior review and written concurrence by the head of the cognizant technical division or laboratory, as applicable:

(i) $1,250,000 for—

(A) National Space Technology Laboratories

(B) Headquarters Contracts and Grants Division

(C) NASA Resident Office—JPL

(ii) $2,500,000 for—

(A) Ames Research Center

(B) Goddard Space Flight Center

(C) Johnson Space Center

(D) Kennedy Space Center

(E) Langley Research Center

(F) Lewis Research Center

(G) Marshall Space Flight Center

(4) For procurements within the range of the dollar amounts set forth below for the installation concerned, the JNCP shall be submitted for the approval of the Head of the Installation, Deputy or Associate Director (the title "Associate Director" means a full Associate Director and not an Associate Director for * * *) after prior review and written concurrences by the Director or Assistant Director of the cognizant technical directorate, cognizant Program Manager, or cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement Officer:

(i) $1,250,000 but less than $2,500,000 for—

(A) National Space Technology Laboratories

(B) Headquarters Contracts and Grants Division

(C) NASA Resident Office—JPL

(ii) $2,500,000 but less than $5,000,000 for—

(A) Ames Research Center

(B) Goddard Space Flight Center

(C) Johnson Space Center

(D) Kennedy Space Center

(E) Langley Research Center

(F) Lewis Research Center

(G) Marshall Space Flight Center

(5) For procurements that are selected for Headquarters review and approval in accordance with the Master Buy Plan Procedure (see Subpart 1807.71), the JNCP shall be submitted for the signature of the Head of the Installation after prior review and written concurrences by the Director or Assistant Director of the cognizant technical directorate, cognizant Program/Project Manager, or cognizant staff official, as applicable, who reports directly to the Head of the Installation and by the Procurement Officer. The JNCP shall contain additional signature blocks, on a separate page for approval by the official designated in the selection of the procurement for Headquarters review and approval under the Master Buy Plan Procedure and for concurrence by cognizant Officials-in-Charge of Headquarters offices and the Deputy Administrator if the Administrator is the approving official.

(6) For procurements involving an individual who was formerly employed by NASA during the past two years or a firm in which such a former employee is a partner, principal officer, majority shareholder, or which is otherwise controlled or predominantly staffed by such former employees (see Subpart 1803.70), the approval of the JNCP shall be one level above that specified in paragraphs (d) (1), (2), and (3) above.

(e) The JNCP shall be attached to the Procurement Plan (see Subpart 1817.1) and made a part of the contract file.

1815.106 Contract clauses.

1815.106-2 Audit—Negotiation clause.

1815.106-270 Partial small business set-asides.

When the conditions in 1819.502-3(a)(2) exist, the clause at FAR 52.215-2, Audit—Negotiation, shall be included in the supplemental agreement and made applicable to the set-aside portion only.

1815.170 Factors in negotiation.

During the course of negotiations, contracting officers and their negotiators shall give due attention to the following and any other appropriate factors:

(a) Comparison of—

(1) The business reputations, capabilities, and responsibilities of the respective persons or firms that submit proposals;

(2) Prices quoted and consideration of other prices for the same or similar supplies or services, with due regard to production costs, including extra-pay shift, multi-shift, and overtime costs, and any other factor relating to price, such as profits, costs of transportation, and cash discounts.

(b) Consideration of—

(1) The quality of the supplies or services offered or the quantity of the same or similar supplies or services previously furnished, with particular regard to the satisfaction of technical requirements;

(2) Delivery requirements;

(3) Cost sharing, if required (see 1816.303);

(4) The size of the business concern;

(5) Whether the prospective supplier requires expansion or conversion of plant facilities;

(6) Whether the prospective supplier is located in a labor surplus area;

(7) Whether the prospective supplier will have an adequate supply of qualified labor;

(8) The extent of subcontracting;

(9) The existing and potential workload of the prospective supplier;

(10) Broadening the industrial base by the development of additional suppliers;

(11) Whether the contractor requires Government-furnished property, machine tools, or facilities, or Government-operated test facilities;

(12) The rules for the avoidance of organizational conflicts of interest (see FAR Subpart 9.5).

(c) Discriminating use of price and cost analyses.

(d) Investigation of price aspects of any important subcontract.

(e) Individual bargaining, by mail or by conference.

(f) Effective utilization in general of the most desirable type of contract.

(g) Advantages or disadvantages to the Government that might result from making multiple awards.

(h) Royalties the Government will be required to pay under patent license agreements.

Subpart 1815.2—Negotiation Authorities

1815.204 Personal or professional services.

(a) Under section 203(c)(9) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(9)), NASA is authorized "to obtain services as authorized by section 3109 of Title 5, United States Code, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS–18." 5 U.S.C. 3109, in turn, provides authority to procure by contract "the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services."

(b) It is NASA policy to obtain the personal services of experts and consultants by appointment rather than by contract. The policies, responsibilities, and procedures pertaining to the appointment of experts and consultants are in the NASA Federal Personal Manual Supp. 118.

1815.213 Technical equipment requiring standardization and interchangeability of parts.

(a) Actions taken under this authority shall be reviewed at least once every two years to determine whether the standardization should be continued, revised, or canceled.

(b) This authority may be used in situations where only one or a limited quantity of a particular item is to be purchased and where compatibility with existing equipment and interchangeability of parts is essential. The fact that this authority is used in such a case does not mean that a subsequent purchase of similar equipment will necessarily require the use of negotiation for purposes of standardization. The facts involved in each case must be examined to determine whether compatibility with other equipment and interchangeability of parts are essential objectives.

1815.217 Purchases in the interest of national defense or industrial mobilization.

1815.217-70 Records and reports.

Each contracting office shall maintain a record of the name of each contractor with a contract awarded under FAR 15.217, together with the amount of the contract and (with due consideration given to the National security) a description of the work required to be performed thereunder. These records, and reports based thereon, are maintained through the NASA procurement reporting system described in Subpart 1804.6.

1815.270 Construction work.

(a) *Application.* Contracts to construct or repair any building, road, sidewalk, sewer, main, or similar item are subject to 10 U.S.C. 2304(c).

(b) *Limitation.* (1) *Work in the United States.* Contracts for construction work to be performed within the United States shall be formally advertised and may not be negotiated unless authorized pursuant to 10 U.S.C. 2304(a)(1), (2), (3), (10), (11), (12), or (15).

(2) *Work outside of the United States.* Contracts for construction work to be performed outside of the United States shall be formally advertised and may not be negotiated unless authorized under 10 U.S.C. 2304(a) (1) through (17), as appropriate.

(c) *Citation of authority to negotiate.* Negotiated contracts for construction work shall cite as authority for their negotiation the applicable subsection of 10 U.S.C. 2304(a).

Subpart 1815.3—Determinations and Findings To Justify Negotiations

1815.302 General.

While the contracting officer is responsible for preparing the determination and findings (D&F's), requirements and technical personnel are responsible for the accuracy and adequacy of the factual information supporting the findings. Supporting information within the functional areas of requirements and technical personnel shall be furnished the contracting officer in writing.

1815.304 Content.

Date. D&F's shall be dated at the time of signature.

(a) *D&F's signed by the Administrator or Deputy Administrator.*

(1) When approval of the procurement plan by NASA Headquarters is required (see 1807.103–2), the submission of the D&F shall be made concurrently with the submission of the procurement plan and forwarded to the Assistant Administrator for Procurement (Code HS–1) for simultaneous processing for required approvals in NASA Headquarters.

(2) Each request for Administrator or Deputy Administrator determination under 10 U.S.C. 2304(a) (11) through (16) shall consist of—

(i) A memorandum from the Procurement Officer to the Assistant Administrator for Procurement (Code HS–1) recommending approval of the D&F;

(ii) An original and one copy of NASA Form 543, Justification for Authority to Negotiate (JAN);

(iii) An original and three copies of the D&F in the appropriate format required by 1815.371 below; and

(iv) When only one source is to be solicited, a copy of the approved Justification for Noncompetitive Procurement, as required by 1815.105–70 or a copy of the approved "Justification for Acceptance of Unsolicited Proposal," as required by 1815.507.

(3) The signed D&F and the original NASA Form 543 shall be returned to the contracting office. The copies of these documents shall be retained in Headquarters files.

1815.307 Signatory authority.

1815.307-70 Determinations and Findings by the Administrator.

(a) The following D&F's may be made only by the Administrator or Deputy Administrator (but see 1815.307–71):

(1) The determination required by FAR 15.211 regarding any negotiated contract for experimental, developmental, or research work, or for the making or furnishing of supplies for experimentation, development, research, or test (but see 1815.307–71(a)(4) when the amount does not exceed $5,000,000).

(2) The determination required by FAR 15.212 regarding any negotiated contract that should not be publicly disclosed.

(3) The determination required by FAR 15.213 regarding any negotiated contract for technical equipment requiring standardization and interchangeability of parts.

(4) The determination required by FAR 15.216 regarding any negotiated contract for technical or specialized supplies requiring a substantial initial investment or an extended period of preparation for manufacture.

(5) The determination required by FAR 15.214 regarding any negotiated contract entered into after advertising has proved unsatisfactory.

(6) The determination required by FAR 15.217 regarding any negotiated contract entered into in the interest of National defense or industrial mobilization.

(b) In addition to the foregoing determinations, the Administrator or Deputy Administrator may also make any of the D&F's in support thereof, that may be made by the Assistant

Administrator for Procurement or by a contracting officer.

1815.307-71 Determinations and Findings below the Administrator level.

(a) The following levels of approval are established for executing D&F's under the authority of 10 U.S.C. 2304(a)(11) below the Administrator level:

(1) $5,000,000 or less—Assistant Administrator for Procurement.

(2) $500,000 or less—Procurement Officer.

(3) $100,000 or less—Contracting Officer.

(b) When it is estimated that a class D&F will consist of two or more contracts, each of which is estimated to exceed $5,000,000, the class D&F shall be submitted to the Assistant Administrator for Procurement (Code HS-1) for the signature of the Administrator or Deputy Administrator and may only be executed by one of those two officials. When it is estimated that a class D&F will consist of two or more contracts, each of which is estimated to exceed $500,000 but not exceeding $5,000,000, the class D&F shall be submitted to the Assistant Administrator for Procurement (Code HS-1) for execution. When it is estimated that a class D&F will consist of two or more contracts, each of which is estimated to be $500,000 or less, the class D&F will be signed by the Procurement Officer.

1815.370 Retention of copies of Determinations and Findings.

Executed originals of all D&F's and copies of supporting documents shall be preserved in the NASA installation for six years following the date of the respective determination.

1815.371 Formats for Determinations and Findings.

1815.371-1 General.

Modifications as appropriate shall be made in the formats for D&F's when they are used for a class of contracts. Other modifications of a minor nature may be made in individual cases as necessary. The statutory negotiation authority is hereafter referred to as "Exception (11)," "Exception (12)," and so forth.

1815.371-2 Formats for Administrator or Deputy Administrator Determinations and Findings.

(a) *Format for Individual D&F for Exception (11).* See 1815.371-3 for class D&F for Exception (11).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, WASHINGTON, DC 20546

Determination and Findings

Authority To Negotiate an Individual Contract Under 10 U.S.C. 2304(a)(11)

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of the property or services described, only if, in accordance with established agency regulations and procedures, the procurement has been authorized and funds have been made available for the purpose.

Upon the basis of the following findings and determination, the proposed procurement described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(11). (See Note 1.)

Findings

1. The * * * (2) * * * proposes to procure by negotiation an Infrared Acquisition Aid for AN/FPS-16 Radar located at * * * (2) * * * consisting of (a) a control unit, (b) an infrared tracking head, (c) an electronic signal processing unit, (d) boresighting gear and (e) test equipment. This acquisition aid will permit * * * (2) * * * to track a vehicle from ignition until burnout and maintain the vehicle within the beamwidth of the AN/FPS-16 Antenna so that searching will not be required and thereby enable * * * (2) * * * to acquire an appreciable amount of data which is unobtainable at present.

2. The effort necessary to satisfy the requirement of the comtemplated Infrared Acquisition Aid will require research and development work to accomplish all of the requirements for acquisition assistance, as well as to optimize the field of view required in this instrument to accommodate the high acceleration vehicles launched from * * * (2) * * * Since no acquisition aid capable of meeting all of our performance specifications has ever been built, research will be required to analyze the tracking rates required to allow the Infrared Servo system to acquire and track the specified vehicles. When these rates have been determined for the Infrared Locator with respect to the various launch locations, the contractor must determine the velocity constant and the acceleration constant for the proper servo bandwidth and then design and develop a Servo and Optics system with adequate loop response to accommodate the stringent angular tracking rate requirement.

3. Formal advertising is not feasible or practicable for this procurement because it involves things which have not been done before, such as the aforementioned optimizing of the field of view to accommodate the high acceleration vehicles launched from * * * (2) * * * It is essential that the specifications and evaluation procedures provide a reasonable latitude for the prospective contractors to propose alternate methods for achieving the performance required, and for the Government to evaluate, and explore with the prospective contractors, which of these methods offer the optimum performance in view of the cost and technical advantages.

Determination

The proposed procurement is for developmental and research work, and for the making of property for research. (3)

Date _____

Notes.—

(1) Assistant Administrator for Procurement, Procurement Officer, and Contracting Officer D&F's under 10 U.S.C. 2304(a)(11) (see 1815.307-71) shall be in the same format and contain justification similar to that in the above example except that the preamble, "This D&F is not an approval of a program * * * made available for the purpose," shall be omitted.

(2) Installation.

(3) When appropriate in individual cases, this determination should be limited to the particular kinds of work under the proposed procurement, as such work is described in FAR 15.211.

(b) *Format for D&F for Exception (12).*

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Determination and Findings

Authority To Negotiate an Individual Contract Under 10 U.S.C. 2304(a)(12)

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of the property or services described, only if, in accordance with established agency regulations and procedures, the procurement has been authorized and funds have been made available for the purpose.

Upon the basis of the following findings and determination the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(12).

Findings

1. The * * * (1) * * * proposes to procure by negotiation * * * (2) * * *, maintenance handbooks for the maintenance and repair of the propulsion system of a YFB-C Research Aircraft being tested jointly by NASA and the United States Air Force.

2. Procurement by negotiation of the above described requirement is necessary because the data to be included in the maintenance handbook is compiled from highly classified tests results and performance data that for reasons of security have been classified as secret. The data in the maintenance handbook describes the stress tolerances for the engine components as well as other classified information that relate to engine thrust levels, speed, and ranges under varying conditions and fuel consumption. Also, included in the document to be prepared and reproduced will be engineering drawings showing various designs of critical parts and components of the propulsion system.

3. Procurement by formal advertising of the above described requirements is impracticable because formal advertising would result in unauthorized public disclosure of information that is classified because of the sensitive character of the data

involved. The information to be made available for this requirement has been classified secret and therefore must be controlled through classified procedures and protected from undue disclosure to avoid jeopardizing the security classification.

Determination

The proposed contract is for property whose procurement should not be publicly disclosed because of their character, ingredients and components. (3)

Date ———————

Notes.—

(1) Installation.

(2) Quantity and description of equipment.

(3) When appropriate in individual cases, this determination should be limited to supplies or to services, as the case may be; and, preferably, refer only to those words in the phrase "character, ingredients, or components" that are germane.

(c) *Format for D&F for Exception (13).*

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Determination and Findings

Authority To Negotiate an Individual Contract Under 10 U.S.C. 2304(a)(13)

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of the property described, only if, in accordance with established agency regulations and procedures, the procurement has been authorized and funds have been made available for the purpose.

Upon the basis of the following findings and determination the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(13).

Findings

1. The * * * (1) * * * proposes to procure by negotiation * * * (2) * * * The * * * (3) * * * is deemed to be technical equipment within the meaning of section 15.213 of the Federal Acquisition Regulation.

2. Procurement by negotiation of the above described equipment is necessary because standardization of this equipment and interchangeability of its parts are necessary in the public interest. This equipment forms an integral part of the launch system. Its failure due to damage or other causes will render the launch system inoperable. Because of the highly technical nature of this equipment, complexity of the processes involved in its manufacture, and differences in manufacturing equipment and techniques, other suppliers would produce equipment having such variation in the physical characteristics of their parts and in their performance (notwithstanding detailed specifications and rigid inspection) that standardization and interchangeability of parts would be precluded. Accordingly when replacement or repair of equipment manufactured by other suppliers becomes necessary, use of other apparently similar equipment or parts is generally impossible. Standardization of this equipment and interchangeability of its parts are necessary to (i) assure the readiness, maintainability and reliability of the equipment; (ii) materially reduce the quantity of spares and repair parts required to be carried which reduction will result in savings in time, manpower, storage space and costs; and (iii) make possible the interchange of parts among pieces of malfunctioning equipment during launch or any other emergency.

3. Use of formal advertising for procurement of the above described equipment is impracticable because such method may result in procurement from another supplier and thereby prevent standardization of the equipment and interchangeability of its parts.

Determination

The proposed contract is for technical equipment for which standardization and interchangeability of its parts is necessary in the public interest, and procurement thereof by negotiation is necessary to assure such standardization and interchangeability.

Date ———————

Notes.—

(1) Installation.

(2) Quantity and description of equipment.

(3) Description of equipment.

(4) Where the item is not for specialized use, omit the words "specialized use" and substitute therefor: use in (enter one or more of the locations where the item is to be used).

(d) *Format for D&F for Exception (16).*

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Determination and Findings

Authority To Negotiate an Individual Contract Under 10 U.S.C. 2304(a)(14)

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of the property described, only if, in accordance with established agency regulations and procedures, the procurement has been authorized and funds have been made available for the purpose.

Upon the basis of the following findings and determination the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(14).

Findings

1. The * * * (1) * * * proposes to procure by negotiation approximately * * * (2) * * * together with spares, special support equipment, engineering drawings and related data, publications and repair parts under provisioning procedures. The * * * (3) * * * is deemed to be of a technical or special nature within the meaning of section 15.216 of the Federal Acquisition Regulation.

2. Procurement by negotiation of the above described equipment is necessary because the equipment is so intricate and complicated that its manufacture requires a substantial initial investment and if manufactured by any supplier other than * * * (4) * * * would duplicate high starting costs already borne by the Government. Starting costs such as preliminary engineering and development work and other manufacturing preparations by * * * (4) * * *, the developer and only producer of this equipment, have been recovered by the contractor under other contracts with the Government. Generally, such work would not be useful to or usable by any other supplier. Therefore, manufacture of this equipment by any other supplier will result in a duplication of these costs and would likely result in additional costs to the Government by reason of such duplication.

[Alt: * * * because manufacture of this equipment by any supplier other than * * * (4) * * * would result in duplication of necessary preparation which would unduly delay the procurement of the equipment. The manufacture of this equipment requires detailed familiarity with the design and related specifications as well as extensive production engineering and time consuming physical preparation. Deliveries of the equipment are required to commence * * * (5) * * * and be completed in * * * (5) * * * or * * * (6) * * * The * * * (4) * * * has acquired the special skills, manufacturing techniques and experience necessary to manufacture this equipment and can meet the required delivery schedule. No other supplier possessing the special skills and experience necessary to manufacture acceptable equipment in time to meet the delivery schedule is known. Accordingly, manufacture by any supplier other than * * * (4) * * * would require an extended period of preparation for manufacture which would delay delivery of the equipment.]

3. Use of formal advertising for procurement of the above described equipment is impracticable because such method may result in procurement from another source which would require duplication of necessary initial investment to produce this equipment and would likely result in additional cost to the Government by reason of such duplication.

[Alt: * * * because such method may result in procurement from another source which would require duplication of necessary preparation and thereby delay the procurement of this equipment.]

Determination

The proposed contract is for equipment of a technical or specialized nature which requires a substantial initial investment to manufacture, and procurement thereof by formal advertising would likely result in additional cost to the Government by reason of duplication of investiment.

[Alt: * * * equipment of a technical or specialized nature which requires an extended period of preparation for manufacture, and procurement thereof by formal advertising would result in duplication of necessary preparation which would unduly delay the procurement of the equipment.]

[Alt: * * * equipment of a technical or specialized nature which requires a substantial initial investment and an extended period of preparation for

manufacture, and procurement thereof by formal advertising would (A) likely result in additional cost to the Government by reason of duplication of investment, and (B) result in duplication of necessary preparation which would unduly delay the procurement of the equipment. (7)]

Date ———————

Notes.—

(1) Installation.

(2) Quantity and description of equipment and estimated cost.

(3) Description of equipment.

(4) Name of supplier.

(5) Month and year.

(6) Number of months.

(7) Determination to be used when both conditions described in paragraph 2 of the Findings exist and both conditions are stated conjunctively.

(e) *Formats for D&F for Exception (14).* (1) *Format (A).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, WASHINGTON, DC 20546

Determination and Findings

Authority To Negotiate an Individual Contract Under 10 U.S.C. 2304(a)(15)

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of the property or services described, only if, in accordance with established agency regulations and procedures, the procurement has been authorized and funds have been made available for the purpose.

Upon the basis of the following findings and determination (1), the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(15).

Findings

1. The * * * (2) * * * proposed to procure by negotiation 12,080 pounds of Hydrazine, Free Base.

2. Procurement by negotiation of the above described supplies is necessary because the bid prices received after formal advertising are unreasonable. In response to Invitation for Bid, * * * (3) * * *, for the above material prepared and mailed, or delivered, to 17 prospective bidders by the * * * (2) * * * in accordance with the requirements of Subpart 14.2 of the Federal Acquistion Regulation, the following responsive bids were received:

Bidder A $8.96 per pound
Bidder B 9.25 per pound
Bidder C 9.30 per pound
Bidder D 9.55 per pound
Bidder E 9.94 per pound

One bid, which failed to conform to the delivery schedule in the Invitation for Bids, was rejected as nonresponsive. The remaining bids comply in all essential respects with the Invitation for Bids. Quantities of individual purchases of this material have been approximately 4,000 pounds. The most recent purchase, approximately one year ago, was for 3,700 pounds. Based on the unit price paid for the above quantity of 3,700 pounds, a unit price of $6.30 per pound was estimated for the proposed procurement of 12,080 pounds. All other terms and conditions were substantially identical to previous purchases. However, comparison of the lowest bid price with prices previously paid for this material, indicates that the bid prices received are unreasonable. * * * (4) * * * (Note: Include such other requirements as may be appropriate.)

3. Use of formal advertising for procurement of the above described supplies is impracticable because bid prices received after formal advertising are unreasonable.

Determination

The proposed contract is for supplies for which bid prices received after formal advertising are unreasonable.

Date: ———————

Notes.—

(1) Where use of the authority of 10 U.S.C. 2304(a)(15) to negotiate after formal advertising is contemplated, two separate D&F's shall be used. See FAR 15.214. This D&F is an example of the first. An example of the second D&F follows (see format (B)).

(2) Installation.

(3) Number or other identification of Invitation for Bids.

(4) In any case where a partial award has been made at bid prices considered reasonable, such fact should be included.

(2) *Format (B).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, WASHINGTON, DC 20546

Determination and Findings

Authority To Negotiate an Individual Contract Under 10 U.S.C. 2304(a)(15)

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of property or services described, only if, in accordance with established agency regulation and procedures, the procurement has been authorized and funds have been made available for the purpose.

Upon the basis of the following findings and determination * * * (1) * * * the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(15).

Findings

1. The * * * (2) * * * proposes to procure by negotiation 12,080 pounds of Hydrazine, Free Base.

2. Procurement by negotiation of the above described supplies is necessary because the bid prices received after formal advertising were unreasonable. Authority to negotiate this procurement under 10 U.S.C. 2304(a)(15) was obtained from the * * * (3) * * * Pursuant to such authority, the Contracting Officer notified each responsive bidder of intention to negotiate and gave each a reasonable opportunity to negotiate. The following proposals were received:

Offeror A $7.95 per pound
Offeror B 8.35 per pound
Offeror C 8.90 per pound
Offeror D 9.10 per pound
Offeror E 9.50 per pound
Offeror F 10.10 per pound

The negotiated price of $7.95 per pound is lower than the lowest rejected bid price of any responsible bidder and is the lowest negotiated price offered by any responsible supplier.

3. Use of formal advertising for procurement of the above described supplies is impracticable because bid prices received after formal advertising were unreasonable.

Determination

The proposed contract is for supplies for which the negotiated price (A) is lower then the lowest rejected bid price of any responsible bidder and (B) is the lowest negotiated price offered by any responsible supplier.

Date: ———————

Notes.—

(1) This is an example of the second D&F which shall be used when the authority of 10 U.S.C. 2304(a)(15) is used to negotiate after formal advertising (see FAR 15.214). An example of the first D&F precedes this example (see Format (A)).

(2) Installation.

(3) Identify the title of the individual signing the first D&F (Format A) and the number and date there.

(f) *Format for D&F for Exception (17).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, WASHINGTON, D.C. 20546

Determination and Findings

Authority To Negotiate an Individual Contract Under 10 U.S.C. 2304(a)(16)

This determination and findings is not an approval of a program or of specific procurement. It authorizes procurement by negotiation, in lieu of formal advertising, of the property or services described, only if, in accordance with established agency regulations and procedures, the procurement has been made available for the purpose.

Upon the basis of the following findings and determination the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(16).

Findings

1. The * * * (1) * * * proposed to procure by negotiation * * * (2) * * * including repair parts and maintenance manuals.

2. Procurement by negotiation of the above described equipment is necessary because its operational and reliability requirements are so critical that no known supplier other than the * * * (3) * * * has the unique skills, sophisticated production techniques, specialized plant facilities and strict quality control disciplines required for its manufacture. This equipment is a vital component of the * * * (4) * * * and its reliable operation is essential to the proper functioning of the * * * (4) * * * It is in the

interest of national defense to keep * * * (3) * * * available for furnishing this equipment in case of a national emergency.

[Alt. (for a class determination and findings): "* * * because the complexity of this equipment limits the sources of supply and it is in the interest of national defense that * * * (3) * * * and * * * (3) * * * be kept available for furnishing such supplies in case of a national emergency. In such event, the planned mobilization requirements for this equipment will substantially exceed the production capacity of both companies. Therefore in addition to maintaining the manufacturing facilities of both companies for emergency requirements, it is essential that their engineering and production skills be maintained in order to be available for training other companies in the manufacture of this equipment."]

3. Use of formal advertising for procurement of the above described supplies is impracticable because such method may result in procurement from another source [notwithstanding rigid evaluation of bidders qualifications, strict manufacturing disciplines and test requirements] of equipment not meeting qualitative requirements.

[Alt. (for a class determination and findings): "* * * because such method may result in procurement from another source and thus prevent the keeping of vital sources available for mass production in the event of a national emergency."]

Determination

It is in the interest of national defense that the * * * (3) * * * be kept available for furnishing such supplies in the event of a national emergency, and procurement by negotiation is necessary to that end.

[Alt. (for a class determination and findings): "It is in the interest of industrial mobilization that the * * * (3) * * * and * * * (3) * * * be kept available for furnishing such supplies in the event of a national emergency, and procurements by negotiation is necessary to that end."]

Date ———————

Notes.—

(1) Installation.

(2) Quantity and description of equipment and estimated cost.

(3) Name of supplier.

(4) Identify system or other end item (e.g., Space Shuttle).

1815.371-3 Format for Class Determination and Findings for Exception (11).

(a) *Findings.* (1) In the first paragraph, identify the program, the project, and the project number (using the NASA Financial Management Manual, Agency-Wide Coding Structure) to which the contemplated procurements are oriented. The following statements will also be included in the first paragraph:

(i) That the D&F covers only procurement requirements that are provided for and further defined under the program project cited; and

(ii) Identification of the NASA installation initiating the request for authority to negotiate.

(2) In the second paragraph, briefly describe the purpose and objectives of the program or project. Also state that the facts and circumstances which demonstrate that the procurements contemplated are for experimental, developmental, and research work, or for making or furnishing property for experiment, test, development and research are set forth in Appendix A. Clearly and convincingly establish that formal advertising would not be feasible and practicable.

(b) *Determination.* Following the format set forth in the sample below, use the appropriate terms to state precisely whether the proposed class of contracts is for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research; or for a combination of these. Include a statement of the period (see paragraph (c) below) for which the D&F will be effective.

(c) *Appendix A.* A description of the types of procurements to be negotiated under this authority will, to the extent identifiable at the time of preparation of the D&F, be set forth in Appendix A, broken down into generic and functional groupings of like type procurements. To the extent that it can be done, specific procurements will be identified, but the class scope is not limited if the generic scope is clear. The critical element is the need for an adequate generic description in order to satisfy the statutory requirements. Accordingly, each category shall set forth those facts and circumstances that are clearly illustrative of the conditions set forth in 10 U.S.C. 2304(a)(11) for use of this authority. These categories should adequately describe in narrative form the particular types of research and development, hardware and configuration, study effort, advance development, novel interfacing problems, and so forth. The purpose here is to demonstrate that even though precise procurements are not identified, the work categories clearly qualify as R&D, e.g., not within the state-of-the-art and not reasonably procurable by formal advertising. Wherever feasible, procurements involving discrete disciplines or work to be done in particular laboratories should be grouped together to better identify the intended subject matter. The appendix should contain sufficient detail to establish that the proposed procurements logically qualify for negotiation under the criteria in paragraph (a) above.

(d) *Format for Class D&F for Exception (11).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, WASHINGTON, DC 20546

Determination and Findings

Authority To Negotiate a Class of Contracts Under 10 U.S.C. 2304(a)(11)

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of the property or services described, only if, in accordance with established agency regulations and procedures, the procurement has been authorized and funds have been made available for the purpose.

Upon the basis of the following findings and determination the proposed class of contracts described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(11).

Findings

1. The procurements contemplated by this document will consist of a class of contracts to be accomplished by the * * * (2) * * *, each of which is estimated to cost in excess of $5,000,000, for the accomplishment of research and development requirements in support of Space and Nuclear Research and Technology except that no procurement of property or supplies for which formal advertising is feasible and practicable will be accomplished hereunder. This document will cover procurement requirements that are defined in Appendix A and are under the following program/project citation: Space and Nuclear Research and Technology Program, Research and Technology Base Project, Project No. 506.

2. The proposed class of contracts is in support of the Space Tug Program. In the performance of these contracts, the contractor will be required to perform work which is of a developmental, experimental or research nature which is described in more detail in Appendix A. In summary, the contractor will be required to: (a) investigate design concepts for the hot side of regenerative thrust chambers that will significantly extend low cycle fatigue life by reduction of wall temperatures or heat flux, and (b) design, fabricate, and test a high chamber pressure, regeneratively-cooled, 20K thrust, 400/1 expansion area ratio, rocket thrust chamber.

3. Formal advertising is not feasible and practicable for these procurements because it is impossible to describe in precise detail or by any definite drawings or specifications, the nature of the work to be performed under the proposed contracts; only the ultimate objectives and the general scope of the work can be outlined. In such programs, technical knowledge, experience, and skills are highly necessary in achieving successful results. Under formal advertising such technical experience and skills cannot be evaluated.

Determination

The proposed class of contracts is for experimental, developmental, and research

work, and for making and furnishing property for experiment, test, development, and research. (3)

This class determination and findings shall remain in effect for one year after the date of execution indicated below.

Date ———————

Notes.—

(1) D&F's for procurements of not more than $5,000,000 under 10 U.S.C. 2304(a)(11) shall be in the same format and contain justification similar to that in the above example except that the preamble "This D&F is not an approval of a program * * * made available for the purpose." shall be omitted.

(2) Installation.

(3) When appropriate in individual cases, this determination should be limited to the particular kinds of work under the proposed procurement, as such work is described in 1815.211(a).

SPACE AND NUCLEAR RESEARCH AND TECHNOLOGY, RESEARCH AND TECHNOLOGY BASE, CHEMICAL PROPULSION, PROJECT NO. 506

Appendix A

Advanced Chemical Rocket Component Technology (506)

The Contractor will be required to investigate design concepts for the hot side of regenerative thrust chambers that will significantly extend low cycle fatigue life by reduction of wall temperatures or heat flux for the space tug engine.

The use of film cooling to reduce wall temperature or heat flux has been recently modeled and correlated under contract using heated gas in typical thrust chamber configurations. To fully evaluate film cooling as a tool for extending low cycle fatigue life, additional follow-on contractual effort is required. Such effort shall include interaction with coolant side, film cooling effect on performance, location of film injection, and hot combustion effects. Ultimately, the modeling capability will be made available to LeRC in the form of computer program or design charts.

Advanced Thrust Chamber Technology (506)

The Contractor will be required to design and fabricate a high chamber pressure (2000 psia), 20K thrust, 400/1 expansion area ratio rocket thrust chamber which must have a life expectancy of 300 major thermal cycles with a safety factor of 4. This thrust chamber is to be regeneratively cooled to an area ratio of 100/1. The delivered altitude specific impulse and heat transfer characteristics are to be determined experimentally by the contractor using a LeRC furnished injector. At the completion of these tests, the thrust chamber is to be delivered to LeRC for evaluation of the life expectancy at the S-40 facility.

Additional Sample Categories

The following sample categories or generic descriptions covering various projects are listed for additional guidance in preparation of the appendix of a class D&F. Each category, when considered together with the description of the associated project set forth in paragraph 2 of the D&F, should identify the experimental, developmental, or research nature of the work.

Example No. 1

The procurements under this category are directed toward improving performance of static inverters and converters through improvements to magnetic materials, and the use of modular components and circuits. High frequency operation of magnetic components in static inverters and converters is desirable, to reduce size and weight. However, high frequency operation is limited by the efficiency reduction resulting from high eddy current losses. The magnetic materials program will provide solid magnetic core materials for high frequency operation through the development of multi-layer thin magnetic films, interspersed with bonded thin-film insulation. Since many of the individual stages such as logic, control, regulation, and filter circuits of existing inverters are quite similar, the modularization program will be a study to determine the types and extent of modularization applicable to existing inverters and converters. The objective is to construct building-block types of circuits modules such that inverters and converters for given power requirements can be fabricated from combinations of the various modules. The feasibility of employing existing inverters and converters paralleling techniques to permit parallel operation of power stage modules to increase inverter and converter power output will be verified by breadboard testing.

Example No. 2

The R&D procurements of fuel cells under this category involve work on basic research on electrode structures, high performance lightweight electrodes, improved catalysts, and investigations of methods for using storable reactants in fuel cells. Also involved are procurements for development of an electrically rechargeable fuel cell for orbital energy storage use, and for improved hydrogen-oxygen fuel cells and systems hardware. Fundamental research on the physical properties of electrolyte solutions shall be undertaken. Improved electrolyte matrices will be studied.

Example No. 3

This category involves the design and development of primary and secondary batteries, reserve batteries, and high temperature batteries. Fundamental research on the mechanism and kinetics of reaction of high energy compounds and cathode reactants in nonaqueous electrolytes will be investigated. Experimental work will be required on the compatibility of electrodes, electrolytes, separators, seals, etc. The most promising combinations will be tested in laboratory cells after proper cell design parameters have been determined. Complete performance evaluations will be made on prototype cells and demonstration batteries will be built. Improvements in the design of conventional batteries will be studied. These tasks will include work on improved electrodes and cell designs to produce increased energy output and reliability.

Example No. 4

The procurements in this category are connected with an evaluation of the capabilities of the regenerative Brayton Cycle for achieving high conversion efficiency in the kilowatt electrical power output range. Work that will be performed is divided into three functional areas. In the area of power subsystems, preliminary designs of a radioisotope heat source will be made for the Brayton Cycle Power Conversion System. In addition, subsystem such as the gas management, and the control system will be examined and developed.

In regard to high efficiency, components work will continue to be done to improve the performance of the aerodynamic components as well as the electrical alternator and recouperator components. Axial and radial flow compressors and turbines will be examined for application to the Brayton Cycle System. In the area of bearings and seals for the Brayton application, designs and materials for self-acting gas bearing will be investigated for the high speed, high temperature machines that are being developed. Exploratory work will also be conducted on sophisticated oil bearings, seals, and gas-scrubber system that may be applicable for the Brayton Cycle Space Power System.

Example No. 5

This cateogry of R&D will require the contractor to conduct research for the definition of design parameters for a Simultaneous Stack Gas Emission Control and Wastewater Purification System requiring the contractor to apply various parametric data (for example, scrubber geometry, gas-liquid contact times, liquid and gas flow rates, SO_2 gas concentrations, inhibitors, catalytic oxidation, and recycle rate) to specified design requirements for fuel, scrubbing efficiency, size of plant, waste water flow, SO_2 in exhaust stream, fly ash, ash, flue gas flow, gas temperature, minimum reheat temperature, and exhaust gas moisture in order to define specific simultaneous purification systems. As part of this program, the contractor will be required to develop detailed parametric curves and/or tables reflecting the magnitude of the effects of dependent and independent variables to the scrubbing process; to design a series of detailed process sequences in order to scrub stack gases, including a definition of the complexity of the processes, their utilization under various conditions, and their costs; to establish a technology evaluation of the state-of-the-art in water scrubbing of sulfur dioxide and oxides of nitrogen; to develop bench model units of a simultaneous purification system of stack gases and waste water; and to define a test plan for the bench equipment.

Example No. 6

This category of R&D will require the contract(s) to conduct research for the definition of design parameters which will result in an engine capable of propelling a space shuttle vehicle under the following nominal conditions, none of which can be achieved with existing flight hardware that can be built from existing designs.

(1) Up to 50,000 pounds of discretionary cargo to be placed into earth orbit and returned.

(2) Crew of 2 plus 10 passengers.

(3) Up to 10,000 cubic feet of internal payload volume. The main engine is to be LO2/LH2 high performance, reusable rocket engine, which is to be throttleable down to a 10:1 ratio with up to 800,000 pound sea-level thrust. Previous LO2/LH2 engines have been designed, including the 1,500,000 pound vacuum thrust M-1 Engine, but none of these engines have embodied the high pressure design required to provide the specific impulse and reusable characteristic required of the propulsion system to be incorporated into the proposed space shuttle vehicle. New concepts in the field of liquid propulsion must be incorporated into design criteria for later hardware development.

These contracts will also provide for testing of components (e.g., turbomachinery, and valves), since they will be of configurations and designs not heretofore used in main engines for space vehicles. These contracts will further provide for a study and design of the facilities required for existing facilities (such as the National Space Technology Laboratories) and prevent duplication: and these contracts will provide for the study, definition, and design of modifications to existing test facilities in order that they may meet the engine requirements.

1815.371-4 Formats for Determinations and Findings below the Administrator or Deputy Administrator level.

(a) *Format for D&F for Exception (2).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Determination and Findings

Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(2), as implemented by paragraph 15.202(b) of the Federal Acquisition Regulation.

Findings

1. The * * * (1) * * * proposes to procure by negotiation the installation of a composition roof to be installed on Building 631 at * * * (1) * * *. The roof on Building 631 was completely destroyed during a hurricane which caused considerable damage in this area on October 10, 1983. As a result of this emergency condition, the electrical equipment housed in this building is exposed to the inclement weather we are now experiencing and is expected to continue for the next week. Building 631 houses electronic test equipment that is used extensively by NASA to check out aircraft components, avionic systems and guidance and navigation equipment for research test aircraft and the Space Shuttle system. The test equipment housed in Building 631 is very unique to its intended purpose and would require considerable cost for replacement if the equipment is destroyed beyond its usefulness through its exposure to the elements. Also, if this equipment is destroyed or incapacitated beyond its operational capability, it would cause a serious interruption to aircraft safety programs conducted by NASA and FAA which could result in a delay of approximately * * * (2) * * * before a replacement facility can be obtained, tested and established. With present program commitments to ongoing research projects for NASA and other Government agencies, the operational capability of this test facility cannot be interrupted for a * * * (2) * * * period without causing serious problems to programs that are critical to the national interest.

2. Formal advertising for this procurement would not be feasible or practicable because of time constraints. Obtaining a contractor that can immediately undertake and complete this effort is only possible through the process of negotiations. Formal advertising procedures would delay this procurement for approximately * * * (2) * * * and could not provide the flexibility that would accelerate contractor selection and contract award in time for this emergency condition. Therefore, it is essential that this work commence and be completed immediately. The negotiated method of procurement will permit NASA to initiate a compressed and accelerated time frame to competitively select a contractor and make an award within a * * * (2) * * *, time period. Also, with this compressed time frame, it would be possible for the contractor to commence work immediately and complete the job within * * * (2) * * * from date of award.

Determination

The proposed contract is for property * * * (3) * * * for which the public exigency will not permit the delay incident for formal advertisting.

Date ———————

Notes.—

(1) Installation.

(2) Time, in days or months as appropriate.

(3) Each determination shall specify whether it is for property or services as applicable.

(b) *Format for D&F for Exception (7).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Determination and Findings

Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(7).

Findings

1. The * * * (1) * * * proposes to procure by negotiation * * * (2) * * *.

2. * * * (3) * * *.

3. The use of formal advertising will not be feasible or practicable in this instance because * * * (4) * * *.

Determination

The use of a negotiated contract is justified because the contemplated procurement is for medical supplies for which procurement by formal advertising is not feasible and practicable.

Date ———————

Notes.—

(1) Installation.

(2) Description of supplies or equipment, quantity, and estimated cost.

(3) Include a statement as to the type of item(s); *e.g.*, medicine, medical supplies, or medical equipment.

(4) Include the specific reason(s) why the use of formal advertising is not feasible or practicable.

(c). *Formats for D&F for Exception (10).* (1) *Format (A).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Determination and Findings

Authority To Negotiate an Indviducl Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(10), as implemented by paragraph 15.210(b)(1) Federal Acquisition Regulation.

Findings

1. The * * * (1) * * * proposes to procure by negotiation * * * (2) * * *. This equipment is special support equipment for the maintenace of the * * * (3) * * *.

2. Procurement by negotiation of the above described special support equipment is necessary because the manufacturer must have a detailed knowledge of the basic equipment to be supported. The special support equipment to be procured must be specially designed to be compatible with the basic equipment.

3. Use of formal advertising for procurement of the above described special support equipment is impractiable because only * * * (4) * * *, the designer, developer, and sole manufacturer of the basic equipment, is sufficiently familiar with the design and operational characteristics of the basic equipment to furnish the special support equipment required.

Determination

The proposed contract is for property or services for which it is impracticable to obtain competition by formal advertising.

Date ———————

Notes.—

(1) Installation.

(2) Quantity and description of equipment and estimated cost.

(3) Describe the basic equipment involved.

(4) Name of supplier.

(2) *Format (B).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Determination and Findings

Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(10), as implemented by

paragraph 15.210(b)(7) of the Federal Acquisition Regulation.

Findings

1. The * * * (1) * * * proposes to procure by negotiation technical non-personal services in connection with the assembly, installation, or servicing of the * * * (2) * * *. The * * * (2) * * * is deemed to be equipment of a highly technical or specialized nature within the meaning of paragraph 15.210(b)(7) of the Federal Acquisition Regulation.

2. Procurement by negotiation of the above described services is necessary because * * * (3) * * * is the only manufacturer of this equipment and is therefore the only contractor qualified to furnish the required services.

3. Use of formal advertising for procurement of the above described services is impracticable because no other supplier is qualified to furnish the services required.

Determination

The proposed contract is for property or services for which it is impracticable to obtain competition by formal advertising.

Date ———————

Notes.—

(1) Installation.

(2) Description of equipment and estimated cost.

(3) Name of supplier.

(3) *Format (C).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Determination and Findings

Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(10), as implemented by paragraph 15.210(b)(13) of the Federal Acquisition Regulation.

Findings

1. The * * * (1) * * * proposes to procure by negotiation * * * (2) * * *.

2. Procurement by negotiation of the above described equipment is necessary because only a developmental model not wholly representative of the equipment to be procured and a performance specification are available. Some additional design and engineering effort by the contractor, including the preparation of design data and quality assurance procedures, will be necessary. The performance specification is not sufficiently detailed to permit advertised bidding. The developmental model was constructed by * * * (3) * * * primarily on the basis of technical contributions from several sources, Government and industry. The design data available are incomplete, not sufficiently detailed and are largely uncoordinated.

3. Use of formal advertising for procurement of the above described equipment is impracticable because it is impossible to draft, for a solicitation of bids, adequate specifications or any other adequately detailed description of the equipment.

Determination

The proposed contact is for property or services for which it is impracticable to obtain competition by formal advertising.

Date ———————

Notes.—

(1) Installation.

(2) Quantity and description of equipment and estimated cost.

(3) Name of activity, Government or industry.

(4) *Format (D).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Determination and Findings

Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(10), as implemented by paragraph 15.210(b)(15) of the Federal Acquisition Regulation.

Findings

1. The * * * (1) * * * proposes to procure by negotiation certain parts or components as replacement parts in support of the * * * (2) * * *. The latter equipment was specially designed and manufactured by * * * (3) * * *. The estimated cost of the proposed procurement is $———.

2. Procurement by negotiation of the parts or components required as replacement parts in support of the equipment described above is necessary because fully adequate data and quality assurance procedures are not available and cannot reasonably be made available. Only the above named designer and manufacturer of the equipment is capable of furnishing parts or components which assure the requisite safe, dependable and effective operation of the equipment.

3. Use of formal advertising is impracticable because the data available are not adequate to assure that the part or component will perform the same function in the equipment as the part or component it is to replace.

Determination

The proposed contract is for property or services for which it is impracticable to obtain competition by formal advertising.

Date ———————

Notes.—

(1) Installation.

(2) Description of the basic equipment for which the replacement parts or components are to be procured.

(3) Name of designer and manufacturer.

§ 1815.372 Preparation of the Justification for Authority to Negotiate.

(a) The determination to formally advertise or to negotiate is governed by the specific facts in a procurement. When the decision is to negotiate and Administrator or Deputy Administrator authority is required, the proposed D&F must be supported by a procurement plan, as required by 1807.103. In such cases, a NASA Form 543, Justification for Authority to Negotiate (JAN) (see 53.215–543), will be attached to the memorandum requesting approval of the D&F (see 1815.304(b)).

(b) The contracting officer shall be generally responsible for the preparation and justification of the proposed D&F and for all contracting aspects discussed in the supporting justification. Where the information furnished in a justification relates to a proposed class D&F, it shall fully support the proposed negotiation authority as to the class of items as a whole or to each item, whichever is applicable, in order to provide the same information that would have been furnished if the item were covered by an individual D&F.

(c) Information to be included in the JAN is self explanatory, except as follows:

(1) In block 5, include a non-technical description of the features of the property or services to be procured which, in the case of Exception (11), demonstrate that the procurement is for experimental, developmental, or research work, or for the making or furnishing of property for experiment, test, development, or research, or a combination of two or more of the foregoing.

(2) In addition to completing block 12, attach a copy of the Justification for Noncompetitive Procurement or Justification for Acceptance of Unsolicited Proposals, as appropriate.

(3)(i) The following information is to be included in block 13 of the JAN or in an attachment:

(A) If a class D&F is proposed, state that a procurement plan and justification for noncompetitive procurement will be prepared prior to the issuance of the requests for proposals, as required.

(B) If a class D&F is proposed, include a statement with regard to the potential for a small business set-aside on a section 8(a) contract on each procurement. If individual procurements are not susceptible to such preferential procedures, the reasons therefor should be stated.

(C) If an individual D&F is proposed, state why a small business set-aside or Section 8(a) contract is inappropriate. Also, state how many of the firms being solicited are small or disadvantaged business firms.

(ii) The requirements of paragraphs (c)(3)(i) (B) and (C) above are not applicable to a noncompetitive

procurement. However, if the firm is a small or disadvantaged business, so state.

(d) The following additional information is required in support of a D&F authorizing negotiation under 10 U.S.C. 2304(a) (11) through (17). When approval of the procurement plan at NASA Headquarters is required, the information will be included in the procurement plan. When approval of the procurement plan is at the Installation level, the information must be included in the JAN or attached to it.

(1) *Exception (12).* The JAN shall contain sufficient information about the item being procured to identify the characteristics warranting a security classification. The simple statement that an item is classified is not sufficient. The nature of the security requirement shall be identified in unclassified language to amplify what will be revealed by data included in the solicitation. A statement shall be included that no other negotiating authority in FAR 15.201 through 15.217 is available for the proposed procurement.

(2) *Exception (13).* Include the following:

(i) A description of previous procurements of the item;

(ii) A statement that the additional units and replacement items of the specific makes and models of technical equipment and parts to be procured have been adopted as standard items of supply in accordance with agency procedures and are—

(A) For use in special situations;

(B) An integral part of or used in direct support of a launch or space vehicle system; or

(C) For use in a particular locality;

(iii) The reasons for standardizing the equipment and why such standardization and interchangeability of parts is necessary in the public interest.

(iv) The results of consideration given each of the factors enumerated in FAR 15.213 and a statement that in arriving at the determination to standardize, other user installations, as applicable, have been consulted in order to insure the full benefit of the action.

(v) A statement that the standardization of the equipment will be reviewed at least once each two years to determine whether the standardization should be continued, revised, or canceled (in cases where standardization of the equipment has previously received Administrator or Deputy Administrator approval, the date the approval was received and the basis for continuing such standardization).

(vi) A statement as to whether or not the initial solicitation of bids or proposals contained the *Notice of Possible Standardization* clause.

(3) *Exception (16).*

(i) If the basis for negotiation is that manufacture of the equipment requires an extended period of preparation for manufacture and its procurement by formal advertising would result in duplication of such preparation which would unduly delay the procurement, the JAN should contain statements of the technical and specialized nature of the item and substantiating data and information clearly demonstrating such duplication of preparation for manufacture and the resulting delay of the procurement, such as the following:

(A) A description of the relationship of the proposed procurement to prior work performed by the proposed contractor, emphasizing the element of delay if the award is made to another contractor.

(B) The associated cost information on the magnitude of the proposed contractor's previous efforts.

(C) The contractor's previous research and development and production contracts, including their respective total time periods and the aggregate dollar values of each kind.

(D) The stage reached in the development or production and any other circumstances which will demonstrate the advantageous lead time of the proposed contractor.

(E) A description of such elements as preliminary engineering and development work already performed by the contractor, including the time required to perform such work, which would not be useful to or usable by any other supplier.

(F) The contractor's ability to make important design changes without repetition of previous engineering effort and the delay that would arise from a new supplier having to acquire the necessary special test equipment and special tooling and to develop essential employee skills.

(G) The minimum lead time for the proposed contractor, establishing that the lead time for any firm other than the proposed contractor would unduly delay the procurement.

(H) The lead time, in terms of months, for other firms as to—

(*1*) Design and engineering;

(*2*) Manufacture of preproduction unit;

(*3*) Test and evaluation; and

(*4*) Acquisition of materials, including special test equipment and special tooling, and manufacture of first production equipment.

(I) The date the requirement originated or was received by the requiring activity.

(J) The date the purchase request was received in the contracting office.

(ii) If the basis for negotiation is that manufacture of the equipment requires a substantial initial investment and its procurement by formal advertising would likely result in additional cost to the Government by reason of duplication of investment, the justification should contain substantiating data and information clearly demonstrating the duplication of investment and additional cost to the Government by reason of such duplication, such as the following:

(A) A description of the type and value of the substantial investment by the proposed contractor or by the Government.

(B) The contracts involved and the identity of any Government-furnished property.

(C) Delineation of costs of the nature described in FAR 15.216(b)(1), (i), (ii), and (iii) (if estimates are used, so state).

(D) The estimated costs which would be duplicated if the procurement were formally advertised; and

(E) The estimated additional costs which the Government would likely incur by reason of such duplication.

(4) *Exception (14).*

(i) Include the following:

(A) Invitation for bid number and date;

(B) The number of firms furnished invitations for bids, number responding, number (if any) rejected as nonresponsive or determined not responsible, a list of the responsible bidders submitting responsive bids, and respective prices submitted.

(C) The installation's original estimate of costs and the basis for the estimate.

(D) A conclusive showing that the responsive bids received are unreasonable as to all or part of the requirements.

(E) If a partial award was made, an explanation thereof.

(F) A list of the firms to be solicited (each responsible bidder that submitted a responsive bid must be included).

(G) A statement that if negotiation is authorized, no contract will be awarded under this authority unless the conditions in FAR 15.214(b) are met and a second D&F is obtained in accordance with 1815.371–2(e)(2).

(ii) See FAR 15.214(b) for procedures where there is evidence that the bid prices were not independently reached in open competition.

(5) *Exception (17).* Emphasis must be placed on the need to negotiate with a particular contractor or contractors, and it must be shown clearly that such necessity arises from genuine

considerations of National defense, or industrial mobilization in the event of a National emergency. The supporting data, as well as the determination and findings, must name the contractors to be kept available and clearly demonstrate that the above considerations form the basis for procurement from such contractors. Additionally, the JAN shall include the following information as applicable and such other information as may be pertinent:

(i) The specific purpose to be served (*i.e.*, for furnishing property or services in case of a National emergency, the interest of industrial mobilization in case of such emergency or the interest of National defense in maintaining active engineering, and research and development would otherwise be subserved) in having a particular contractor, or particular contractors, available in the event of a National emergency.

(ii) The circumstances which make it necessary to keep the proposed contractors available for this particular purpose.

(iii) If for maintaining active engineering, research and development, the circumstances which require negotiation under this authority.

(iv) The technical complexity and criticality of the item.

(v) The procurement history of the item and the firms which have produced it.

(vi) The reasons for lack of sources.

(vii) The current annual requirement and prospective needs for the item.

(viii) If, for maintenance of an existing mobilization base, the contractor's loss of capability to produce the item in the quantities and within the time required by the mobilization planning if the contract is awarded to other suppliers, the specialized capabilities that will be lost, and the time that would be necessary to reacquire such capabilities in the event of a National emergency.

(ix) When the establishment of additional source(s) is necessary to provide production capability to meet current and emergency requirements, the following:

(A) The current annual and the mobilization requirements for the item, citing the source of or the basis for such planning data.

(B) The comparison of current production capacity necessary to meet mobilization requirements.

(C) The hazards of relying on present sources and the time required for a new source to acquire the necessary facilities and skills and achieve the production capacity of both old and new source(s) to that necessary to meet mobilization requirements.

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

1815.405 Solicitations for information or planning purposes.

1815.405-1 General.

Solicitations for informational or planning purposes are particularly useful when a procurement can be properly negotiated only after potential offerors have had an opportunity to become familiar with a large quantity of relevant data, or where it would be desirable to have industry participation in the formulation or review of complex specifications or requirements. Solicitations for informational or planning purposes can result in some desirable benefits. Aside from the basic objectives of promoting competition in the private sector and insuring the reasonableness and feasibility of the requirement, potential sources are apprised of NASA requirements in a particular field and invited to submit data for consideration early in the acquisition process without undue expenditure of time, effort, and money. However, such solicitations shall not be used as a means for the prequalification of offerors. It is recognized that the use of solicitations for informational or planning purposes may serve to lengthen the acquisition cycle under some circumstances. Conversely, it may shorten the time required for submitting proposals in situations where a large quantity of data must be analyzed by industry prior to the actual submission of proposals.

1815.405-70 Application.

Solicitations for informational or planning purposes should be utilized when appropriate. Instances where such solicitations would have application include major systems acquisitions or other complex projects where feasibility or technology studies are being conducted (either in-house or by contract) that may have relevance to later competitions. The results of such studies may be made available to industry as soon as they are known or at periodic intervals. Requirements for automatic data processing equipment or support services to perform specified operations or achieve certain results may also be suitable for advance review and comment by the private sector where diverse approaches to the accomplishment of mission objectives may be possible. The material made available in advance may vary from a comprehensive draft of a proposed requirement to a partial draft, e.g., statement of work and/or specifications or reports.

1815.405-71 Procedure.

(a) In making advance information available to industry, sufficient time should be allowed in the acquisition process to permit potential sources an opportunity, commensurate with the task, to prepare and submit a response to the solicitations for informational or planning purposes. Invitations for bids and requests for proposals will not be used for this purpose. Solicitations for informational or planning purposes shall be issued only with prior approval of the Procurement Officer.

(b) The provision at FAR 52.215-3 does not prohibit the allowance, under FAR 31.205-18, of the cost of preparing a response to the solicitation. Solicitations for informational or planning purposes will at least request an expression of interest in the contemplated requirement and will designate a time and place for submission of responses. Each solicitation will define, as explicitly as possible, the information the Government desires and will indicate whether it is contemplated that the solicitation will be followed by a conference. After approval by the Procurement Officer, the solicitation will be forwarded to potential sources and synopsized as required by FAR Subpart 5.2.

(c) Each source responding to the solicitation will be advised of the details of any pending conference. The conference, when provided for, will be conducted by procurement personnel, and should be attended by technical, legal, and other personnel as appropriate. Care must be taken not to prejudice any future competition. Each source shall be furnished identical information in connection with the proposed requirement. Also, care shall be taken to safeguard any information received in confidence.

1815.405-72 Special considerations.

It should be understood that the foregoing procedure does not consitute procurement in the usual sense, where the Government is fully aware of its requirements and has incorporated them in a formal solicitation or where firms are invited to make known their interest in a procurement by responding to a presolicitation notice. Under the solicitations for informational or planning purposes procedure, interested firms may suggest changes in a proposed specification or statement of work, propose alternatives in concept, method, design, system integration, and the like that might result in lower costs

without sacrificing performance, or propose changes in other requirements regarding the product or service involved. Care should be exercised in this connection to avoid potential conflict of interest situations. (See FAR Subpart 9.5.)

1815.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

(a) Requests for proposals (RFP's), including amendments thereto, shall be prepared by the contracting office with assistance from technical or other offices as required and be issued by the contracting officer or authorized representative. The RFP has a twofold purpose: (1) To convey to prospective contractors the information they need to prepare a proposal properly, and (2) to solicit the information that procurement and technical personnel need to appraise the proposals of prospective contractors.

(b) RFP's shall specify a date for their submission. Any extension of time granted to one prospective contractor shall be granted uniformly to all. Each request for proposals shall be issued to prospective contractors at the same time, and no contractor shall be given an advantage. When advisable, particularly in the case of research and development, proposals shall be requested in two parts: (1) An unpriced technical proposal, and (2) a cost proposal cross-referenced to the technical proposal (see 1815.406–70).

1815.406–2 Part I—The Schedule.

The contracting officer shall include, in addition to requirements specified elsewhere in the FAR and this Regulation, the following in the section indicated of the Schedule:

Section A—Solicitation/contract form.

(a) A statement on the first sheet or on a cover sheet of the request for proposals that: "PROPOSALS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THE REQUEST FOR PROPOSAL (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN PROPOSALS IS PRESCRIBED IN 18 U.S.C. 1001." This statement shall be suitably modified when quotations are requested.

(b) Instructions that offeror promptly acknowledge receipt of the request for proposal or request for quotation and advise whether it intends to submit a proposal or offer.

1815.406–3 Part II—Contract clauses.

Section I, Contract clauses. In addition to the requirements of FAR 15.406–3, the contracting officer shall include in this section the clauses required by this regulation, if these clauses are not required in any other section of the Uniform Contract Format.

1815.406–4 Part III—Documents, exhibits, and other attachments.

Section J, List of Attachments. List here all of the documents, exhibits, and other attachments which make up the solicitation package; give form number, name, date, and number of pages for each document; give type and identifier (for example, "Exhibit A"), name, and number of pages for each exhibit, appendix, or other attachment (for example: work frequency schedules, work breakdown structures, work statements, specifications, special requirements, or other documents too lengthy to be conveniently written into the solicitation proper).

1815.406–5 Part IV—Representations and Instructions.

(a) *Section L, Instructions, conditions, and notices to offerors or quoters.* (1) Includes statement that prospective offerors may submit inquiries by writing or calling (collect calls not accepted) (insert name and address, telephone area code, number, and extension).

(2) Include directions for obtaining copies of any documents, such as plans, drawings, and specifications, which have been incorporated by reference.

(3) Indicate the type of contract contemplated, together with type of repricing, and economic price adjustment, if any.

(4) Include a statement that the selected contractor will or will not require access to classified information (see NASA Management Instruction 1650.1, Industrial Security Policies and Procedures).

(5) Indicate the method and format of price quotation desired (fixed-price or cost type, if known at the time), including a reference to the necessity for cost or price breakdown.

(6) Include a description of the information required to support proposed prices; e.g., subcontract structure, purchasing system, royalty, and cost price information (see FAR Subparts 15.7 and 15.8, and FAR Part 44).

(7) Include information regarding the requirements for "Certificate of Current Cost or Pricing Data."

(8) Include instructions for disposition of drawings and specifications supplied with the solicitation.

(9) Include a statement of information required to facilitate evaluation of technical and financial capabilities and a statement covering special technical capabilities which offerors must possess.

(10) Include an instruction reflecting desirability of a separation between the contractor's "Business Management Proposal" and "Technical Proposal." For evaluation purposes separate proposals, where time permits, should be received; therefore, the format should be flexible enough to permit separate requirements (see 1815.406–70).

(11) Include a statement that this solicitation does not commit the Government to award a contract, since the Government reserves the right to reject any or all proposals, or to negotiate separately with any source considered qualified; and that the contracting officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with the proposed procurement.

(12) Include a statement that the solicitation does not commit the Government to pay any cost incurred in the submission of the offer/quotation or in making necessary studies or designs for the preparation thereof, nor to contract for services or supplies. Further, no costs may be incurred in anticipation of a contract with the exception that any such costs incurred at the offeror's risk may later be charged to any resulting contract to the extent that they would have been allowable if incurred after the date of the contract and to the extent authorized by the contracting officer.

(13) In procurements involving mission-critical positions in connection with the Space Transportation System, include a statement that the selected contractor will comply with the provisions of NASA Management Instruction 8610.13, Space Transportation System Personnel Reliability Program. The statement will not be required in procurements for flight crew members or payload specialists when covered by other NASA Management Instructions which have equivalent screening requirements to NMI 8610.13. (See NMI 7100.16, Payload Specialists for NASA-Related Payload.)

(b) *Section M, Evaluation factors for award.* See 1815.406–70 for instructions for Technical Proposals and Business Management Proposal submissions to be included in this section as applicable.

1815.406–70 Instructions for technical proposal and business management proposal submission.

When it is contemplated that the contract will exceed $1,000,000 (or if appropriate lesser amounts), the solicitation should contain requirements for the following information to be

furnished by the offeror in the offer, if applicable, in addition to the information specified in 1815.406 above.

(a) *Technical proposal.* Proposals should include the following:

(1) Method by which the offeror proposes to solve the technical problems of the project, other than information to be furnished elsewhere as a part of program or project support plan summaries (see (a)(7) below).

(2) A specific exception to proposed technical requirements.

(3) Statement of background experience in fields relating to the procurement.

(4) Names and resumes of experience of key technical personnel who will be employed on the project and extent to which each will participate in the performance of the project. Include an organization chart of the segment of offeror's organization which will be directly assigned to the project, listing names and job categories.

(5) Description and location of the company-owned research test and production equipment and facilities which will be available for use on the project. Include a separate list of any additional facilities or equipment required in the performance of the work, and a separate list of existing Government facilities available to the contractor and required for use on the project.

(6) Hourly time estimates (without pricing information) by labor class for each phase or segment of the project, extent to which these estimates are based on the use of employees presently on the offeror's payrolls who will be available for the work as required, and an indication of number and types of personnel necessary to be hired and arrangements made to obtain them.

(7) For negotiated procurements conducted under Source Evaluation Board procedures where detailed program or project support plans will be required as part of the offeror's proposal, and when such plans are not considered to be important discriminators in the evaluation process but only provide technical or management support to the primary product or service being offered, the requirements for these plans shall be described in separate Appendices to the Statement of Work. As part of their original proposal, offerors will be required to submit an estimate of the cost and work force to perform major tasks under each requirement separately identified and a summary of the major task elements to perform each requirement. Offerors will also be required to indicate that they understand that a detailed program or project support plan will be ultimately required if they are selected for negotiations and that such plans will be negotiated into the proposed contract prior to award.

(b) *Business management proposal.* Proposals should include the following:

(1) Organization proposed for carrying out the project, including organization charts showing interrelationship of business management, technical management, and subcontract management, and an indication of all levels of operation and management, from lower levels through intermediate management to top-level management.

(2) Resume of experience of all key personnel who will conduct the managerial affairs of the project.

(3) Contractural procedures proposed for the project to effect administrative and engineering changes, describing differences from existing procedures.

(4) Extent to which offeror has invested corporate funds in research and development work in the project area or directly related areas and plans for future expenditures for such work; and the extent, if any, to which offeror is willing to participate in the cost of the project.

(5) Statement as to capacity at which company-owned research test and production equipment and facilities required in the performance of the work are currently working; and the extent to which such facilities and equipment could handle the additional workload imposed by this project. The cost of any additional facilities or equipment required in the performance of the work with information as to whether such additional facilities or equipment will be contractor-furnished or Government-furnished and a statement of value of exisitng Government facilities available to offeror and required for use on the project, showing the Government agencies and facilities contracts involved.

(6) Statement of past performance and experience including—

(i) List of Government contracts in excess of $1,000,000 received in past three years or currently in negotiation involving mainly research and development work, showing each contract number, Government agency placing the contract, type of contract, and brief description of the work;

(ii) For each cost-type contract, a list of amounts of cost overruns or underruns, reasons therefor, and percentage of fixed fee;

(iii) For each contract, a record of contract completion as against completion date anticipated at time of entering into contract, giving explanations for completion delays; and

(iv) An identification and explanation of any terminations for default or convenience.

(7) Balance sheet for offeror's last fiscal year, accompanied by profit and loss statement.

(8) Detailed cost or price proposal, furnished as a separate, detachable element of the business management proposal.

(9) In soliciting proposals for support services requiring price quotations for a cost reimbursement type contract, the solicitation should contain available data regarding the quantity and quality of supplies and services required. This data should be set forth in terms of work hours of identifiable categories of labor, including experience and related qualifications, and in terms of quantities of supplies, all exclusive of costs. To be responsive, an offeror must submit a detailed cost or price proposal based on the effort described or estimated in the solicitation. If the offeror feels that the work can be accomplished more efficiently with organizational plans, staffing, management, or equipment other than that indicated in the solicitation, it may also submit an alternate proposal supported by a detailed cost or price proposal.

1815.407 Solicitation provisions.

As authorized at FAR 15.412(c) and 1815.412(c), use the NASA Alternate I to FAR 52.215–10 (see 1852.215–10), Late Submissions, Modifications, and Withdrawals of Proposals, in NASA solicitations. Alternate I allows the contracting officer to accept late proposals or proposal modifications if, in the contracting officer's judgment, it is in the Government's best interest.

1815.412 Late proposals and modifications.

(a) Proposals, or modifications thereof, received from qualified firms after the latest date specified for receipt may be considered if there is a probability of a significant reduction in cost to the Government or if there are significant technical improvements, as compared with proposals previously received. In such case, the negotiator shall investigate the circumstances surrounding the submission of the late proposal or modification and evaluate its content and submit written recommendations and findings to the contracting officer as to whether—

(1) The company submitting the proposal has an excusable reason for late submission;

(2) There is an advantage to the Government to consider the proposal:

(3) All companies submitting proposals should be resolicited; and

(4) Time of performance permits such resolicitation.

(b) The contracting officer shall determine whether the proposal should be considered or rejected or whether proposals should be resolicited.

(c) When the failure of a proposal to arrive on time is due solely to delay in the mails for which the offeror was not responsible or when only one proposal is received, the contracting officer may consider the proposal.

(d) Offerors may withdraw their proposals any time prior to award, provided that the conditions in paragraph (g) of the provision at FAR 52.215–10, Late Submissions, Modifications, and Withdrawals of Proposals are satisfied.

1815.413 Disclosure and use of information before award.

The alternate procedures at FAR 15.413–2 shall be used for NASA procurements in lieu of those prescribed at FAR 15.413–1. The Notice at FAR 15.413–2(e) shall be placed on the cover sheet of all proposals whether solicited or unsolicited.

Subpart 1815.5—Unsolicited Proposals

1815.502 Policy.

NASA will foster and encourage the submission of unsolicited proposals relevent to agency mission requirements by—

(a) Informing organizations and individuals of the scientific and technological areas encompassed by NASA's mission;

(b) Issuing notices to the scientific and technological communities which are informative of ongoing programs and areas of activity;

(c) Making no other use of proposals than for evaluation or review purposes unless otherwise specified by law;

(d) Developing appropriate policies and procedures that are consistent with this subpart and that only encourage unsolicited proposal submission and avoid to the extent possible factors that tend to discourage the generation and acceptance of innovative ideas by the unsolicited proposal mechanism;

(e) Ensuring the availability of information for the preparation and submission of unsolicited proposals to NASA;

(f) Maintaining throughout NASA uniform proposal submission requirements that place the least possible burden on the offeror; and

(g) Acknowledging proposals, making suitable evaluations, and notifying the offeror of NASA's decisions in a timely fashion.

1815.503 General.

When it is determined that a meritorious unsolicited proposal is not related to the mission of NASA or may be of interest to agencies in additon to NASA, NASA may identify for the offeror other agencies whose missions bear a relationship to the subject matter of the unsolicited proposal; however, NASA should not transfer responsibility for evaluation to another agency without the express consent of the offeror.

(a) NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to JPL without the express consent of the offeror.

(b) Proposals submitted to NASA may not be transferred to JPL for procurement without the offeror's permission.

1815.505 Content of unsolicited proposals.

In addition to the requirements listed a FAR 15.505, unsolicited proposals submitted to NASA should contain—

(a) *Additional supporting information.* (1) Brief descriptions of the organization, previous work or experience in the field of the proposal, and facilities to be utilized for the work, where appropriate for understanding the proposal.

(2) The identifying number of the basic contract or other agreement, if applicable.

(b) *Renewal information.* Proposals for renewal of ongoing projects are generally simpler to prepare. However, they should cover the items listed at FAR 15.505 (a) through (c) and at (a) above, particularly as dictated by changes since the original award was made. Prior contact with the NASA technical officer is advisable to determine the optimum amount of technical information to include.

1815.506 Agency procedures.

(a) *NASA points of contact—*

(1) *Coordinating offices.* Each NASA field installation will designate an organizational entity as its unsolicited proposal control unit for coordinating the handling of unsolicited proposals in accordance with policies and procedures herein and in FAR Subpart 15.5. Headquarters program offices are designated as coordinating offices for proposals sent directly to them in relation to disseminated information on continuing activities described in paragraph (a)(2) below.

(2) *Proposal submission.* (i) Headquarters offices broadly disseminating information within the scientific and technological communities regarding continuing responsibilities and areas of activity should indicate in the communications that unsolicited proposals relating to such continuing responsibilities and areas of activities should be submitted directly to the originating office, unless submission to a specific field installation is indicated. Responses to any field installation announcements shall be addressed to the unsolicited proposal control unit at that installation.

(ii) Except as provided in paragraph (a)(2)(i) above, unsolicited proposals believed to be of interest to only one NASA field installation should be submitted to that installation, marked for the attention of the unsolicited proposal control unit.

(iii) Except as provided in paragraph (a)(2)(i) above, unsolicited proposals believed to be of interest to NASA Headquarters are to be submitted to NASA Headquarters, Office of Space Science and Applications, Management Operations, Code EPM–2, Washington, DC 20546.

(iv) Except as provided in paragraph (a)(2)(i), proposals from colleges and universities that are of interest to more than one installation should be submitted to NASA Headquarters, Office of Space Science and Applications, Management Operations, Code EPM–2, Washington, DC 20546, whereas such proposals from noneducational and other nonprofit organizations should be submitted to each installation believed to have an interest, marked for the attention of the unsolicited proposal control unit.

(3) *Proposal preparation information.* Information on the preparation of unsolicited proposals may be obtained from field installation contracting offices or NASA Headquarters. Only inquiries from academic researchers should be sent to Code EPM–2. All other inquiries to NASA Headquarters should be addressed to Headquarters Contracts and Grants Division, Code HW–2, Washington, DC 20546.

(4) *Other inquiries.* (i) Advertising material and commercial product offerings may be forwarded to any NASA office or individual.

(ii) Contributions should be sent to the Director of the Staff, Inventions and Contributions Board, NASA, Washington, DC 20546.

(iii) NASA does not have an "informal" or "preliminary" proposal category. Hence, any inquiries or exploratory discussions prior to submission of a complete unsolicited proposal are left as a matter strictly between the interested individuals or

organization and the appropriate NASA office or employee. General guidance on whom to contact is available from the contracting office at each field installation and NASA Headquarters.

(b) *Time of submission.* Unsolicited proposals should be submitted well in advance of the offeror's desired beginning of the proposed effort or activity in order to allow the agency sufficient time to evaluate the proposal and negotiate any resultant contract or other agreement and in ample copies to allow simultaneous study by all reviewers. A minimum of five copies and four months advance submission is suggested.

(c) *Receipt, review, and evaluation.* (1) Each NASA field installation shall adopt procedures that provide for the coordination, control, receipt, and evaluation of proposals in accordance with agency-wide policies and procedures. Because of the sensitivity of the evaluation process, evaluations should be conducted in a manner that will ensure thorough and equitable reviews that are in the best interests of NASA and the offeror.

(2) Unsolicited proposals shall be acknowledged as soon as possible by the office which has been assigned the coordination responsibility and processed in an expeditious manner.

(d) *Reconsideration.* NASA shall not deny reconsideration of a timely and appropriately revised submission which is responsive to an initial determination of inadequacy under FAR 15.506–1.

(e) *Information requirements.* Designated installation coordinating units shall keep records of received proposals and shall provide prompt status information to requestors. At a minimum, the information will include: The number under current active evaluation and the number received, funded, and rejected during the fiscal year. These numbers shall be broken out by source (large business, small business, university, or nonprofit).

1815.507 Contracting methods.

(a) Under FAR 15.507(b)(3), the technical office sponsoring the procurement shall support its recommendation for award of a negotiated, noncompetitive contract with a Justification for Acceptance of Unsolicited Proposal (JAUP). The JAUP shall be based on a comprehensive evaluation of the proposal; it shall include the facts and circumstances that operate to preclude competition and that support the recommended noncompetitive action. Consideration shall include the evaluation factors listed in FAR 15.506–2(a).

(b) For purchases in excess of $1,000, the JAUP shall be in writing and shall be submitted for the approval of the Procurement Officer or a designee after prior review and written concurrence by the head of the cognizant technical division or laboratory, as applicable.

1815.570 Foreign proposals.

Proposals from foreign sources are additionally subject to the provisions of NPD 1362.1, Initiation and Development of International Participation and Cooperation in Aeronautical and Space Programs. Installations shall forward procurement requests for foreign proposals to the Headquarters Contracts and Grants Division, Code HW–2, through the International Programs Division, Code LI–15, for procurement action.

Subpart 1815.6—Source Selection

1815.608 Proposal evaluation.

1815.608–70 Technical evaluation.

(a) Technical evaluation should include—

(1) The contractor's understanding of the scope of the work as shown by the scientific and technical approach proposed;

(2) Availability and competence of experienced engineering, scientific, or other technical personnel;

(3) Availability of necessary research, test, and production facilities;

(4) Experience or pertinent novel ideas in the specific branch of science or technology involved;

(5) The contractor's willingness to devote its resources to the proposed work with appropriate diligence; and

(6) The contractor's proposed method of achieving the reliability required.

(b) In making this evaluation, technical personnel may be given access to portions of the business proposals upon request. After evaluation and preparation of written findings as to selection of source by the technical personnel, proposals shall be returned to the negotiator. The contracting officer is responsible for reviewing the justification in support of the written findings of technical personnel to determine that the justification is adequate and that the documentation is complete.

1815.608–71 Automatic data processing equipment.

In evaluating proposals containing a significant amount of cost for Automatic Data Processing Equipment (ADPE), the contracting officer should obtain from the prospective contractor a feasibility study and a lease-versus-purchase study covering the acquisition of such equipment or service. The contracting officer will obtain the recommendations of the price analyst and appropriate ADPE technical personnel as to the adequacy of the studies and the prospective contractor's determinations resulting from the studies. Particular attention should be given to those proposals containing a high dollar amount for rental of ADPE or complete systems to be used solely for performance of the contract. Current Office of Management and Budget criteria (NHB 2410.1, Computer Resources Management) should be used, where applicable, as a guide in evaluating the contractor's studies. Prospective contractors should be encouraged to—

(a) Use ADPE machine time available within a reasonable geographic distance;

(b) Use telecommunications links to remote Government-owned or -leased ADPE systems; and

(c) Purchase ADPE in preference to leasing the equipment where the financial advantage is the sole or overriding factor.

1815.610 Written or oral discussion.

Procurement personnel, as well as other personnel concerned with the procurement, shall ensure that contract negotiations are completed expeditiously. However, all details of the negotiation must be completed before the contract is actually placed. This includes, to the extent applicable—

(a) Arrangements regarding Government-furnished property, including the contractor's responsibility for controlling, maintaining, and accounting for such property;

(b) Determination that the prospective contractor is responsible, including completion of preaward surveys where required;

(c) Arrangements with other Government agencies for the use of facilities under their control;

(d) Where the contract will be administered by another Government agency, any necessary arrangements with the responsible activity of that agency;

(e) Where the contract will involve access to classified information, verification that required security clearance has been obtained;

(f) The requirement for the furnishing of data by the contractor in the performance of the contract, both for technical evaluation and for competitive reprocurement where follow-on procurement is probable, in those situations where the appropriate

technical office has requested that the contracting officer obtain such data; and

(g) Assuring that the proposal has been included in the contract as an item of deliverable data (where it is considered necessary for NASA to have access during contract performance to proposal technical data which has been qualified by the offeror as protectible data).

1815.613 Alternative source selection procedures.

1815.613-70 General.

The evaluation of proposals received may be accomplished in a number of different ways. Evaluation of proposals received in response to an Announcement of Opportunity will be accomplished in accordance with NHB 8030.6, Guidelines for Acquisition of Investigations. The applicability of and rules for the conduct of source selection in accordance with formal source evaluation board procedures are covered at 1815.613-71 below.

1815.613-71 Evaluation and negotiation of procurements conducted in accordance with the Source Evaluation Board Manual (NHB 5103.6).

(a) *Applicability.* (1) These procedures shall be used for all competitively negotiated procurements conducted in accordance with NHB 5103.6 (excluding procurements for architect-engineer services and procurements for which the procedures have been specifically waived) when—

(i) The estimated cost of the contract exceeds $5,000,000;

(ii) The estimated cost of the contract does not exceed $5,000,000, but it is likely that the source selected will receive other contracts for later phases of the same project which, cumulatively, would total more than $5,000,000 (Examples of this category: (A) Options as defined in FAR Subpart 17.2; (B) agreements-to-agree, wherein the parties agree to negotiate for the extension of the supplies or services being procured; and (C) later phases of the same project subject to the Guidelines for Phase Project Planning concept prescribed by NHB 7121.1, Planning and Approval of Major Research and Development Projects, and/or the Major Systems Acquisition concept prescribed by NMI 7100.14, Major System Acquisitions.); or

(iii) A Source Selection Official determines that the use of the SEB procedures is desirable. Except where the relevance of this paragraph is peculiar to the SEB procedure, the principles expressed herein also apply to other negotiated procurements conducted in accordance with this Regulation.

(2) The detailed procedures regarding the designation and operation of SEB's are in NHB 5103.6.

(3) Evaluation of system design concepts resulting from requests for alternative system design concept proposals in support of a major system acquisition subject to NMI 7100.14 policies and procedures should include, in addition to proposed system function and performance capabilities to meet mission needs and program objectives, and analysis of resources required and benefits to be derived by trade-offs, where feasible, among technical performance, acquisition costs, ownership costs, time to develop and procure, and the relevant accomplishment record of competitors.

(b) *Evaluation and selection procedures. (1) Responsibility of source selection official.* In the final analysis, NASA judgment on the totality of the evaluation will be that of the Source Selection Official. This includes assessment of the procedures followed by the Board, the validity of its substantive evaluations, the relative significant of the several areas of evaluation, and the weightings previously assigned by the SEB, in the light of all the information produced by the source evaluation and selection process.

(2) *Evaluation criteria and weights.* The establishment of evaluation criteria and their weights requires the exercise of judgment on a case-by-case basis. Evaluation criteria and their weighting factors should be tailored to the requirements of each particular procurement. An SEB should not give scores for cost as such. Technical excellence, price or estimated cost, and contractor management capability are important factors in selection. Their relative importance depends on the nature of the products or services procured, with technical considerations having paramount importance in research and development. Any factor may tip the balance when competition is very close as to other factors. Evaluation criteria shall be described in each Request for Proposals (RFP's) fully enough to inform evaluators and prospective offerors of the significant matters to be addressed in the proposals. A general description of the relative weights of categories of evaluation criteria shall be furnished prospective offerors.

(3) *Initial identification of proposals not considered acceptable.* (i) Subsequent to the review of committee ratings and other information known to the committees or the Board and prior to ranking of proposals by the Board, the Board may discontinue the evaluation of any proposal which is unacceptable because—

(A) It does not represent a reasonable initial effort to address itself to the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements of the RFP;

(B) In research or development procurement, a substantial design drawback inheres in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(C) It contains major technical or business deficiences or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

(ii) Sample technical nonresponsiveness in the sense in which the term is used in formal advertising is not alone sufficient to constitute unacceptability if the proposal is otherwise competitive and negotiations after selection reasonably offer the likelihood of resolution. When there is doubt as to whether a proposal should be rejected initially as unacceptable, that doubt shall be resolved by including it for further consideration.

(iii) Documentation must be prepared by the Board as to why the deficiencies of any proposal are believed to be of sufficient significance to warrant discontinuing the evaluation of a proposal at this point in the evaluation process.

(4) *Board determinations of competitive range.* After initial identification of proposals not considered acceptable, the Board will tentatively rank the remaining proposals in accordance with the established scoring system. After this ranking is completed, the proposals will be reviewed to determine the proposals within the competitive range; namely, those which have a reasonable chance of being selected for final award. In making this determination, the Board will evaluate the potential for improving the competitive position of the proposals by written or oral discussions conducted in accordance with paragraph (b)(5) below. The competitive range will consist of the best proposals, considering mission suitability, cost or price, experience and past performance, and other factors. When there is doubt as to whether a proposal is within the competitive range, that doubt shall be resolved by including it. The initial number of offerors considered as being within the competitive range may be narrowed as a result of the written or oral discussions. However, a proposal

initially included in the competitive range should not be rejected withou giving the offeror an opportunity to submit a revised proposal to serve as the basis for establishing the new competitive range unless the discussions relating to an ambiguity or omission make it clear that the proposal should not have been in the competitive range initially.

(5) *Conduct of written or oral discussions.* (i) *General.* Careful judgment will be exercised in determining the extent of discussions. In some cases, good business practice may warrant having more than one round of discussions with all or some of those firms considered in the competitive range. The time available, the expense and administrative limitations, and the size and significance of the procurement should all be considered in deciding on the type, duration, and depth of the discussions.

(ii) *Cost-reimbursement type contracts and all contracts for research and development.* (A) The contracting officer, in concert with or on behalf of the SEB, will conduct written or oral discussions of the work to be done and the cost of the work with those concerns whose proposals are within the competitive range. The discussions are intended to assist the SEB or other evaluators *(1)* in understanding fully the proposals and their strengths and weaknesses based upon the individual efforts of each offeror, *(2)* in assuring that the meanings and the points of emphasis of RFP provisions have been adequately conveyed to the offerors so that all are competing equally on the basis intended by the Government, *(3)* in evaluating the personnel proposed by each firm, and *(4)* in presenting a report to the Source Selection Official that makes the discriminations among proposals clear and visible. In this process, prior to contractor selection, the Government's interests are not served by its assuming the role of an information exchange or clearing-house.

(B) In cost-reimbursement type contracts and all research and development contracts, the contracting officer shall point out instances in which the meaning of some aspect of a proposal is not clear and instances in which some aspects of the proposal failed to include substantiation for a proposed approach, solution, or cost estimate.

(C) However, where the meaning of a proposal is clear and the Board has sufficient information to assess its validity and the proposal contains a weakness which is inherent in an offeror's management, engineering, or scientific judgment or which is the result of its own lack of competence or inventiveness in preparing its proposal, the contracting officer shall not point out the weaknesses. Discussions are useful in ascertaining the presence or absence of strengths and weaknesses. The possibility that such discussions may lead an offeror to discover that it has a weakness is not a reason for failing to inquire into a matter where the meaning is not clear or where insufficient information is available, since understanding of the meaning and validity of the proposed approaches, solutions, and cost estimates is essential to a sound selection. Offerors should not be informed of the relative strengths or weaknesses of their proposals in relation to those of other offerors. To do so would be contrary to other regulations which prohibit the use of auction techniques (see FAR 15.610(d)(3)). In the course of discussions, Government participants should be careful not to transmit information which could give leads to one offeror as to how its proposal may be improved or which could reveal a competitor's ideas.

(D) The foregoing guidelines are not all-inclusive. Careful judgment must be exercised in the light of all the circumstances of each procurement to promote the most advantageous selection from the standpoint of the Government while, at the same time, maintaining the fairness of the competitive process.

(E) At the conclusion of discussions, the contracting officer shall give each offeror a reasonable opportunity (with a common cut-off date for all) to support and clarify its proposal. An offeror may, on its own initiative, revise its proposal and make corrections or improvements until the established cut-off date.

(iii) *Fixed-price contracts other than for research and development.* (A) In fixed-price type contracts other than for research and development, the specifications ordinarily described the Government's requirements with more particularity than is possible in cost reimbursement or research and development contracting so that less emphasis is placed on an offeror's introduction of scientific, engineering, and management innovations. The contracting officer will conduct discussions in accordance with the provisions of paragraph (b)(5)(ii) above, except for the difference in paragraph (b)(5)(iii)(B) below.

(B) The contracting officer, in written or oral discussions, shall point out instances in which some aspect of a proposal contains a weakness in relation to the Government's requirements. But, as provided in paragraph (b)(5)(ii) above, the contracting officer shall neither point out the relative strengths or weaknesses of a proposal in relation to those of other offerors nor transmit information which could give leads to one offeror as to how its proposal may be improved or which could reveal a competitor's ideas. The contracting officer shall point out price elements that do not appear to be justified and shall encourage offerors to put forward their most favorable price proposals, but shall not discuss, disclose, or compare price elements of any other offeror.

(6) *Conduct of negotiations prior to selection.* If, after conclusion of written or oral discussions, the SEB considers that the evaluation findings thus far completed are not sufficiently comprehensive for the Source Selection Official to make a decision, it may be prudent and necessary to conduct further discussions or final negotiations with those offerors remaining in the competitive range prior to presentation of the findings to the Source Selection Official. This course of action must be considered as an exception to the SEB process and therefore may be accomplished only with the approval of the Assistant Administrator for Procurement.

(7) *Notice and debriefing.* When a proposal is no longer to be considered for contract award, the offeror will be promptly notified, in writing, together with a general, reasonably brief explanation of the reasons. If an offeror requests, in writing, a debriefing as a result of such notice, it will be accorded a formal debriefing in accordance with NMI 5103.1, Debriefing of Unsuccessful Companies in Competitive Negotiated Procurements. Such a debriefing will be provided at the earliest feasible time, which normally shall be after announcement of the selection decision and prior to award of the contract. However, where the exigency of the situation will not permit delaying the award in order to debrief unsuccessful offerors, such debriefing may be conducted after award.

(8) *Report to source Selection Official.* The SEB report shall contain a summary of the primary points of discussion and will show the effect of the discussions on the evaluation of proposals. The report shall set forth the strengths and weaknesses of each proposal with an estimate of the potential for correction of the principal weaknesses identified. The report also should state the board's estimate of the approximate impact on cost or price that will result from the elimination of correctible weaknesses during negotiations after selection.

1815.613-72 NASA solicitation provision.

The provision at 1852.215-70, Increases in Estimated Costs, shall be included in all requests for proposals to be evaluated pursuant to NASA Source Evaluation Board procedures, when award of a cost-reimbursement type contract (with or without incentive arrangement) is contemplated. The purpose of this provision is to advise the offeror(s) selected for final negotiation that they may not unilaterally increase their estimated costs for the reasons cited therein. Government negotiators are cautioned that in those cases where the second exception applies, there may be instances where such costs do not warrant additional fee.

Subpart 1815.7—Make-or-Buy Programs

1815.704 Items and work included.

As a rule, make or buy programs should not include items or work efforts estimated to cost less than (a) one percent of the total estimated contract price or (b) $5,000,000, whichever is greater.

1815.706 Evaluation, negotiation, and agreement.

The make or buy program review by the activities' small and disadvantaged business utilization specialist and the SBA representative (see FAR 15.706(b)) should be, concurrent with the contracting officers' review. When urgent circumstances preclude this, or where the small and disadvantaged business specialist or SBA representative fails to respond on a timely basis, the contracting officer shall include an explanatory statement in the contract file and transmit a copy to each of them.

Subpart 1815.8—Price Negotiation

1815.804 Cost or pricing data.

1815.804—3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) When granting an exemption under FAR 15.804-3(e)(2) for repetitive submissions of catalog items, Government approval or the exemption claim shall state the effective period, usually not more than one year, and require the contractor to furnish any later information that might raise a question as to the continuation of the exemption. This approval may be extended to other Government contracting offices with their concurrence.

(b) When exempting submission before solicitation under FAR 15.804-3(e)(3), the contracting officer may, by a solicitation provision or otherwise, either dispense with the requirement for a SF 1412 or limit the data required to be submitted on the form. For example, if the item being procured is similar to a commercial item, only an explanation of a price differential may be needed. If the fact of substantial sales to the general public is well known, the actual sales prices, but not the quantity of sales may, be required.

(c) The authority in FAR 15.804-3(i) to waive the requirement for submission of cost or pricing data is delegated to the Assistant Administrator for Procurement without power of redelegation. Set forth below is a format for the Determination and Findings to be made by the Assistant Administrator for Procurement to waive the requirement for submission of cost or pricing data and certification thereof as required by 10 U.S.C. 2306(f). Requests for waivers shall be addressed to NASA Headquarters, Contract Pricing and Finance Office, Code HC-1.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, WASHINGTON, DC 20546

Determination and Findings

Authority To Waive Submission of Cost or Pricing Data and Certificate

Upon the basis of the following findings and determination, the requirement for submission of cost and pricing data and certificate described below may be waived pursuant to the authority of 10 U.S.C. 2306(f), as implemented by NASA FAR Supplement 1815.804-3(c).

Findings

1. The * * * (1) * * * proposes to enter into a contract with * * * (2) * * * for the procurement of * * * (3) * * *.

2. Pursuant to FAR 15.804-2, the proposed contractor is required to submit cost or pricing data as defined in FAR 15.801, together with the certificate in FAR 15.804-4. However, waiver of submission of the cost or pricing data described below is justified for the reasons indicated:

Determination

The requirement for submission of cost or pricing data for the proposed procurement is waived.

Date _____

Notes.—

(1) Installation.

(2) Name of proposed contractor.

(3) Brief description of supplies or services.

(4) Describe the cost or pricing data requirements to be waived. The waiver may be partial *i.e.*, limited to particular cost or pricing data. Describe the circumstances and conditions which make the proposed procurement an exceptional case and state the reasons justifying the proposed waiver.

1815.805-4 Technical analysis.

1815.805-470 Responsibilities of NASA requirements personnel.

NASA requirements personnel are responsible for conducting a technical evaluation of proposals to determine whether the supplies or services offered will meet specifications. In addition, when a cognizant contract administration office is not requested to perform a technical analysis of proposals in accordance with FAR 15.805-5, the analysis will be the responsibility of NASA requirements personnel.

1815.805-5 Field pricing support.

(a) When the price is based on cost or pricing data submitted by the contractor, the contracting officer or authorized representative shall request a field pricing report unless information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price, prior to negotiation of a contract or modification resulting from a proposal in excess of: (1) $100,000, see FAR 15.805-5(a)(1), for firm fixed-price and fixed-price with provision for economic price adjustment, fixed-price redeterminable (prospective), time-and-materials, or labor-hour type of contract, interim and final price redetermination and settlement of incentive types; (2) $250,000 for fixed-price incentive, cost plus incentive fee or fixed-price redeterminable (retroactive) type of contract; or (3) $1,000,000 for cost reimbursement, cost sharing, cost-plus-award-fee, or cost-plus-a-fixed-fee type of contract.

(b) Whenever available data is considered adequate for a reasonableness determination, the contracting officer shall document the contract file to reflect the basis of the determination. Information of the type described in paragraphs (b) (1) through (6) below, which is often available to the contracting officer from the cognizant contract administration office, should be useful in determining the extent of any field pricing support that is needed. No single category of information is necessarily sufficient by itself; for example, information as to rates for labor and overhead would normally require data concerning the base elements-labor hours, material costs, and so forth, to which the rates apply.

(1) In-house engineering determination of level of effort required in connection with research and development or study contracts.

(2) Audited cost information from contract awards in process or recently negotiated contracts.

(3) Adequately reviewed data on proposed subcontract items which constitute the major portion of the prime contract price proposal.

(4) Prices of standard commercial items which constitute the major portion of the prime contract price proposal.

(5) Special forward pricing formulas or rates such as for support items or forecast overhead rates prescribed in an existing advance agreement.

(6) Current labor rates, overhead rates, loading factors, per diem rates, and lot data based upon actual costs and labor hours.

(c) The Defense Contract Audit Agency provides procurement liaison auditors at most NASA installations to facilitate the receipt and use of audit service and to provide accounting and audit advice as to whether or not audit review of a price proposal should be waived.

1815.806 Subcontract pricing considerations.

The appropriate contract administration activities will be notified by the contracting officer when review and evaluation of subcontractor's proposals (a) will require extensive field pricing assistance in connection with a major acquisition or (b) require special or expedited action by field pricing personnel and such action is being or has been delayed.

1815.807 Prenegotiation objectives.

Prior to conducting negotiations that require Center or Headquarters review, contracting officers or their representatives shall prepare a Prenegotiation Position Memorandum setting forth the technical, business, contractual, pricing, and other aspects to be negotiated. Matters for negotiation may result from proposal evaluations, contractor requests, unique Center requirements, and other Government agencies' requirements, among others.

1815.807-70 Content of the Prenegotiation Position Memorandum.

The Prenegotiation Position Memorandum (PPM) should fully explain the contactor and Government positions on any open issues as well as identify and justify the elements that are acceptable as proposed. Since the PPM will ultimately become the basis for negotiation, it should be structured to provide an audit trail to the Contract Negotiation Memorandum (see FAR 15.808 and 1815.808). Generally, the PPM should address the following subjects in the order presented:

(a) *Introduction.* Include a brief description of the procurement and a brief history indicating the extent of competition and results thereof. The identification of the contractor and the place of performance (if not evident from the description of the procurement) shall be included. In addition, the negotiation schedule should be addressed and the Government negotiating team members identified by name and position.

(b) *Special features and requirements.* In this area, discuss any special features (and related cost impact) of the procurement including such items as—

(1) Letter contract or precontract cost requirements;

(2) Government property to be furnished;

(3) Contract option requirements;

(4) Contractor/Government investment in facilities and equipment (and any modernization thereof to be provided by the contractor/Government);

(5) Any deviations, special clauses or conditions anticipated.

(c) *Cost and profit/fee analysis.* Include a parallel tabulation by element of cost and profit/fee of the contractor's proposal, the Government's negotiation objective, and the Government's maximum position. For each element of cost, compare the contractor and Government estimate and explain how each was developed, including the estimating assumptions and projection techniques employed. Further, explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective. Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or contractor's proposal should be highlighted and explained. Also, technical evaluation results which caused the Government's cost negotiation objectives to significantly differ from the contractor's proposed cost, such as differences in staffing, should be highlighted and explained. Further, there should be an identification and a brief discussion of each major subcontract involved, citing the type of subcontract and stating the degree of analysis performed on the subcontract cost estimate. In addition the rationale for the Government's profit/fee objectives, and a completed copy of the NASA Form 634, Structured Approach-Profit/Fee Objective, where appropriate, should be included.

(d) *Type of contract contemplated.* Explain the type of contract contemplated and the reasons for its suitability. For an incentive contract, including award fee contracts, describe the planned structuring arrangement in terms of profit/fee patterns, share lines, ceilings, and so forth.

(e) *Negotiation approval sought.* Indicate the specific approvals sought, *e.g.*, dollar parameters, special clauses/conditions not constituting deviations, type of contract, fee objectives, and so forth.

1815.807-71 Center reviews.

Each contracting activity shall establish a formal system for the prenegotiation review of any proposal over $250,000 ($100,000 at National Space Technology Laboratories, Jet Propulsion Laboratory, and Headquarters Contracts and Grants Division). The scope of coverage, exact procedures to be followed, levels of management review, and contract file documentation requirements should be directly related to the dollar value and complexity of the procurement and will be determined by each Center. The primary purpose of these reviews is to ensure that the negotiator, or negotiating team, is thoroughly prepared to enter into negotiations with a well-conceived, realistic, and fair plan.

1815.807-72 Headquarters reviews.

Approval of the prenegotiation position by the Assistant Administrator for Procurement is required prior to entering into negotiations on all procurement actions selected for Headquarters review. Generally, at the time a procurement is processed as a Master Buy Plan (MBP) action, under Subpart 187.71, a decision will be made as to whether the prenegotiation position will be subject to Headquarters review and approval. However, prenegotiation positions on MBP procurement actions where the prenegotiation position was not initially selected for Headquarters review and approval and other non-MBP procurement action prenegotiation positions may be selected for Headquarters review and approval at any point in the acquisition cycle prior to actual negotiations.

(a) *Scheduling of presentation.* When a prenegotiation presentation is required by Headquarters or requested by the Center, scheduling of the presentation will be arranged by the Office of Procurement, Program Operations Division (Code HS-1), in consultation with appropriate Headquarters program officials. It is the responsibility of the Center to notify Code HS-1 sufficiently in advance of the desired presentation date in order to permit scheduling and preparation by Headquarters staff.

(b) *Advance information.* Not less than ten working days in advance of the scheduled prenegotiation presentation, the Center shall provide Code HS–1 with the following:

(1) Five copies of the Center's PPM.

(2) Five copies of any briefing charts and/or vu-graphs to be used in the presentation. Briefing charts and/or vu-graphs shall summarize key points/factors identified in the PPM and should be grouped in the same manner as presented in the PPM. Only key words or expressions should be used on the charts or vu-graphs—complete sentences are not necessary.

(3) One copy each of the contractor's proposal, the Government technical evaluation, and all pricing reports (including any audit reports).

(c) *Waiver.* The Assistant Administrator for Procurement may waive the presentation requirement where, based on Headquarters review of the advance information provided under paragraph (b)(2) above, it is clear that Center personnel are thoroughly prepared to enter into negotiations.

(d) *Safeguarding prenegotiation material.* Prenegotiation data is very sensitive in nature and should be handled accordingly. Close coordination with Program Operations Division (HS–1) personnel should be maintained to ensure that prenegotiation material is not compromised during transit. Distribution of prenegotiation data shall be made on a need-to-know basis.

1815.808 Price negotiation memorandum.

(a) The NASA Contract Negotiation Memorandum serves as a detailed summary of (1) the technical, business, contractual, pricing and other aspects of the contract negotiated, and (2) the methodology and rationale used in arriving at the final negotiated agreement.

(b) Normally, the Contract Negotiation Memorandum is a "stand alone" document. However, when a PPM has been prepared under 1815.807 the subsequent Contract Negotiation Memorandum need explain (1) only the differences between the prenegotiation position and the final negotiated settlement, and (2) the areas identified in FAR 15.808(a).

1815.870 Subcontract price redetermination.

1815.870–1 General.

When subcontracts have been placed on a price redetermination or fixed-price incentive basis and the prime contract is to be repriced, it may be appropriate to negotiate a firm prime contract price, even though the contractor has not yet established final subcontract prices. The contracting officer may do this when convinced the amount included for subcontracting is reasonable, *e.g.*, where realistic cost or pricing data on subcontract efforts is available. However, even though the available cost data is highly indefinite and there is a distinct chance that one or more of the subcontracts eventually may be redetermined at prices that are lower than those predicted in redetermining the prime contract price, other circumstances may require the prompt negotiation of the final contract price. In such a case, the contract modification which evidences the revised contract prices should provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent redetermination of the specified subcontracts. This may be done by including in the contract modification the clause prescribed at 1815.870–2.

1815.870–2 NASA contract clause.

Insert the clause at 1852.215–71, Adjustment for Subcontract Price Redetermination in contract modifications.

1815.871 Procedures for identifying contractor's unallowable costs.

(a) The establishment, maintenance, and consistent use of procedures for identifying and segregating unallowable costs, which will assure compliance with CAS 405 and FAR 31.201–6 will benefit both the Government and contractors. Such procedures may vary between plants or divisions of a contractor due to size, mix of business and complexity of organization. Some of the advantages of sound procedures are that—

(1) A greater degree of confidence can be placed on the accuracy and reliability of contractors' proposals, billings, and claims;

(2) They expedite the negotiation process; and

(3) They may reduce the scope of reviews performed by audit and other technical and procurement personnel.

(b) The responsible Federal Contract Audit organization shall review the contractor's procedures and practices in conjunction with other contract audit activities. Deficiencies shall be reported to the cognizant Administrative Contracting Officer and, as appropriate, contracting officers having substantial business with the contractor. Among the matters to be considered in determining the adequacy of a contractor's procedures are its policy, practices, and techniques for—

(1) Assignment of responsibilities within the organization for reviewing and approving claims against the government;

(2) Identification of unallowable costs (expressly unallowable, mutually agreed to be unallowable, or specifically designated as unallowable by written decision of the contracting officer) together with the individual employees incurring such costs;

(3) Identification and computation of directly-associated costs;

(4) Assurance that unallowable and directly-associated costs are not included in estimated costs proposed or in incurred amounts claimed by the contractor;

(5) Coordination and communication between the elements of the contractor's organization that prepare proposals and claims and those responsible for identifying unallowable and directly associated costs; and

(6) Assuring the adequacy of the documentation maintained by the contractor identifying the unallowable costs together with directly associated costs.

(c) Documentation in support of the contractor's procedures shall be made available to authorized Government personnel.

Subpart 1815.9—Profit

1815.902 Policy.

As authorized by FAR 15.902, NASA has established a structured approach for determining profit or fee objectives. This approach, described at 1815.970, is based on the profit-analysis factors appearing at FAR 15.905 and shall be used to determine a profit or fee objective for the conduct of negotiations in those acquisitions that require cost analysis except the following:

(a) Architect-engineer contracts.

(b) Management contracts for operation and/or maintenance of Government facilities.

(c) Construction contracts.

(d) Contracts primarily requiring delivery of material supplied by subcontractors.

(e) Termination settlements.

(f) Cost-plus-award-fee contracts (however, contracting officers may find it advantageous to perform a structured profit analysis as an aid in arriving at an appropriate fee arrangement).

(g) Contracts having unusual pricing situations where the structured approach is determined to be unsuitable and the exemption is justified in writing and authorized by the Procurement Officer.

1815.970 NASA structured approach for profit or fee objective.

(a) The following factors shall be considered in all cases in which profit is to be specifically negotiated. The weight ranges listed after each factor on NASA Form 634, Structure Approach Profit/Fee Objective, shall be used in all instances where the structured approach is used.

(b) The contracting officer shall first measure the "Contractor Effort" by the assignment of a profit percentage within the designated weight ranges to each element of contract cost recognized by the contracting officer. The amount calculated for the cost of money for facilities capital is not to be included for the computation of profit as part of the cost base.

(c) The suggested categories under the Contractor Effort are for reference purposes only. Often individual proposals will be in a different format; but since these categories are broad and basic, they provide sufficient guidance to evaluate all other items of cost.

(d) After computing a total dollar profit for the Contractor Effort, the contracting officer shall calculate the specific profit dollars assigned for cost risk, investment, performance, socio-economic programs, inventive developmental contributions, and additional factors. This is accomplished by multiplying the total Government Cost Objective, exclusive of any cost of money for facilities capital, by the specific weight assigned to the elements within the Other Factors category. NASA Form 634 should be used, as appropriate to facilitate the calculation of this profit objective (calculating Inventive and Developmental Contributions and Unusual Pricing Agreements and combining them under Special Situations).

(e) In making a judgment of the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors together with considerations for evaluating them as set forth in 1815.970–1, 1815.970–2, and 1815.970–3.

(f) The structured approach was designed for arriving at profit or fee objectives for other than nonprofit organizations. However, if appropriate adjustments are made to reflect differences between profit and nonprofit organizations, the structured approach can be used as a basis for arriving at fee objectives for nonprofit organizations. Therefore, the structured approach, as modified in paragraph (f)(2) below, shall be used to establish fee objectives for nonprofit organizations. The modifications should not be applied as deductions against historical fee levels, but rather, to the fee objective for profit organizations as calculated under the structured approach.

(1) For purposes of this subparagraph, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.

(2) For contracts with nonprofit organizations where fees are involved, an adjustment of up to 3 percent will be subtracted from the total profit/fee objective. In developing this adjustment, it will be necessary to consider the following factors:

(i) Tax position benefits,

(ii) Granting of financing through letters of credit,

(iii) Facility requirements of the nonprofit organization, and

(iv) Other pertinent factors which may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

1815.970–1 Common factors.

(a) *Contractor effort.* This factor is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is apart from the contractor's responsibility for contract performance, takes into account what resources are necessary and what the contractor must do to accomplish a conversion of ideas and materials into the final product called for in the contract. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and that the profit objective should reflect the extent and nature of the contractor's contribution to total performance. A major consideration, particularly in connection with experimental, developmental, or research work, is the difficulty or complexity of the work to be performed, and the unusual demands of the contract, such as whether the project involves a new approach unrelated to existing equipment or only refinements on existing equipment. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows:

(1) *Material acquisition (subcontracted items, purchased parts, and other material).* Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required purchased parts, subcontracted items, and other materials, including special tooling. This evaluation shall include consideration of the number of orders and suppliers, and whether established sources are available or new sources must be developed. The contracting officer shall also determine whether the contractor will, for example, obtain the material and tooling by routine orders from readily available supplies (particularly those of substantial value in relation to the total contract cost), or by detailed subcontracts for which the prime contractor will be required to develop complex specifications involving creative design or close tolerance manufacturing requirements. Consideration should be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts, and select subcontractors, including efforts to break out subcontracts from sole sources, through the introduction of competition. These determinations should be made for purchases of raw materials or basic commodities, purchases of processed material including all types of components of standard or near-standard characteristics, and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end-item. In the application of the criterion, it should be recognized that the contractor's purchasing program might make a substantial contribution to the performance of the contract. This might be applicable in the management of subcontracting programs involving many sources, involving new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor's representative. Recognized costs proposed as direct material costs such as scrap charges shall be treated as material for profit evaluation. If intracompany transfers are accepted at price in accordance with FAR 31.205–26(e), they shall be evaluated as material. Other intracompany transfers shall be evaluated by individual components of cost, *i.e.*, material, labor, and overhead.

(2) *Direct labor (engineering, service, manufacturing, and other labor).* Analysis of the various items of the cost content of the contract should include evaluation of the comparative quality and level of the engineering talents, service contract labor, manufacturing, skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or

unusual or scarce engineering talent needed in contrast to journeyman engineering effort or supporting personnel. The diversity, or lack thereof, of scientific and engineering specialties required for contract performance and the corresponding need for engineering supervision and coordination should be evaluated. Such circumstances as whether the calibre or class of engineer involved is that of an "idea-man," or whether the contractor is required by the contract to assign to the work, because of its nature, unusually skilled talent should be considered as part of the evaluation. Service contract labor should be evaluated in a like manner by assigning higher weights to engineering or professional type skills and lower weights to semi-professional or other type skills required for contract performance. Similarly, the variety of manufacturing and other categories of labor skills required and the contractor's manpower resources for meeting these requirements should be considered. For purposes of evaluation, categories of labor (*i.e.*, quality control, receiving and inspecting, etc.) which do not fall within the definition for engineering, service, or manufacturing labor may be categorized as appropriate. However, the same evaluation considerations as outlined above will be applied.

(3) *Overhead and general management (G&A).*

(i) Analysis of these overhead items of cost includes the evaluation of the make-up of these expenses and how much they contribute to contract performance. To the extent practicable, analysis should include a determination of the amount of labor within these overhead pools and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements should be given the same profit consideration that they would receive if they were treated as direct labor. The other elements of these overhead pools should be evaluated to determine whether they are routine expenses such as utilities and maintenance, and hence given lesser profit consideration, or whether they are significant contributing elements. The composite of the individual determinations in relation to the elements of the overhead pools will be the profit consideration given the pools as a whole.

(ii) It is not necessary that the contractor's accounting system break down overhead expenses within the classification of engineering overhead, manufacturing overhead, other overhead pools, and general and administrative expenses (G&A), unless dictated otherwise by Cost Accounting Standards (CAS). The contractor whose accounting system only reflects one overhead rate on all direct labor need not change its system (if CAS exempt) to correspond with the above classifications. The contracting officer, in an evaluation of such a contractor's overhead rate, could break out the applicable sections of the composite rate which could be classified as engineering overhead, manufacturing overhead, other overhead pools, and G&A expenses, and follow the appropriate evaluation technique.

(iii) Management problems surface in various degrees and the management expertise exercised to solve them should be considered as an element of profit. For example, a new program for an item which is on the cutting edge of the state of the art will cause more problems, require more managerial time, and abilities of a higher order than one which is a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons should be adjusted downward since many of the problems should have been solved. In any event, an evaluation should be made of the underlying managerial effort involved on a case-by-case basis.

(iv) It may not be necessary for the contracting officer to make a separate profit evaluation of overhead expenses in connection with each procurement action for substantially the same product with the same contractor. Where an analysis of the profit weight to be assigned to the overhead pool has been made, that weight assigned may be used for future procurements with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances, or the factors discussed in paragraph (a)(3)(iii) above are involved.

(4) *Other costs.* Include all other direct costs associated with contractor performance under this item (e.g., travel and relocation, direct support, and consultants). Analysis of these items of cost should include (i) the significance of the cost to contract performance, (ii) nature of the cost, and (iii) how much they contribute to contract performance.

(b) *Contract cost risk.* The degree of risk assumed by the contractor should influence the amount of profit or fee a contractor is entitled to anticipate. For example, where a portion of the risk has been shifted to the Government through cost-reimbursement or price redetermination provisions, unusual contingency provisions, or other risk-reducing measures, the amount of profit or fee should be less than where the contractor assumes all the risk. In developing the pre-negotiation profit objective, the contracting officer will need to consider the type of contract anticipated to be negotiated and the contractor risk associated therewith when selecting the position in the weight range for profit that is appropriate for the risk to be borne by the contractor. This factor should be one of the most important in arriving at pre-negotiation profit objectives.

(1) Evaluation of this risk requires a determination of (i) the degree of cost responsibility the contractor assumes, (ii) the reliability of the cost estimates in relation to the task assumed, and (iii) the complexity of the task assumed by the contractor. This factor is specifically limited to the risk of contract costs. Thus, such risks on the part of the contractor as reputation, losing a commercial market, risk of losing potential profits in other fields, or any risk on the part of the contracting office such as the risk of not acquiring an effective space vehicle, are not within the scope of this factor.

(2) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor through the selection of contract type. The extremes are cost-plus-fixed-fee contract requiring the contractor to use its best efforts to perform a task and a firm fixed-price contract for a complex item. A cost-plus-fixed-fee contract would reflect a minimum assumption of cost responsibility. Whereas a firm fixed-price contract would reflect a complete assumption of cost responsibility, where proper contract type selection has been made, the regard for risk by contract type would usually fall into the following ranges:

Cost Type Contracts: 0–3 percent
Fixed-Price Type Contracts: 3–7 percent

(3) The second determination is that of reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. Prior experience assists the contractor in preparing reliable cost estimates on new procurements for similar equipment. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(4) The third determination is that of the difficulty of the contractor's task. The contractor's task can be difficult or easy, regardless of the type of contract.

(i) Within the above ranges, a cost-plus-fixed-fee contract normally would not justify a reward for risk in excess of 0 percent, unless the contract contains cost risk features such as ceilings on overheads, etc. In such cases, up to ½ percent may be justified. Cost-plus-incentive-fee contracts fill the remaining portion of the above cost range with weightings directly related to such factors as confidence in target cost, share ratio of fee(s), etc. The range for fixed-price contracts is wide enough to accommodate the many types of fixed-price arrangements. These include fixed-price-incentive, firm-fixed-price with economic price adjustment, fixed-price with prospective or retroactive price redetermination, and firm-fixed-price contracts. Weighting should be indicative of the price risk assumed and the end item required, with only firm-fixed-price contracts with requirements for prototypes or hardware reaching the top end of the range.

(ii) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a contract form. It could cause risk to increase or decrease in terms of both cost and performance. This consideration should be a part of the contracting officer's overall evaluation in selecting a factor to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor and the contract cost risk evaluation may, as a result, be below the range which would otherwise apply for the contract type being proposed. The contract cost risk evaluation should not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts without any substantial transfer of the contractor's risk.

(iii) In making a contract cost risk evaluation in a procurement action that involves definitization of a letter contract, unpriced change orders, and unpriced orders under BOA's, consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk remained substantially unchanged. To be equitable the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances; not just by the portion of costs incurred, or percentage of work completed, prior to definitization.

(iv) Time-and-material and labor-hour contracts will be considered to be cost-plus-fixed-fee contracts for the purpose of establishing profit weights, unless otherwise exempt under 1815.902 in the evaluation of the contractor's assumption of contract cost risk.

(c) *Investment.* NASA encourages its contractors to perform their contracts with a minimum of financial, facilities, or other assistance from the Government. As such, it is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. The evaluation of this factor should include an analysis of the following:

(1) *Facilities.* To evaluate how this factor contributes to the profit objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors who furnish their own facilities which significantly contribute to lower total contract costs should be provided with additional profit. On the other hand, contractors who rely on the Government to provide or finance needed facilities should receive a corresponding reduction in profit. Cases between the above examples should be evaluated on their merits with either a positive or negative adjustment, as appropriate, in profit being made. However, where a highly facilitized contractor is to perform a contract which does not benefit from this facilitization or where a contractor's use of its facilities has a minimum cost impact on the contract, profit need not be adjusted.

(2) *Payments.* In analyzing this factor, consideration should be given to the frequency of payments by the Government to the contractor. The key to this weighting is to give proper consideration to the impact the contract will have on the contractor's cash flow. Generally, negative consideration should be given for payments more frequent than monthly with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly with additional consideration given for a capital turn-over-rate on the contract which is less than the contractor's or the industry's normal capital turn-over-rate.

(d) *Contractor's performance.* The contractor's past and present performance should be evaluated in such areas as quality of product, meeting performance schedules, efficiency in cost control (including need for and reasonableness of cost incurred), accuracy and reliability of previous cost estimates, degree of cooperation by the contractor (both business and technical), timely processing of changes and compliance with other contractual provisions, and management of subcontract programs. Where a contractor has consistently achieved excellent results in the foregoing areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit or fee. Conversely, a poor record in this regard should be reflected in determining what constitutes a fair and reasonable profit or fee.

(e) *Federal socio-economic programs.* This factor, which may apply to special circumstances or particular acquisitions, relates to the extent of contractor's successful participation in the Government sponsored programs such as small business, small disadvantaged business, labor surplus programs, and energy conservation efforts. The contractor's policies and procedures which energetically support Government socio-economic programs and achieve successful results should be given positive consideration. Conversely, failure or unwillingness on the part of the contractor to support Government socio-economic programs should be viewed as evidence of poor performance for the purpose of establishing a profit objective.

(f) *Inventive and development contributions.* (1) The extent and nature of contractor-initiated and financed independent development should be considered in developing the profit objective. The importance of the development in furthering space and aeronautical purposes, the demonstrable initiative in determining the need and application of the development, the extent of the contractor's cost risk, and whether the development cost was recovered directly or indirectly from Government sources should be weighed.

(2) This factor need not be limited to situations which only increase profit/fee levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract (e.g., products with commercial application).

1815.970-2 Additional factors—unusual pricing agreements.

Occasionally, unusual contract pricing arrangements are made with the contractor wherein it agrees to participate in the sharing of contract cost or agrees to accept a lower profit or

fee for changes or modifications within a prescribed dollar value. In such circumstances, the contractor should receive favorable consideration in developing the profit objective.

1815.970-3 Facilities capital cost of money.

When facilities capital cost of money (cost of capital committed to facilities) is included as an item of cost in the contractor's proposal, a reduction in the profit objective shall be made in an amount equal to the amount of facilities capital cost of money allowed in accordance with FAR 31.205-10(a) (see FAR 15.904 and 52.215-30 for related contract clause).

1815.971 Payment of profit or fee under letter contracts.

It is NASA policy to pay profit or fee on definitized contracts only. Therefore, contractors shall not be paid any profit or fee under letter contracts except as provided in the appropriate Termination clause for letter contracts (see 1852.249-7001 and 1852.249-7002). (See 1816.603-70(g).)

Subpart 1815.10—Preaward and Postaward Notifications, Protests, and Mistakes

1815.1002 Debriefing of unsuccessful offerors.

The policies and procedures governing debriefing are in NMI 5103.1, debriefing of Unsuccessful Companies in Competitive Negotiated Procurements and, as applicable, paragraph 504 of NHB 8030.6, Guidelines for Acquisition of Investigations.

PART 1816—TYPES OF CONTRACTS

Subpart 1816.2—Fixed-Price Contracts

Sec.

1816.203 Fixed-price contracts with economic price adjustment.
1816.203-4 Contract clauses.

Subpart 1816.3—Cost-Reimbursement Contracts

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1816.506 Ordering.

Subpart 1816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1816.603 Letter contracts.
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Subpart 1816.7—Agreements

1816.702 Basic agreements.
1816.702-70 Content and form.
1816.702-71 Responsibilities and procedures.
1816.703 Basic ordering agreements.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1816.2—Fixed-Price Contracts

1816.203 Fixed-price contracts with economic price adjustment.

1816.203-4 Contract clauses.

(a) When neither of the clauses prescribed in FAR 16.203-4(a) or (b) is appropriate, the contracting officer may use a clause prescribed in paragraph (b)(1) or (2) below or an alternate clause approved by the Assistant Administrator for Procurement.

(b) When applicable, the contracting officer will insert one of the clauses at 1852.216-7001 or 1852.216-7002 in accordance with following instructions:

(1) *Economic Price Adjustment for Basic Steel, Aluminum, Brass, Bronze or Copper Mill Products.* The price adjustment clause at 1852.216-7001 is authorized for use in fixed-price supply contracts for basic steel, aluminum, brass, bronze or copper mill products, such as sheets, plates and bars, when an established catalog or market price exists for the particular product being procured and has been verified in accordance with criteria in FAR 15.804-3(c). The ten percent figure in paragraph (c)(1) of the clause shall not be exceeded unless approved by the Procurement Officer. No adjustment under this clause shall be made in the contract price until the requested adjustment has been verified by the contracting officer, in accordance with the criteria in FAR 15.804-3(c) and as required by paragraph (c)(4) of the clause.

(2) *Economic Price Adjustment for Nonstandard Steel Items.* The price adjustment clause at 1852.216-7002 is authorized for use in fixed-price supply contracts when (i) the contractor is a steel producer and actually manufactures the standard steel mill item referred to in paragraph (d) of the clause and (ii) the items being procured are nonstandard steel items made wholly or in part of standard steel mill items. The 110 percent figure in paragraph (e) of the clause shall not be exceeded unless approved by the Procurement Officer after coordination with the installation Financial Management Officer.

(c) The contracting officer shall also coordinate with the installation Financial Management Officer before exceeding the ten percent limit in paragraph (c)(1) of the clause at FAR 52.216-2, 52.216-3, and 52.216-4.

(d) The contracting officer may modify the clause at FAR 52.216-4 for use in formally advertised procurements (see 1816.203-4(b)).

(e) *Adjustments based on labor or material costs (cost index method).* (1) As an alternative to the clauses at FAR 52.216-2, 52.216-3, or 52.216-4, consideration should be given to inclusion of a special economic price adjustment clause designed to minimize contingency pricing and prepared under the guidelines listed in (c) below, when (i) there will be an extended period of performance with significant costs to be incurred beyond one year after commencement of contract performance, (ii) the contract amount subject to adjustment is substantial and (iii) the economic variables for labor and material are determined to be too unstable to reflect a reasonable division of risk between the parties absent economic price adjustment provisions.

(2) All economic price adjustment clauses utilizing indices require advance approval by the Assistant Administrator for Procurement. Requests for such approval shall be submitted to the Office of Procurement, NASA Headquarters, Code HS-1.

(3) The following factors may be considered in preparing a price adjustment clause meeting the criteria of paragraph (e)(1) above including construction of appropriate indices:

(i) The clause should not be overly complex;

(ii) Normally, the clause should not provide either a ceiling or a floor for adjustment unless adjustment is based on indices below the four digit level of the Bureau of Labor Statistics Producer Price Index or the Wage and Income Series by Standard Industrial Classification (Labor).

(iii) Normally, the clause should cover all potential economic fluctuations within the original contract period of performance.

(iv) The clause must have a positive and accurate identification of the applicable index(es) upon which adjustments will be based and provide appropriate economic fluctuation in the event of the discontinuance of the publication of the movement of the designated index. This might include the substitution of another index if the time remaining would so justify and an appropriate index is reasonably available, or some other method for repricing of the remaining portion of the work to be performed. There should not normally be any need to make an

adjustment in the event computation of the indentified index is altered; however, provision may be made to adjust the economic fluctuation computations in the event there is such a substantial alteration to the method of computing the index as to negate the original intent of the parties. When an index to be used is subject to revision (*e.g.*, the Bureau of Labor Statistics Producer Price Indexes), The economic price adjustment clause shall further specify that any economic price adjustment shall be based upon the applicable revised index.

(v) An index should be structured to encompass a large sample of relevant items yet bear a logical relationship to the type of contract costs being measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to the contract performance, yet must be significantly broad so as to assure the minimal effect of any single company, including the anticipated contractors.

(vi) Construction of an index is largely dependent upon two general series published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). These are the Industrial Commodities portion of the Producer Price Index and the Wage and Income Series by Standard Industrial Classification for labor. Since there are no BLS published series currently available that relate directly to total prices of delivered items of aeronautical electronics, space property, etc., such composite indices from major portions of the two series described above should be made.

(vii) Normally not more than two indices should be used, i.e., one for labor (direct and indirect) and one for material (direct and indirect).

(viii) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made as a reference point for application of an index.

(ix) The clause should provide for adjustment from the beginning of the contract or from such period of time that the rate of expenditure is commensurate with the administrative cost and effort to adjust, but it should not provide for adjustment beyond the original contract performance period.

(x) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor usage as it relates to total contract price) in lieu of actual cost incurred. In the event the clause is to be used in a competitive procurement, the labor and material allocations, with regard to both mix of labor and material and rate of expenditure by percentage, shall be determined by the contracting officer in a manner which will, as nearly as possible, approximate the average expenditure profile of all companies to be solicited in order that all companies may compete on an equal basis. If the clause is to be used in a non-competitive procurement, the labor and material allocations as determined by the contracting officer may be subject to negotiation and agreement.

(xi) The clause should state that percentage of the contract price subject to price adjustment. Normally, adjustments would not be applied to the profit portion of the contract. Additionally, the labor and material portions of the contract must be examined to exclude any areas that do not require adjustment. It may not be necessary, for example, to include all subcontracting as being subject to escalation because some of the subcontracting could be for shorter periods of time during the early life of the contract and, would be covered therefor, by firm priced subcontracting. It may be possible to exclude certain areas of overhead from escalation protection; for example, depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges are illustrated as some of the areas that should be examined in detail. In the same manner, consideration should be given to the necessity to include economic fluctuation protection covering that portion of labor for the period of time for which a definitive union agreement exists without additional factoring for such things as cost of living increases. Care should be taken to allocate to labor and material only those costs likely to be affected by fluctuation in the economy. That portion of the contract which is determined to be proper for economic fluctuation protection shall then be allocated to specific periods of time (*e.g.*—quarterly, semiannually, etc.) based on the most probable expenditure or commitment basis (expenditure profile).

(xii) The clause should provide for definite times or events positive for price adjustments. Adjustments should be of such a frequency so as to afford the contractor appropriate economic relief without at the same time creating a burdensome administrative effort. The adjustment period should normally range from a minimum of quarterly to a maximum of annually.

(xiii) When the contract contains cost incentives, any sums paid to the contractor on account of economic price adjustment provision shall be subtracted from the total of the contractor's allowable cost for the purpose of establishing the total costs to which the cost incentive provisions apply. If the incentive arrangement is cited in percentage ranges rather than dollar ranges, above and below target costs, the economic price adjustment clause should be structured to maintain the original contract incentive range in dollars.

(xiv) The economic price adjustment clause should provide that once the labor and material allocations have been established, they remain fixed through the life of the contract and are not modified except in the event of partial termination of the contract. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provision for economic price adjustment.

(f) Consistent with the factors set forth in (e)(3) above, the contracting officer may also determine it appropriate to provide for certain economic price adjustment arrangements between the prime contractor and subcontractors to properly allocate risks. In such circumstances, provision for incorporation of price adjustment clauses in specified subcontracts should be included in the price adjustment provision of the prime contract.

(g) When economic price adjustment provisions are included in contracts that do not require submission of cost or pricing data as provided for in FAR 15.804–2 it will be the responsibility of the contracting officer to obtain adequate information to establish the base line from which adjustments will be made. In addition, the contracting officer may require verification of the data submitted to the extent considered necessary to permit reliance upon it as a reasonable base line.

(h) The contracting officer shall insert the provision at 1852.216–7003, Evaluation of Bids Subject to Economic Price Adjustment, in all solicitations and contracts that contain an economic price adjustment clause.

Subpart 1816.3—Cost-Reimbursement Contracts

1816.301 General.

1816.301-3 Limitations.

The determination and findings required by FAR 16.301–3(c) may be signed by the contracting officer for individual purchases and contracts.

1816.303 Cost sharing contracts.

NASA's Appropriation Acts for several years have included provisions

requiring cost sharing by the contractor under research contracts resulting from unsolicited proposals. In accordance with the foregoing, the following basic guidelines will be implemented in the negotiation of all research contracts and in supplements to such contracts which required additional funding.

(a) *When cost sharing is applicable.* (1) Except as provided in paragraphs (b)(1) and (2) below, cost sharing by non-Federal organizations is mandatory in any contract for basic or applied research which results from an unsolicited proposal.

(2) Cost sharing by non-Federal organizations which is not mandatory under paragraph (a)(1) above may nevertheless be accepted when voluntarily offered by a performing organization.

(b) *When cost sharing is not applicable.* (1) Cost sharing is not applicable to contracts for basic or applied research resulting from an unsolicited proposal when the offeror certifies in writing to the contracting officer that it has no commercial, production, educational, or service activities on which to use the results of the research and that it has no means of recovering any cost sharing on such projects. In these situations, where there is no measurable gain to the performing organization, there is, therefore, no mutuality of interest and it would not be equitable for the Government to require cost sharing.

(2)(i) The activities of educational institutions under NASA research grants, cooperative agreements, and contracts are of benefit only to NASA and thus would not normally justify cost sharing, *i.e.*, NASA's policy of normally reimbursing universities fully for research performed on its behalf would apply. However, in order to establish on a case-by-case basis that there is no clear indication of significant future benefit or measurable gain and that cost sharing does not apply, the contracting officer shall document the file with a determination that is substantively the same as required in paragraph (b)(1) above. The determination shall identify the information on which it is based. If the determination cannot reasonably be made from the available material, the contracting officer will request the offeror to certify as in paragraph (b)(1), above. Blanket procedures for obtaining certifications from offerors for all cases on a routine basis shall not be established.

(ii) Cost sharing by educational institutions may nevertheless be accepted when voluntarily offered provided the institution is aware of NASA's policy that amount of cost sharing is not a factor in the determination to support a given proposal.

(c) *Amount of cost sharing*—(1) *Educational institutions and affiliated not for profit institutions.*

(i) Cost sharing for such institutions normally may vary from one percent to as much as five percent of the costs of the project. Normally, it should be presumed that the cost sharing is appropriate if it falls within the one to five percent range.

(ii) NASA does not request inclusion of cost sharing information in proposals from educational institutions. If it is determined that cost sharing is applicable, a cost sharing offer will be requested during negotiations.

(2) *Other performing organizations.* (i) Cost sharing for other organizations may vary from less than one percent to fifty percent or more of the costs of the research. Mutuality of interest in the results of the work being performed should be of primary significance in assessing the appropriateness of any particular level of cost sharing within the foregoing ranges.

(ii) Factors which may be considered in determining mutuality of interest include:

(A) The potential of the contractor to recover its contribution from non-Federal sources;

(B) The extent to which a particular area of research requires special stimulus in the national interest; and

(C) The extent to which the research effort or result is likely to enhance the contractor's capability, expertise or competitive position.

(d) *Implementation.* The following policies and procedures implement the basic guidelines above.

(1) *Payment of fee or profit.* Normally, no fee or profit will be paid to a contractor, and only an agreed portion of allowable costs will be reimbursed. However, when required to reach agreement, fee- or profit-bearing contracts may be awarded, provided that the total contract value, *i.e.*, the amount of allowable costs plus the fee required, must not exceed the total amount that would have been recognized as the contractor's share under a straight cost-sharing arrangement.

(2) *Method of cost sharing.* Cost sharing shall be accomplished by a contribution of part or all of one or more elements of allowable cost of the work being performed and normally shall be expressed as a stated minimum percentage of the total allowable costs of the project. Costs so contributed may not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(3) *Documentation.* Grant, cooperative agreement, and contract files shall contain appropriate documentation setting forth the reasons for cost sharing and supporting the amount of cost sharing agreed upon. For educational institutions, the reasons for cost sharing which exceeds five percent or the amount originally offered will be documented.

(4) *Contract clause.* The clause at 1852.216-7004 shall be inserted in each contract in which costs are shared by the contractor pursuant to 1816.303.

1816.370 Forms.

Contractors shall use the NASA Form 779, Assignee's Release, at 1853.216-70(d) and NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts, at 1853.216-70(d) to fulfill the assignment and release requirements of the clauses prescribed at FAR 16.307 (a) and (g).

Subpart 1816.4—Incentive Contracts

1816.405 Contract clauses.

As authorized at FAR 16.405(e) the contracting officer shall insert the clause at 1852.216-7004, Award Fee, in solicitations and contracts when a cost-plus-award-fee contract is contemplated.

Subpart 1816.5—Indefinite-Delivery Contracts

1816.506 Ordering.

Orders may be placed by written telecommunication if the contracting office retains all contract administration functions.

Subpart 1816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1816.603 Letter contracts.

1816.603-70 Information to include in a letter contract.

Although there is no set format for a letter contract, certain items must be addressed either in the letter portion of the letter contract or in an attachment to it. The following listing of items, not intended to be all-inclusive, applies to letter contracts:

(a) Signature of the contracting officer.

(b) Provision for written acceptance by the contractor.

(c) Statement of work.

(d) Provision for delivery or performance schedule and place of inspection and acceptance.

(e) Maximum dollar amount of Government liability and a statement

that expenditure or obligation in excess of that amount shall be at the contractor's own risk.

(f) Target date for negotiation and execution of a definitive contract and a statement of the type of contract contemplated.

(g) Statement that no profit or fee shall be paid under the letter contract except as provided in the Termination clause (see 1815.971).

1816.603-71 Information to be furnished when requesting authority to issue a letter contract.

(a) Requests for authority to issue letter contracts shall be signed by the Procurement Officer and submitted to the Assistant Administrator for Procurement (Code HS-1), and shall include the following:

(1) Name and address of proposed contractor.

(2) Location where contract is to be performed.

(3) Contract number, including modification number if applicable.

(4) Brief description of the work or services to be performed.

(5) Peformance period, or delivery schedule.

(6) Amount of letter contract.

(7) Performance period of letter contract.

(8) Estimated total amount of definitive contract.

(9) Type of definitive contract to be executed (fixed-price, cost-plus-award-fee, etc.).

(10) Statement that the definitive contract will contain all required clauses or that deviations therefrom have been approved.

(11) Statement as to the necessity and advantage to the Government of the use of the proposed letter contract.

(12) If a modification, date of letter contract approval and of execution.

(b) Promptly upon receipt of a request to issue a letter contract, the Assistant Administrator for Procurement will obtain the concurrence or comments of cognizant Officials-in-Charge of Headquarters Offices. Upon their receipt the Assistant Administrator for Procurement will advise the Procurement Officer of the disposition of the request.

Subpart 1816.7—Agreements

1816.702 Basic agreements.

1816.702-70 Content and form.

Basic agreements shall contain a set of "General Provisions." These general provisions shall include three groups of clauses. The first group, identified as "Section A," shall include all of the clauses made mandatory by Statute, Executive Order, the FAR and NASA FAR Supplement for use in negotiated research and development contracts. The second group, identified as "Section B", shall add clauses and/or modifications to the "Section A" clauses made mandatory by Statute, Executive Order, the FAR and NASA FAR Supplement for use in negotiated supply contracts. The third group, identified as "Section C", shall consist of clauses which may be made a part of each formal contractual document, depending upon their applicability to the particular procurement. The format set forth below may be adapted to fit specific circumstances:

Basic Agreement Between the United States of America and * * *

1. This Agreement is entered into as of the * * * day of * * * 19 * * * between the United States of America, hereinafter called the "Government", represented by the Contracting Officer and * * *, a corporation organized and existing under the laws of the State of * * *, hereinafter called "Contractor."

2. The clauses and provisions of Sections A, B, and C hereinafter set forth have been agreed upon by: the parties hereto for use in negotiated * * * type contracts between the parties, entered into on or after the date of this Agreement, and prior to its termination.

3. The clauses set forth in Section A shall apply to cost-reimbursement research and development contracts whereas cost-reimbursement supply contracts shall include the clauses in Section A modified by the clauses in Section B. These clauses are mandatory and shall, by reference or attachment, be incorporated in every such contract which makes reference to this Agreement. The clauses set forth in Section C are to be incorporated in individual contracts only when applicable and agreed to by the parties.

4. This Agreement, including Sections A, B, and C hereof, may be amended only by mutual agreement of the parties, and the Agreement may be terminated in its entirety by either party upon thirty (30) days written notice to the other party, except that this Agreement may be terminated by the Government at any time if the parties fail to agree upon any deletion, amendment, or addition to this Agreement which is required by statute, Executive Order, the FAR, or NASA FAR Supplement. No deletion, modification, addition to, or termination of this Agreement shall affect any contracts theretofore entered into between the parties in which this Agreement or a portion thereof has been incorporated except that letter contracts citing this Agreement shall, when formalized, contain the latest modification hereto and any required NASA implementations of Executive Orders, Federal Statutes, the FAR or NASA FAR Supplement.

5. This agreement shall continue in effect until terminated in accordance with paragraph four (4) above or until superseded by another Agreement. This Agreement should shall be reviewed, as a minimum, annually before the anniversary of its effective date, and revised to conform with all requirements of Federal Statutes, Executive Orders, the FAR, and NASA FAR Supplement. Such revision shall be evidenced by an Agreement modifying this Agreement or by the issuance of a superseding Basic Agreement.

6. This Agreement shall not be referred to by the Contractor in bids submitted in response to invitations for bids nor become a part of any contract placed through the process of formal advertising.

In Witness Whereof, the parties hereto have executed this Agreement as of the day and year first above written:

(Name of Company) _____

By _____

(Signature of Authorized Individual)

Typed or Printed Name _____

Title _____

United States of America

By _____

(Signature of Contracting Officer)

Typed or Printed Name _____

1816.702-71 Responsibilities and procedures.

(a) The Assistant Administrator for Procurement, NASA Headquarters, is responsible for negotiation of all basic agreements and amendments thereto. Contracting offices may not enter into basic agreements nor alter existing basic agreements without the prior written authorization of the Assistant Administrator for Procurement.

(b) Where a contracting office is authorized to enter into a basic agreement with a particular contractor, an introductory paragraph to the basic agreement shall include the clause at FAR 52.204-1, Approval of the Contract, with the word "contract" deleted from the title and text of the clause and the words "basic agreement" inserted in lieu thereof.

(c) Prior to the negotiation for renewal of a Basic Agreement or of a special clause requested by a contractor, each field installation, contracting office, and concerned Headquarters offices will be informed and will be asked to comment on any special items to be discussed.

(d) Basic agreements submitted to the Assistant Administrator for Procurement for approval, shall include the following information:

(1) A memorandum of negotiation describing each deviation from the FAR and NASA FAR Supplement as it appears in the basic agreement together with supporting data required;

(2) A listing of all non-standard clauses used, the genesis of such clauses, and the reasons for use in the basic agreement;

(3) A résumé of all salient features of the agreement which will facilitate the review and approval consideration; and

(4) Documentation of the coordination effected between the negotiator and the procurement offices of other NASA field installations.

1816.703 Basic ordering agreements.

(a) Orders under a basic ordering agreement may be issued on Optional Forms 347, 348, or an Installation prescribed form.

PART 1817—SPECIAL CONTRACTING METHODS

Subpart 1817.1—Multiyear Contracting

Sec.
1817.102 Policy.

Subpart 1817.2—Options

1817.207 Exercise of options.

Subpart 1817.4—Leader Company Contracting

1817.401 General.

Subpart 1817.5—Interagency Acquisitions Under the Economy Act

1817.504 Ordering procedures.

Subpart 1817.70—Procurement with Military Departments

1817.7000 Scope of subpart.
1817.7001 Authorization and policy.
1817.7002 NASA-Defense Purchase Request and acceptance.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1817.1—Multiyear Contracting

1817.102 Policy.

(a) *General.* Due to the nature of NASA's appropriations and agency mission, multiyear contracting is a technique that is generally not appropriate for use by this agency. Therefore, contracting officers shall not issue a multiyear solicitation without first obtaining written approval from the Assistant Administrator for Procurement, NASA Headquarters, Code HS–1.

(b) *Limitation.* Under 10 U.S.C. 2306(g), multiyear contracting is permitted for periods of not more than five years for certain types of services to be performed outside the 48 contiguous States and the District of Columbia. In such cases, a written determination and findings is required by 10 U.S.C. 2306(g) and 2311 at the approval levels listed below (this is in addition to the approval required under 1817.102(a) above):

(1) Contracts in excess of three years—Administrator or Deputy Administrator.

(2) Individual contracts that do not exceed three years—contracting officer.

Subpart 1817.2—Options

1817.207 Exercise of options.

Reporting of options exercised under FAR Subpart 17.2 shall be in accordance with the instructions for NASA Form 507, Individual Procurement Action Report (see 1853.204–70).

Subpart 1817.4—Leader Company Contracting

1817.401 General.

It is NASA policy not to use the leader company contracting technique.

Subpart 1817.5—Interagency Acquisitions Under the Economy Act

1817.504 Ordering procedures.

(a) It is the policy of NASA not to place Government agencies in direct competition with commercial sources. Prior to soliciting bids or proposals from commercial sources, it shall be determined by the Field Installation Director or designee (see NMI 5101.24, Delegation of Authority to Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters) whether to obtain supplies or services from other Government agencies. Solicitations shall not be sent to Government agencies. Current market prices, recent procurement prices, or prices obtained by informational bids as provided in FAR 15.405 may be used to ascertain whether procurement can be effected more economically from commercial sources.

(b) An order for services shall not be placed with an agency when such services can be performed as conveniently or more economically by private contractors.

(c) Delivery orders shall be placed on Optional Form 347, 348, or an Installation prescribed form. However, when the decision is made to procure energy services under DoD area-wide utility contracts, the method of ordering prescribed in the appropriate DoD area-wide contract will be used. The form may be modified to satisfy fiscal and administrative requirements of NASA, and to contain such additional contract provisions as may be contemplated or permitted by the DoD area-wide contract, except that it shall not be modified for use as a public voucher in lieu of Standard Form 1034.

Subpart 1817.70—Procurement With Military Departments

1817.7000 Scope of subpart.

This subpart contains policies and procedures, developed jointly by NASA and DOD, with reference to procurement of supplies or services by NASA from or through the Military Departments.

1817.7001 Authorization and policy.

(a) NASA is authorized by the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) to use the procurement services, personnel, equipment, and facilities of the Military Departments with their consent, with or without reimbursement, and on a similar basis to cooperate with the Military Departments in the use of procurement services, equipment, and facilities.

(b) The Military Departments have agreed to cooperate fully with NASA in making their procurement services, equipment, personnel, and facilities available on the basis of mutual agreement.

(c) The Military Departments have agreed not to claim reimbursement for administrative costs incident to procurements for NASA, except as may be otherwise agreed prior to the time the services are performed.

(d) When procuring supplies or services for NASA or performing field service functions in support of NASA contracts, the Military Departments concerned have agreed to use its own methods, except when otherwise required by the terms of the agreement involved.

(e) The Military Departments normally will use their own funds when procuring supplies or services for NASA, or performing services, and will not cite NASA funds on any Defense obligation or payment document.

1817.7002 NASA-Defense Purchase Request and acceptance.

(a) The NASA-Defense Purchase Request (NASA Form 523) shall be used by NASA contracting offices for requesting procurement of supplies or services from all activities of the Military Departments. Individual NASA-Defense Purchase Requests shall be prepared in accordance with the instructions on the reverse of NASA Form 523 and shall be numbered in accordance with Subpart 1804.71. The form shall not be used for requesting:

(1) Block transfers of excess property between NASA and the Military Departments;

(2) Performance by the Military Departments of field service functions related to NASA contracts; or

(3) Items which the Military Departments normally purchase and stock for military use or in-house services, except when a DOD activity is willing to accept the form for these purposes. Supplies and services of this nature may be requisitioned using

appropriate DOD forms when they are provided by and are acceptable to or preferred by the Military Department supplying activity or as otherwise mutually agreed upon by the parties.

(b) To obtain materials from the Air Force Missile Procurement Fund, the procedures of 1808.072 will be followed.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1819.1—Terms and Size Standards

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1819.101 Explanation of terms.

Subpart 1819.2—Policies

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1819.202 Specific policy.
1819.202–5 Data collection and reporting requirements.

Subpart 1819.3—Determination of Status as a Small Business Concern

1819.302 Protesting a small business representation.

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Subpart 1819.6—Certificates of Competency and Determinations of Eligibility

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Subpart 1819.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

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Subpart 1819.8—Contracting With the Small Business Administration (the 8(a) Program)

1819.801 General.
1819.803 Selecting acquisitions for the 8(a) program.
1819.804 Agency evaluation of the Small Business Administration's request for a commitment.
1819.808 Preaward considerations.
1819.809 Preparing the contracts.
1819.809–1 General.
1819.810 Contract administration.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1819.1—Terms and Size Standards

1819.101 Explanation of terms.

"Director of Small and Disadvantaged Business Utilization" means that NASA officer who—

(a) Is appointed by the NASA Administrator;

(b) Is responsible only to and reports directly to the NASA Administrator or deputy;

(c) Is responsible for the implementation and execution of the functions and duties under sections 8 and 15 of the Small Business Act which relate to NASA;

(d) Has supervisory authority over NASA personnel to the extent that the functions and duties of such personnel relate to functions and duties under sections 8 and 15 of the Small Business Act;

(e) Assigns a small business technical adviser to each office to which the SBA has assigned a procurement center representative; and

(f) Cooperates, and consults on a regular basis with the Administration regarding performance of the functions and duties described in paragraph (c) above.

"Small business specialist" is that person who (a) is appointed by the Head of each NASA installation having procurement responsibilities and (b) is the central point of contact for all small business and labor surplus area matters. See 1819.201 (b) and (c) for a detailed description of this position. This person is synonymous with the Small and Disadvantaged Business Utilization Specialist (see FAR 19.201(d)).

"Small business technical adviser" means that NASA officer at each NASA center to which SBA has assigned a procurement center representative—

(a) Who is a full-time employee of the contracting activity and is well qualified, technically trained, and familiar with the supplies or services acquired by the activity, and

(b) Whose principal duty is to assist the SBA procurement center representative in performing those duties and functions relating to sections 8 and 15 of the Small Business Act.

Subpart 1819.2—Policies

1819.201 General policy.

(a) *NASA headquarters.* The Assistant Administrator for Procurement is responsible for the general supervision and coordination of the NASA Small Business Program. The Director of the Office of Small and Disadvantaged Business Utilization is responsible for developing the NASA Small Business Program, advising the Assistant Administrator for Procurement and other NASA officials on small business matters, and representing NASA before other Government agencies and industry on matters related to the small business program.

(b) *Installations.* The Head of each installation having procurement responsibilities shall designate a qualified individual in the contracting office as a "small business specialist" to provide a central point of contact to which small business concerns may direct inquiries concerning participation in the NASA procurement program and small business matters. The small business specialist shall also perform such other functions as specifically directed to perform by this subpart for which the Procurement Officer may prescribe for the purpose of implementing the small business program, including the assignment of responsibility for the Labor Surplus Area Program described in FAR Part 20. When the Head of an installation considers that the volume of procurement or the functions relating to procurement at the installation does not warrant a full-time small business specialist, these duties may be assigned to procurement personnel on a part-time basis.

(c) *Small Business Specialists.* The small business specialist appointed under paragraph (b) above shall perform the following duties, as determined appropriate to the installation by the Procurement Officer:

(1) Maintain a program designed to locate capable small business sources for current and future procurements, through SBA or other methods.

(2) Coordinate inquiries and requests for advice from small business concerns on procurement matters.

(3) Prior to issuance of solicitations or contract modifications for additional supplies or services, determine that small business concerns will receive adequate consideration including initiation of set-asides (see FAR Subpart 19.5). This determination may be made jointly with the contracting officer or may be in the form of a recommendation to the contracting officer. Disagreements

between the small business specialist and the contracting officer on proposed set-aside actions shall be resolved by the Procurement Officer whose decision shall be final except in those cases where an SBA representative intervenes as an interested party. (See FAR 19.505 as to resolution of disagreements with SBA recommendations on set-asides.)

(4) If small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, unless there are sufficient and valid reasons to the contrary, initiate action, in writing, with appropriate technical and contracting personnel to ensure that necessary specifications or drawings for the current or future procurements, as appropriate, are available.

(5) Review procurement programs for possible breakout of items suitable for procurement from small business concerns.

(6) Advise small business concerns regarding the financial assistance available under existing laws and regulations, assist such concerns in applying for financial assistance, and also assure that requests by small business concerns for financial assistance are not treated as a handicap in securing the award of contracts.

(7) Participate in determinations concerning responsibility of a prospective contractor (see FAR 9.103), whenever small business concerns are involved.

(8) Participate in the evaluation of a prime contractor's small business subcontracting program (see FAR 19.705–4).

(9) Review and make appropriate recommendations to the contracting officer on any proposal to furnish Government-owned facilities to a contractor if such action may hurt the small business program.

(10) Assure that participation of small business concerns is accurately reported.

(11) Notify the Procurement Officer of possible contracting opportunities in or near sections of concentrated unemployment or underemployment and of areas of persistent or substantial labor surplus.

(12) Make available to SBA copies of solicitations when so requested.

(13) Act as liaison between the contracting officer and SBA field offices and representatives in connection with set-asides, certificates of competency and any other matters in which the small business program may be involved. Procurements in which certificates of competency are requested shall be reported to the Assistant Administrator for Procurement, NASA Headquarters. The report should contain a description of the requirement, a list of the offerors, and the contract prices specified in the offers as submitted and the reason for the proposed rejection of an otherwise acceptable small business offer. Pertinent dates such as the required date for the completion of the procurement, the date of the request for the certificate of competency, etc., should also be furnished.

(14) In cooperation with the contracting officer and technical personnel, seek and develop information on the technical competence of small business concerns for research and development contracts. Regularly bring to the attention of the contracting officers and technical personnel descriptive data, brochures, and other information as to small business concerns that are apparently competent to perform research and development work in fields in which NASA is interested.

(15) When a small business firm's offer has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel, and assist that small business firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards.

1819.202 Specific policies.

1819.202–5 Data collection and reporting requirements.

Records of the total value of contracts and subcontracts placed with small business concerns during each fiscal year shall be maintained and reported through the NASA procurement reporting system prescribed in Subpart 1804.6.

Subpart 1819.3—Determination of Status as a Small Business Concern

1819.302 Protesting a small business representation.

When the contracting officer determines in writing that award must be made without delay to protect the public interest, award will not be made prior to (a) 5 working days after the bid opening date for procurements placed through small business restricted advertising or (b) the deadline date for submitting a protest set forth in the notification to the apparently unsuccessful offeror(s) for small business set-aside procurements placed through conventional negotiation. (See FAR 19.302(h)(1).)

Subpart 1819.4—Cooperation with the Small Business Administration

1819.401 General.

All NASA contracting offices are responsible for consulting and cooperating with the SBA in carrying out the purposes of the Small Business Act.

1819.402 Small Business Administration procurement center representatives.

(a) The contracting office shall include in the appropriate solicitation list or in any group of firms to be solicited in specific procurements, the names of firms submitted by SBA, unless there is a valid reason for not so doing.

(b) If the contracting officer determines not to solicit a firm recommended by SBA in a particular procurement, and as a result no small business firm will be solicited, SBA may appeal such determination to the Procurement Officer.

1819.470 Access to procurement information.

Upon request, and subject to applicable security regulations, the small business specialist shall provide SBA representatives access to available or reasonably obtainable information, including technical data (including drawings and specifications), procurement history, and solicitation lists, and to procurement planning information. The SBA representative will be furnished such other available or reasonably obtainable information as may be required for the SBA referral program.

Subpart 1819.5—Set-Asides for Small Business

1819.501 General.

(a) The contracting officer is responsible for either setting aside a requirement or documenting why a set-aside is inappropriate. The small business specialist is responsible for reviewing those procurements not set aside and for taking action in accordance with 1819.506.

1819.502 Setting aside acquisition.

1819.502–3 Partial set-asides.

(a)(1) Offers obtained under the clause at FAR 52.219–7 Notice of Partial Small Business Set-Aside from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (i) agreement as to the established set-aside price for the available set-aside quantity, (ii) agreement as to the required delivery, (iii) agreement that all other terms and conditions of the solicitation will apply

to the set-aside award, and (iv) agreement to inclusion of the clause at FAR 52.215–1, "Examination of Records by the Comptroller General" in 7.104–5 and the clause at FAR 52.215–2, "Audit Negotiation."

(2) When the award of the no-set-aside portion has been made to a small business concern and the same concern is entitled to receive the set-aside portion of the solicitation, the set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (i) include a reference to the contractor's letter offering on the set-aside quantity, (ii) state the price and delivery schedule applicable to the set-aside quantity, and (iii) include the clauses prescribed at FAR 15.106–1 and 15.106–2. Copies of all pertinent documents, including the signed offer, shall be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor since his signature on the attached offer will be deemed sufficient.

(3) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (a)(1) and (2) above. Also, the award shall reference in Block 26 of Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

(b) For purposes of Subpart 1804.6 the non-set-aside portions shall be reported separately.

1819.503 Setting aside a class of acquisitions.

(a) The contracting officer shall retain copies of each class set-aside determination.

1819.505 Rejecting set-aside recommendations.

(a) NASA small business specialist may make a set-aside recommendation with respect to any individual or class set-aside except those on which an SBA representative has made a recommendation.

(b) If an SBA representative makes a recommendation, see FAR 19.505 for the procedure to be followed.

(c) If the small business specialist recommends that an individual procurement or class of procurements, or portion thereof, be set-aside the contracting officer shall promptly either:

(1) Concur in the recommendation, or

(2) Disapprove, stating in writing his reasons for disapproval.

(d) If the contracting officer disapproves the recommendation of the small business specialist, the case shall be promptly referred to the SBA representative (if one is assigned and available) for review. No further appeal action will be taken by the small business specialist. If an SBA representative is not assigned or available, resolution of disagreements on set-asides between the small business specialist and the contracting officer shall be accomplished under (f) below.

(e) All cases involving the noninitiation of a set-aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for his review. The SBA representative will either concur with the decision of the contracting officer or appeal the case under FAR 19.505.

(f) In those cases where an SBA representative is not assigned or available, and the contracting officer disagrees with the recommendation of the small business specialist regarding a small business set-aside for an individual procurement or class of procurements or a portion thereof and so notifies the small business specialist in writing, or if the small business specialist disagrees with the contracting officer regarding a withdrawal or modification of a set-aside determination, the small business specialist may appeal in writing to the Procurement Officer (see 1819.201(b)) for decision. A memorandum of the decision by the Procurement Officer shall be placed in the contract file. After receipt of a decision from the Procurement Officer, which shall be final, and if the decision approves the action of the contracting officer, the small business specialist shall forward for information and management purposes complete documentation of the case to the Director of Small and Disadvantaged Business Utilization, NASA Headquarters, Code K.

(g) A signed memorandum of nonconcurrence in a recommended set-aside action or of any withdrawal or modification shall be made and retained in the contract file.

Subpart 1819.6—Certificates of Competency and Determinations of Eligibility

1819.601 General.

(a) In any procurement where the highest competence obtainable or the best scientific approach is needed, as in certain negotiated procurements of research and development, highly complex equipment, or professional services, the certificate of competency procedure is not applicable to the selection of the source offering the highest competence obtainable or best scientific approach. However, if a small business concern has been selected on the basis of the highest competence obtainable or best scientific approach and, prior to award, the contracting officer determines that the concern is not responsible, the certificate of competency procedure is applicable.

(b) A pre-award survey (see FAR 9.106) shall be made prior to a determination by a contracting officer that a small business concern is not responsible on a proposed award exceeding the small purchase limitation.

1819.602 Procedures.

1819.602–1 Referral.

A copy of the communication referring the matter to SBA shall be forwarded to the Assistant Administrator for Procurement, NASA Headquarters.

1819.602–3 Resolving differences between the Agency and the Small Business Administration.

(a) When there is a disagreement between the contracting officer and the SBA as in FAR 19.602–3(a), the contracting officer shall also forward through channels on an expedited basis a complete case file to the Assistant Administrator for Procurement with a request that the case be considered for appeal to SBA Headquarters. This file will include the data already furnished to SBA, SBA's rationale for proposing affirmative certificate of competency action, and the contracting officer's comments thereon. Procurement action shall be suspended until the contracting officer is informed by the Assistant Administrator for Procurement of the final decision in the case.

(b) If the Assistant Administrator for Procurement concludes that the request for certificate of competency action should be withdrawn and a contract awarded without benefit of a certificate of competency, the contracting officer will be so informed and provided written instructions on how to proceed with the procurement.

(c) If the Assistant Administrator for Procurement agrees with the recommended appeal action of the contracting officer, SBA Central Office will be requested to review the proposed affirmative certificate of competency action of the SBA Regional office.

1819.602-70 Reports on certificates of competency.

The NASA Director of Small and Disadvantaged Business Utilization shall be informed by the contracting activity small business specialist, in writing, on a quarterly basis, of all certificate of competency cases initiated during a particular quarter and of the final disposition made on cases during the quarter, including the number and dollar value of certificates of competency issued during the period. The information shall include company name, item being procured, solicitation number, dollar value of the procurement, and the date the case was submitted to SBA. In addition, advice and data will be furnished for all cases where (a) the small business concern elects not to file an application for a certificate of competency, (b) SBA declines to issue a certificate of competency, or (c) the contracting activity reverses the pre-award survey activity's negative finding concerning responsibility, withdraws the request for the certificate of competency, and makes the award. This reporting requirement shall be included in the Summary of Significant Matters related to the Small Business Program Reports Control No. 10000000029.

Subpart 1819.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1819.705 Responsibilities of the contracting officer under the subcontracting assistance program.

1819.705-1 General support of the program.

The FAR permits the contracting officer to use an incentive clause with monetary rewards for increasing subcontract opportunities for small and small disadvantaged business concerns. It is a NASA policy that no clause of this nature be used in connection with the subcontracting program set forth in FAR Subpart 19.7.

1819.707 The Small Business Administration's role in carrying out the program.

Under the provisions of FAR 19.707(a)(2) and (3), 5 days are allotted for SBA review of solicitations and contracts subject to the subcontracting program. In the absence of an SBA request for the documents, the contracting officer may elect not to seek review.

Subpart 1819.8—Contracting With the Small Business Administration (the 8(a) Program)

1819.801 General.

In contracts for supplies, services, and research and development, it is the stated policy of the SBA to contract with only those small firms which have submitted a written business plan specifically outlining a reasonable approach to the attainment of the policy objectives of this program. This business plan, if approved by the SBA, will be the basis for NASA's consideration of participation in a section 8(a) program for the firm. In the execution of this policy, the SBA will furnish to the Assistant Administrator for Procurement, NASA Headquarters or to the Procurement Officer of a particular NASA installation, when the requested procurement is of a local nature, its request for a commitment to support the approved plan. SBA requests addressed to NASA Headquarters will be coordinated with appropriate installations.

1819.803 Selecting acquisitions for the 8(a) program.

(a) The SBA, under FAR 19.803, makes two separate requests to NASA regarding an 8(a) firm's participation (see FAR 19.803 (b) and (c)). The first request is based on the firm's 8(a) business plan (see 1819.801) and seeks NASA's general commitment to support the firm's plan, that is, to contract with that firm. If NASA commits itself to support the plan, the SBA then makes specific requests to NASA to make 8(a) awards for individual contracts.

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

(c) It will be the responsibility of the SBA to provide the NASA contracting officer written certification, as to SBA's competency to perform the contract. Such certification may be in the form of a statement in the SBA contract with the NASA contracting office, substantially as follows:

> SBA certifies that it is competent to perform the requirement as stated in this contract.

1819.804 Agency evaluation of the Small Business Administration's request for a commitment.

(a) In addition to considering specific requests for commitments to support the business plans submitted by the SBA under FAR 19.803(b), the NASA small business specialist or other responsible individuals shall review and evaluate, on a continuing basis, all procurement requirements to determine their suitability for referral to the SBA for 8(a) consideration. Upon completion of such evaluation, a recommendation concerning award to the SBA will be made to the contracting officer. In the event the contracting officer disagrees with the recommendation, the procedure in FAR 19.505 shall apply.

(b) After the SBA requested commitments have been evaluated or a specific procurement has been designated as suitable for 8(a) contracting, the cognizant contracting officer shall notify the SBA and the Director of Small and Disadvantaged Business Utilization. The notification will include the extent to which a section 8(a) contract may be placed with the SBA and the time frame within which the prime and subcontract actions must be completed to satisfy NASA's requirements. This notification represents a firm commitment by NASA to negotiate with the SBA, provided that there is no material change in requirements, availability of funds, or other pertinent factors. Within ten working days after notification, the SBA will establish contract with the installation and initiate negotiations of the section 8(a) contract. If negotiations with the installation contracting office have not been initiated by the SBA

within the time indicated, the Procurement Officer will notify the Director of Small and Disadvantaged Business Utilization of the intent to proceed with the procurement without further regard to the section 8(a) procedures, unless additional time is requested by the SBA and such additional time can be granted considering the urgency of the requirement.

1819.808 Preaward considerations.

(a) A preaward survey of the SBA's contractor, as required by FAR 9.106, will not generally be requested by the NASA contracting officer. The SBA or the NASA contracting officer may request a cognizant contract administration office to assist in a review of a specific element pertaining to the SBA contractor's responsibility.

(b) Certified cost or pricing data, when required by FAR 15.804–2, or needed to determine an estimated current fair market price, shall be obtained by the contracting officer. The request shall provide for the submission in writing by the SBA's contractor of cost or pricing data with a supporting certificate.

(c) Subsequent to agreement with SBA on satisfactory terms and conditions, including an estimated current fair market price and receipt of the SBA's reimbursable order for any business development expense (if appropriate), the contracting officer shall proceed with the award of a contract to the SBA.

(d) For follow-on year procurements in support of the SBA requested commitment, the SBA will initiate individual requests to NASA for each ensuing proposed section 8(a) contract. This process will permit NASA, prior to actual negotiations of follow-on section 8(a) awards, to verify the availability of requirements, funding, and other pertinent factors. It will be the responsibility of the SBA to provide certification to the cognizant NASA contracting officer for each section 8(a) contract under FAR 19.803(c).

1819.809 Preparing the contracts.

1819.809–1 General.

(a) *Supplies and services (including research and development).* (1) As required by FAR 19.809–1(a), the contracting officer shall prepare a Standard Form 26 for execution with the SBA without incorporating any required clauses (see FAR 52.101(e)) since they are not applicable to the SBA. "10 U.S.C. 2304(a)(17)" shall be cited as the authority for negotiation of this contract. This contract shall include a statement as follows:

It is agreed that the provisions of the Termination for Convenience of the Government, Changes, Disputes, and Default clauses which are included in the contract between the SBA and its Contractor shall be invoked in appropriate cases when requested by the NASA contracting officer. If the SBA does not agree with the NASA contracting officer's request, the case shall be referred to the Assistant Administrator for Procurement, NASA Headquarters, for decision.

Note.—Where a cost-reimbursement type contract is utilized, the following words shall be substituted in the above statement:

Termination (Cost-Reimbursement) in lieu of Termination for Convenience of the Government.

Excusable Delays in lieu of Default.

(2) The execution and distribution of contractual documents by the cognizant NASA contracting office shall comply with FAR Subparts 4.1 and 4.2. The contracting office shall accomplish internal NASA distribution of both the prime contract and the subcontract, and provide the SBA with a duplicate original copy of the executed prime contract and such additional authenticated, conformed or reproduced copies as requested by the SBA. The SBA shall provide the NASA contracting office with two duplicate original copies of the executed subcontract and such additional authenticated, conformed or reproduced copies as requested by the contracting office for internal NASA distribution. For purposes of fund obligation and payment, the NASA contracting office shall ensure that the NASA paying office identified in the contract is provided a signed copy of each contract.

(b) *Construction.* (1) In contracts for construction, it is the stated policy of the SBA to contract with only those small firms which have been approved by the SBA as supporting the policy objectives of FAR 19.801(a). In the execution of this policy, the SBA will furnish to the Assistant Administrator for Procurement or to the Procurement Officer of a particular NASA installation when the requested procurement is of a local nature, its request for a commitment(s) showing at least the following information:

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

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

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

(2) The Director of Small and Disadvantage Business Utilization will coordinate the evaluation of the SBA's request for a commitment(s) with installation contracting offices, to determine whether or to what extent NASA has proposed work projects for which funding is available, in those categories for which the SBA has indicated its contractors have capabilities to perform. In addition, the NASA small business specialist, or other responsible individual, shall review on a continuing basis, all construction procurement requirements to evaluate their suitability for referral to the SBA for 8(a) consideration. Upon completion of such evaluation, recommendation concerning award to the SBA will be made to the contracting officer. In the event the contracting officer disagrees with the recommendation, the procedure in FAR 19.503 shall apply. In these evaluations consideration shall be given to—

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

(ii) Required performance schedule;

(iii) Work project(s) of similar complexity and nature if there are no known work project(s) of the specific type requested;

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

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

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

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

(3)(i) After the SBA requested commitments have been evaluated or a specific NASA construction requirement has been designated as suitable for 8(a) contracting, the cognizant contracting officer shall notify the SBA and the Assistant Administrator for Procurement. The notification shall contain information regarding the work project(s) as follows:

(A) A summary of the scope of the proposed work.

(B) Detailed Government cost estimates.

(C) Plans and specifications.

(D) Required performance schedules.

(E) Any other pertinent and reasonably available data.

(ii) This notification represents a firm commitment by NASA to negotiate with the SBA, provided there is no material change in requirements, availability of funds, or other pertinent factors. Within ten working days after notification, the SBA will establish contact with the installation and initiate negotiations of the section 8(a) contract. If negotiations with the installation contracting office have not been initiated by the SBA within the time indicated, the contracting office will notify the Assistant Administrator for Procurement of the intent to proceed with the procurement without further regard to the section 8(a) procedures, unless additional time is requested by the SBA and such additional time can be granted considering the urgency of the work project.

(4) Provisions of the Miller Act regarding performance and payment bonds do not apply to the prime contract between NASA and the SBA, but do apply to the contract between the SBA and its contractor.

(5) Certified cost or pricing data, when required by FAR 15.804–2 or needed to determine an estimated current fair market price, shall be obtained by the contracting officer. The request shall provide for the submission in writing by the SBA's contractor or appropriate cost or pricing data with a supporting certificate.

(6) It will be the responsibility of the SBA to provide written certification, as to its competency to perform the contract, to the contracting officer. Such certification may be made under FAR 19.803(c).

(7) Subsequent to agreement with SBA on satisfactory terms and conditions, including an estimated current fair market price, and receipt of the SBA's reimbursable order for any business development expense (if appropriate), the contracting officer shall proceed with the award of a contract to the SBA.

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

(i) Prepare appropriate contractual documents for use by the SBA with the SBA's contractor. These documents shall be completed, except for signatures and award information (see 1819.809–1), based on information requested or furnished by the SBA. This contract shall incorporate the required clauses and standard forms as required.

(ii) Prepare Standard Form 1442 or other appropriate forms for execution with the SBA without incorporating any required clauses. The required clauses are not applicable to the SBA. "10 U.S.C. 2304(a)(17)" shall be cited as the authority for negotiations of this contract. This contract shall include a statement as follows:

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

(9) The execution and distribution of procurement documents shall be in accordance with Part 1804 and as set forth herein.

1819.810 Contract administration.

To the extent consistent with NASA capability and resources, SBA contractors furnishing NASA requirements shall be afforded production assistance, including, where appropriate, identification of causes of deficiencies in their products and suggested corrective action to make such products acceptable.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1822.1—Basic Labor Policies

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Authority: 42 U.S.C. 2473(c)(1).

Subpart 1822.1—Basic Labor Policies

1822.101 Labor relations.

1822.101–1 General.

(a) NASA contracting officers, in taking any of the actions prescribed or authorized in FAR Part 22 or Part 1822, will consult with and get advice from the labor relations advisor or other NASA official assigned that function at the installation concerned.

(b) NASA officials will not take any action regarding labor matters involving major policy determinations having a substantial impact on the activities of NASA or other Government agencies without the prior approval of the Director, Office of Industrial Relations (Code NR–31). A full report concerning any labor relations problem, particularly where a labor dispute significantly threatens to affect important NASA procurement, should be furnished to Code NR–31 in accordance with 1822.101–3.

(c) When a strike which may have an adverse effect on NASA programs is imminent or in progress at a prime's or subcontractor's plant, contracting officers shall—

(1) Advise both the prime contractor and the head of the union local in writing of the expected impact of the strike on NASA programs and, where appropriate, of the actions NASA is considering to protect the Government's interest and prevent delay in the accomplishment of NASA's mission. If the strike is in a subcontractor's plant, the subcontractor will only be approached through the prime contractor;

(2) Explore the possibility of locating other sources for the supplies or services to have been provided by the strike-threatened plant;

(3) Consider taking the actions at FAR 22.101-4.

1822.101-3 Reporting labor disputes.

Reports of actual or incipient labor-management disputes affecting NASA procurement, operations, or services shall be submitted as specified by the Director, Office of Industrial Relations. Reports shall be made as early as possible and shall include immediately available information. Supplemental reports shall be made, as appropriate, to provide full information and cover new developments. Reports shall be sent by the most expeditious means required in view of the seriousness of the situation. When an immediate critical effect on NASA procurement is probable, the initial report shall be made by telephone and followed by an electronically transmitted message or a confirming letter. These reports shall describe, but need not be limited to—

(a) The nature of the actual or incipient dispute, including whether a strike, lockout, slow-down, shut-down, or picketing is involved and the degree of emergency presented;

(b) The character, quantity, and importance of the supplies, operations, or services involved, including scheduled performance and delivery dates and the relation of the production involved to the total procurement program;

(c) The identity and location of the parties to the dispute and their representatives, including the approximate number of employees involved;

(d) The need for and availability of alternative facilities to furnish the items involved within the time required;

(e) The critical items, if any, which should be removed from the plant or work site or should be continued to be processed there with the consent of the parties to the dispute; and

(f) Recommended action to be taken by NASA.

1822.101-4 Removal of items from contractors' facilities affected by work stoppages.

When the contracting officer determines that it would be in the best interest of the Government to remove items or to arrange for shipment of urgently required items as provided in FAR 22.101-4(a)(2), the contracting officer shall first request approval from Code NR-31 and then take such action as shall be approved.

1822.101-70 Inspection of material during labor disputes.

Despite the existence of a labor dispute, inspection functions at contract plants or sites shall be performed as normally required during contract performance except where the safety of the inspector may be endangered.

1822.101-71 Admission of labor representatives to contract sites.

NASA activities shall not prevent the access of labor union representatives to contract sites for the conduct of union business if their activities are compatible with performance of the contract work involved and applicable safety and security regulations.

1822.102 Federal and State labor requirements.

1822.102-70 Suspension or relaxation of State labor standards.

(a) NASA shall not initiate applications to State agencies or officials for the suspension or relaxation of State labor standards.

(b) Contracting officers may support applications of contractors or subcontractors when relaxation of State labor standards does not conflict with applicable Federal labor laws and when all of the following circumstances are present:

(1) 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.

(2) There are no alternative sources of supply for such products or services available within the required delivery schedule.

(3) Remedial action (such as recruitment, training, and more effective utilization of manpower) is not practicable.

(4) 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.

(c) NASA letters of support will be addressed to the appropriate State agency and will indicate—

(1) The facilities and services affected; and

(2) The extent of relaxation of the particular State labor standard required to complete the specific work in conformity with the delivery schedule.

1822.103 Overtime.

1822.103-4 Approvals.

(a) The Procurement Officer or designees are authorized to approve overtime premiums at Government expense. Where two or more contracting officers have current contracts at a single facility, and the approval of overtime by one contracting office will affect the performance or cost of contracts of another, the approving official will obtain the concurrence of other appropriate approving officials and seek agreements as to the contracts under which overtime premiums will be approved. If the approving officials do not agree within a reasonable time as to the action to be taken, a decision shall be obtained through normal channels. Ordinarily, in the absence of evidence to the contrary, a contracting office may rely on the contractor's statement that such approval will not affect the performance, or payments in connection with any contract of another contracting office. Designations to approve overtime shall be in writing and shall not be delegated beyond the first level of supervision below the Procurement Officer.

Subpart 1822.6—Walsh-Healey Public Contracts Act

1822.604 Exemptions.

1822.604-2 Regulatory exemptions.

Applications for exceptions from one or more of the Act's stipulations under FAR 22.604-2(c)(1) shall be submitted in writing through the contracting officer with pertinent data and recommendations to the Director, Office of Industrial Relations (Code NR-31).

Subpart 1822.8—Equal Employment Opportunity

1822.804 Affirmative action programs.

1822.804-2 Construction.

In compliance with FAR 2.804-2(b), listing of covered geographical areas in NASA FAR Supplement Directives.

1822.805 Procedures.

1822.805-70 Preaward clearances for contracts between the small purchase limitation and $1,000,000.

In determining the contractor's responsibility for award of a contract in an estimated or actual amount between the small purchase limitation and $1,000,000, if the contracting officer learns or has reason to believe because of information from Government sources or from the offeror (see FA 52.222-21) that the prospective contractor is currently in violation of the Equal Opportunity clause, or has not developed an acceptable affirmative action program at each of his establishments, award shall be made only after ascertaining that the company

is no longer in noncompliance and is, therefore, eligible for award. The contracting officer will request any clearance from OFCCP at least 30 calendar days prior to the proposed contract award date. Award may also be made, notwithstanding the company's failure to have developed an acceptable affirmative action program, if the contracting officer determines that the proposed contract is for less than $50,000 or that the company has fewer than 50 employees and, in either case, has not previously been required to develop an affirmative action program.

1822.807 Exemptions.

To request an exemption under FAR 22.807(a)(1), the contracting officer shall prepare a detailed justification for such determination which shall be submitted to the Administrator.

1822.870 Reports and other required information.

(a) Title 41, Section 60–1.2 of the CFR prescribes the annual filing of required forms by prime contractors and subcontractors.

(b) If the bidder or prospective prime contractor fails to complete the representation at FAR 52.222–22, he/she should state, prior to award of the contract, whether he/she has participated in any previous contract or subcontract subject to the Equal Opportunity clause; and, if so, whether he/she has filed with the Joint Reporting Committee, the Director, OFCCP, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

(c) In any case in which the bidder, prospective prime contractor or proposed subcontractor who participated in a previous contract or subcontract subject to Executive Order 10925, 11114, or 11246 has not filed a report due under the applicable filing requirements, the contract or subcontract shall not be awarded unless such contractor or subcontractor submits a report covering the delinquent period or such other period specified by the Director, OFCCP, and notifies the contracting officer of such submission.

(d) A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information, including copies of affirmative action programs, the Director, OFCCP, requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to or after the award, or both, to furnish such information, including copies of affirmative action programs, as Director, OFCCP, requests.

(e) Failure to file timely, complete, and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the Equal Opportunity clause and is the basis for the imposition by Director, OFCCP, of any sanctions authorized by these regulations or for cancellation or termination of the subcontract by prime contractor or subcontractor. Any such failure shall be reported in writing to the Director, OFCCP, by the contracting officer as soon as practicable after it occurs.

(f) Reports filed and information furnished pursuant to FAR Subpart 22.8 shall be used only in connection with the administration of EO 11246, the Civil Rights Act of 1964, or in furtherance of the purpose of the Executive Order and Act and, to the extent consistent with this purpose, shall be held in confidence as privileged information in accordance with 32 CFR 286.6(b)(4) when requested by the offeror, contractor, or subcontractor.

Subpart 1822.10—Service Contract Act of 1965

1822.1001 Definitions.

"Agency labor advisor," means the Director, Office of Industrial Relations, NASA Headquarters (Code NR–31).

1822.1003 Applicability.

All requests for determinations and exemptions (see FAR 22.1003(e)) shall be submitted in writing through contracting channels to Code NR–31.

1822.1007 Notice of Intention to Make a Service Contract.

(a) Contracting officers shall ensure that completed Standard Form 98/98a, Notification of Intent to Make a Service Contract and Response to Notice (original and 4 copies), reach Code NR–31 at least 40 days before issuing any solicitation, or opening negotiations for the contract extension, or exercising the option.

(b) Requests to expedite wage determinations shall be sent to Code NR–31.

(c) The information requested, below, by item number, shall be furnished, in addition to that required by the SF 98/98a:

(1) *Item 6.* Insert on the far left side of the block the applicable code identifying the type of proposed action:

Code and Proposed Action

I New Contract.
II Recompetition of services.
III Contract modifications affecting the scope of the work (see FAR 22.1007(f)).
IV Extension of contract performance through exercise of an option or otherwise (see FAR 22.107(h)).
V Other (e.g., when a multiyear contract (funding is not subject to annual appropriation) is to be entered into, NASA Headquarters (Code NR–31) shall be notified at the time of submission of the required SF 98/98a (see 1817.1)).

(2) *Item 8.* (i) If the proposed contract will be awarded under Section 8(a) of the Small Business Act, insert both the Small Business Administration and the name of the subcontractor.

(ii) If there is an incumbent contractor, the contractor's wage rate ranges and current actual wage rates being paid to the various classes of non-exempt, unrepresented employees will be included as part of the wage data submitted.

(iii) If there is no incumbent contractor, furnish whatever information that is available on wages and fringe benefits currently being paid in the locality.

(iv) If no wage determination is currently available for the particular contract, insert "None" in Item 8.b.

(3) *Item 10.* In addition to information requested, add the solicitation number, if known.

(4) *Item 12.* (i) When entering into a new service contract, all classes of work expected to be performed under the contract will be listed under this item, regardless of whether the class of employees is considered professional, executive, administrative, or hourly. However, if submission of the SF's 98/98a is in connection with any actions other than Code I in paragraph (c)(1) above, list only the classes of work that the incumbent contractor indicates are "nonexempt."

(ii) When classifications include both those categories of employees covered by a collective bargaining agreement and those not represented by a union, distinguish the difference by marking the classifications that are unionized with an asterisk(s).

(iii) If the classification of work is not known, use the most descriptive job title available for the work to be performed under the contract.

(5) *Item 13.* If the number of employees is not known, the estimated manhours required to perform the tasks should be designated so that manning estimates can be determined and listed.

(6) *Item 14.* This item shall also include the wage rates that would be paid if the employees were subject to 5 U.S.C. 5332 (GS grades).

Subpart 1822.11—Professional Employee Compensation

1822.1103 Policy, procedures, and solicitation provisions.

(a) The instructions in paragraph (a) of the clause at FAR 52.222–46, Evaluation of Compensation for Professional Employees, shall be augmented in Section M of the solicitation with an explanation of how the Government will evaluate the offeror's plan. The Government's assessment of the plan shall be a weighted and scored evaluation criterion under the Mission Suitability Factor—Understanding the Requirement. This criterion shall be accorded sufficient weight and relative order of importance to be effective under the particular circumstances involved. When there is a significant number of professional employees involved, the period of performance is lengthy, and the cost relatively large, or there is continuity of the same or similar services at the same location, the weight and relative importance of the criterion should be in the "most important" category.

(b) The cost realism of professional compensation proposed (see paragraph (c) of the clause at FAR 52.222–46) shall be identified as an evaluation factor in Section M of the solicitation.

Subpart 1822.13—Special Disabled and Vietnam Era Veterans

1822.1306 Complaint procedures.

The Assistant Administrator for Equal Opportunity Programs (Code U) is the NASA official designated to act on complaints received about administration of the Act.

Subpart 1822.70—Nondiscrimination—Government Lease

1822.7001 Policy.

It is NASA policy to include a Facilities Nondiscrimination clause in leases when NASA is the lessee. The policy has been adopted because Federal employees belonging to minority groups and other members of minority groups doing business with the Government in some parts of the country have been denied the use of public facilities located in buildings where the Government leases office space.

1822.7002 Contract clause.

(a) The contracting officer shall include the clause at 1852.222–70, Facilities Nondiscrimination Notice, in all solicitations involving leases and resulting leases.

(b) The contracting officer shall include the clause at 1852.222–71, Facilities Nondiscrimination, in all leases where (1) the total annual rental exceeds $10,000 or (2) the total annual rental under a new lease, combined with the total annual rental under all other NASA leases of space in the same building, exceeds $10,000.

PART 1823—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 1823.1—Pollution Control and Clean Air and Water

Sec.
1823.106 Delaying award.
1823.107 Compliance responsibilities.

Subpart 1823.3—Hazardous Material Indentification and Material Safety Data

1823.302 General.
1823.370 Acquisition of potentially hazardous items from or through another Government agency.

Subpart 1823.70—Safety and Health

1823.7000 Scope of subpart.
1823.7001–2 Policy.
1823.7002 Responsibility.
1823.7003 Hazardous operations.
1822.7004 Contracts clauses.

Subpart 1823.71—Frequency Authorization

1823.7101 NASA contract clauses.
1823.7102 Forms.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1823.1—Pollution Control and Clean Air and Water

1823.106 Delaying award.

All notifications initiated by the contracting officer under FAR 23.106 shall be submitted to the EPA through the Procurement Officer and Assistant Administrator for Procurement, NASA Headquarters (Code HS–1).

1823.107 Compliance responsibilities.

Notifications under FAR 23.107 shall be submitted through the same channels as under 1823.106.

Subpart 1823.3—Hazardous Material Identification and Material Safety Data

1823.302 General.

As authorized under FAR 23.302(c)(3), NASA has designated the following as a "potentially hazardous" item.

Electro-sensitive initiating devices (squibs).

1823.370 Acquisition of potentially hazardous items from or through another Government agency.

When acquiring supplies or services from or through another Government agency (e.g., see FAR Part 8 and FAR Subpart 17.5) NASA shall request the acquiring agency to furnish NASA with the data required by FAR Subpart 23.3 and the clause at FAR 52.223–3.

Subpart 1823.70—Safety and Health

1823.7000 Scope of subpart.

This subpart contains NASA's safety and health policy responsibility, and requirements relating to its contractors.

1823.7001 Policy.

It is NASA policy that contractors and subcontractors shall perform in a safety and health conscious environment which, within the limits of controllable hazards, will—

(a) Protect the life, health, and physical well-being of NASA and contractor employees during their work on NASA programs;

(b) Assure proper protection of the public from hazards incident to operations of NASA contractors and subcontractors;

(c) Avoid accidental work interruptions which could delay NASA programs;

(d) Prevent contamination and damage to or loss of property, supplies and equipment;

(e) Provide data whereby risks and loss factors in space technology related to NASA programs can be accumulated and evaluated; and

(f) Comply with applicable regulations, standards, and guides.

1823.7002 Responsibility.

(a) *Originators of procurement requests.* Originators of procurement requests will ensure, in accordance with installation safety and health screening criteria, that procurement requests affected by considerations of safety or health are processed through the appropriate installation safety officials and installation health officers or other designated responsible officials for (1) determining if hazards are involved in the procurement, (2) formulating or selecting specific safety and health provisions applicable to the procurement in accordance with FAR Subpart 23.3 or applicable NASA instructions, and (3) determining to what extent a contractor safety and health plan will be required.

(b) *Installation safety officials, occupational health officials, or other designated responsible officials.* The appropriate installation safety and health officials, with their respective areas of responsibility, will advise and assist the contracting officer in—

(1) Evaluating prospective contractors' safety and health programs;

(2) Determining to what extent safety and health provisions, if any, should be included in a proposed procurement;

(3) Assigning the specific safety and environmental health provisions to be included in a contract Schedule;

(4) Determining, in coordination with the cognizant program or project manager, the need for and the adequacy of contractors' safety and health plans;

(5) Assigning the specific occupational medicine provisions to be included in a contract Schedule;

(6) Determining the extent and form of accident or incident reports, required of contractors in compliance with the Federal Reports Act of 1942, and NASA reporting requirements;

(7) Requesting inspections of NASA contractors by representatives of the Occupational Safety and Health Administration (OSHA) when appropriate; and

(8) Reviewing contractor hazardous operations procedures and certification requirements.

(c) *Headquarters occupational health official.* At installations where medical and environmental health officers or other designated responsible officials are not available to assist with the formulation of occupational medicine and environmental health provisions of a contract, the Director, NASA Occupational Health Office, NASA Headquarters (Code NPG-34), will assume this responsibility.

(d) *Contracting officer.* (1) The contracting officer will obtain advice, assistance, recommendations, and applicable requirements from the appropriate safety and health officials prior to the issuance of a solicitation in the following procurements:

(i) Construction, modification, and demolition of facilities on Government installations.

(ii) Manufacture of aerospace systems, including such items as power units, energy systems, boosters, engines, liquid and solid fuels, oxidizers, and/or propellants.

(iii) Transportation of fuels, oxidizers, hazardous chemicals, and other hazardous or regulated materials.

(iv) Research, development, or test of engines, related components and propellants which involve hazardous operations or the use of hazardous or regulated materials.

(v) Services on Government installations which involve hazardous operations or the use of hazardous or regulated materials.

(vi) Operations which involve the use of or exposure to potential health hazards (asbestos, polychlorinated biphenyls (PCB's), etc.) confined space entries, use of hazardous materials, or potential contamination of property, and pollution of air, water, vegetation, and soil.

(vii) Activities which may (by either direct or secondary effect) adversely effect the work environment due to the use of ionizing radiation, microwaves, noise, lasers, ultraviolet, and infrared sources.

(viii) Operations which necessitate exposures in neutral buoyancy or hyperbaric chambers and operations related thereto.

(2) Before issuing a stop-work order under paragraph (d)(2) of the "Safety and Health" clause at 1852.223-70, prior coordination will be effected with the safety and health officials and with the cognizant program or project manager.

1823.7003 Hazardous operations.

Hazardous operations are those that involve the use of, or handling of, hazardous materials or other materials, phenomena or elements at abnormal environmental or physical parameters that could result in personnel injury, illness or property damage if special precautions are not followed (e.g., high pressure gas operations in excess of 150 pounds per square inch gauge (psig), low pressure high volume gas operations, voltages above 550 volts, storage or handling of propellants or explosives, use of "heavy lift" material handling equipment, high or low temperature environments, environments with less that 19.5 percent or more than 25 percent oxygen by volume at normal atmospheric pressure, reduced gravity, radiation, or excessive noise).

1823.7004 Contract clauses.

(a) Specific system safety requirements which are to be included in the contract for the purpose of procuring system safety engineering services shall be defined in the contract Schedule in accordance with applicable NASA instructions.

(b) Any unique facility safety or health requirements, which are in addition to the general requirements of the clause at 1852.223-70, Safety and Health, shall be prescribed as required by 1823.7002(b)(3).

(c) Except as provided in paragraph (d) below, the clause at 1852.223-70 shall be included in—

(1) All negotiated contracts of $1,000,000 or more, unless the contracting officer makes a written determination in accordance with 1823.7002(b)(2) that, under the circumstances of the procurement, the clause is not necessary;

(2) All construction, repair, or alteration contracts in excess of $25,000;

(3) All contracts having, within their total requirement, construction, repair, or alteration tasks in excess of $25,000; and

(4) Any procurement regardless of dollar amount when (i) the deliverable contract end items are of a hazardous nature or (ii) during the life of the contract it can reasonably be expected that hazards will be generated within the operational environment, and the contracting officer determines that the hazards warrant the inclusion of the clause.

(d) The clause prescribed in paragraph (c) above may be excluded from any contract which is subject to either the Walsh-Healy Public Contracts Act (see FAR Subpart 22.6) or the Service Contract Act of 1965 (see FAR Subpart 22.10) and in which the application of either Act and any regulations thereunder constitute adequate safety and health protection. However, the clause should not be excluded without approval of the local safety and health officials.

Subpart 1823.71—Frequency Authorization

1823.7101 NASA contract clauses.

The contracting officer shall insert the clause at 1852.223-71, Frequency Authorization, in any contract which calls for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

1823.7102 Forms.

NASA Form 566, Application for Radio Frequency Assignment (see 1853.223-566), shall be used to request radio frequency assignments under the clause at 1852.223-71.

Part 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1824.1—Protection of Individual Privacy

Sec.

1824.000 Scope of part.
1824.103 Procedures.
1824.103-70 Applicability.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1824.1—Protection of Individual Privacy

1824.000 Scope of part.

NASA rules and regulations implementing the Privacy Act are located at 14 CFR 1212.100 et seq.

1824.103 Procedures.

1824.103-70 Applicability.

(a) The Privacy Act is not applicable to a system used by a contractor as a result of management discretion. For example it is not applicable to systems

of personnel records maintained by contractors on their own behalf.

(b) Illustrations of systems of records to which the Act applies include the following:

(1) Records which are maintained for administrative functions of a Federal agency, such as personnel and payroll records.

(2) Health records which are maintained by a contractor engaged to provide health services to agency personnel.

(c) Illustrations of systems of records to which the Act does not apply include the following:

(1) Records which are maintained by a contractor on individuals whom the contractor employs in the process of providing goods and services to the Federal Government.

(2) Under contracts with a State or private educational organization to provide training, the records generated on contract students pursuant to their attendance (admission forms, grade reports), are similar to those maintained on other students, and are commingled with their records on other students.

PART 1825—FOREIGN ACQUISITION

Subpart 1825.1—Buy American Act—Supplies

Sec.

1825.101 Definitions.
1825.102 Policy.
1825.103 Agreements with foreign governments.
1825.105 Evaluating offers.
1825.109 Solicitation provisions and contract clause.
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Subpart 1825.2—Buy American Act—Construction Materials

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Subpart 1825.3—Balance of Payments Program

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1825.703 Exceptions.

Subpart 1825.9—Omission of the Examination of Records Clause

1825.903 Conditions for omission.
1825.903–70 Request for determination and findings.

Subpart 1825.70—Foreign Contracts

1825.7000 Scope of subpart.
1825.7001 Definition.
1825.7002 Policy.
1825.7003 Assignment of responsibility for contract negotiation.
1825.7004 Procedure.
1825.7005 Assignment of contract administration.
1825.7006 Contracts with foreign nationals.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1825.1—Buy American Act—Supplies

1825.101 Definitions.

"Canadian end product" means an unmanufactured end product, mined or produced in Canada, or an end product manufactured in Canada if the cost of its components which are mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product.

1825.102 Policy.

(a) Subject to the approval requirements in paragraph (c) below, contracting officers are authorized to make determinations under FAR 25.102(a)(4) and to make additional determinations of nonavailability both prior to entering into contracts and in the course of contract administration; *provided,* however, that in the latter case the Government receives adequate consideration. A copy of each determination of nonavailability will be included in the contract file.

(b) The following is the format for nonavailability determinations made by contracting officers:

Determination of Nonavailability

Pursuant to the authority contained in the Buy American Act (41 U.S.C. 10) and authority delegated to me by 48 CFR 1825.102(a), I hereby find—

a. (Insert a description of the item or items to be procured, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.);

b. (Enter the name and address of proposed contractor or supplier and country of origin of the items.);

c. (Include a brief statement of the necessity for the procurement.);

d. (Include a statement of facts establishing the nonavailability of similar items of domestic origin. If there are no known domestic items which can be used as a reasonable substitute, make a statement to this effect.) Based upon these findings, I determine that the above-described item(s) is not mined, produced, or manufactured, or the articles, materials, or supplies from which it is manufactured, are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

Accordingly, the requirement of the Buy American Act that procurement be made from domestic sources and that the item(s) be of domestic origin is not applicable to this procurement, since said procurement is within the nonavailability exception stated in the Buy American Act. Authority is granted to procure the above-described item(s) of foreign origin (country of origin) at an estimated total cost of $——, including duty and transportation costs to destination.

(Date)——————————

Contracting Officer——————————

(c) Determinations made under 1825.102(a) shall be approved by the Head of the Installation.

1825.103 Agreements with certain foreign governments.

(a) The Administrator has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act to the acquisition of certain supplies mined, produced, or manufactured in Canada (see NMI 5106.2, "Determination Under the Buy American Act—Canadian Supplies"). Accordingly, contracting officers shall—

(1) Evaluate all bids and proposals offering Canadian end products on a parity with bids and proposals offering domestic-source end products, except that applicable duty (whether or not a duty-free entry certificate may be issued) shall be included in evaluating such bids and proposals offering Canadian end products; and

(2) Treat all components mined, produced, or manufactured in Canada as though they were mined, produced, or manufactured in the United States, except that, in evaluating bids and proposals containing such components, applicable duty (whether or not a duty-free entry certificate may be issued) shall be included.

(b) The procedures in paragraph (a) above do not apply to or affect items—

(1) Listed in FAR 25.108; or

(2) Determined to be nonavailable under 1825.102.

1825.105 Evaluating offers.

The following are examples of evaluation of bids and proposals using the provisions of FAR 25.105.

(a) *Example 1:* Price differential of 6 percent or less between low foreign (non-Canadian) and low domestic bid or proposal:

	Low domestic bid	Low foreign bid
Cost to destination	$20,000	$19,000
Import duty		600
Total	20,000	19,600
6 percent differential		1,176
Total	20,000	20,776

The low domestic bid is not unreasonable; award would be made to the low domestic offeror.

(b) *Example 2:* Price differential in excess of 6 percent between low foreign (non-Canadian) and low domestic bid or proposal, and small business and/or labor surplus area concerns are not involved.

	Low domestic bid	Low foreign bid
Cost to destination	$20,000	$17,000
Import duty		500
Total	20,000	17,500
6 percent differential		1,050
Total	20,000	18,550

The low domestic bid is unreasonable; award would be made to the low foreign offeror.

(c) *Example 3:* Low domestic offeror is a small business and/or labor surplus area concern; the low domestic bid or proposal exceeds the low foreign (non-Canadian) bid or proposal by more than 6 percent, and small purchase procedures are not involved.

	Low foreign bids (include transportation to destination and duty)		Low domestic bids (include transportation to destination)			
Item	A Company	B Company	C Company	D Company	E Company	Difference (percent)
1	$20,000		$24,000			20
2	40,000		46,000			15
3		$20,000		$22,000		11
4	20,000				$22,600	13
5		30,000		32,700		9
6	20,000		22,000			10
7	10,000		10,700			7
8	5,000				6,500	30
Total			102,700			

(1) For Items 1, 2, 6, and 7, proposed awards would be submitted to the Assistant Administrator for Procurement for decision by the Administrator since (i) the low acceptable domestic offer exceeds the low acceptable foreign offer plus 6 percent on an item-by-item basis, (ii) the low acceptable domestic offeror is a small business or labor surplus area concern, and (iii) the low acceptable domestic offer exceeds $100,000.

(2) For Items 3 and 5, award would be made to the low acceptable domestic offeror, since (i) the differential is less than 12 percent on an item-by-item basis, (ii) the low acceptable domestic offeror is a small business and/or labor surplus area concern, and (iii) the low acceptable domestic offer is less than $100,000.

(3) For Items 4 and 8, award would be made to the low foreign offeror, since (i) the differential exceeds 12 percent on an item-by-item basis, (ii) the low acceptable domestic offeror is a small business and/or labor surplus area concern, and (iii) the low acceptable domestic offer is less than $100,000.

1825.109 Solicitation provisions and contract clause.

1825.109-70 NASA solicitation provision.

The contracting officer shall insert the clause at 1852.225-70, Percent Foreign Content, in all solicitations (including construction) except those made outside the United States.

Subpart 1825.2—Buy American Act—Construction Materials

1825.202 Policy.

(a) Subject to the approval requirements in paragraph (b) below, contracting officers are authorized to make determinations under FAR 25.202(a)(3) and to make additional determinations of nonavailability both before and after contract award; *provided,* however, that in the latter case the Government receives adequate consideration. The format for nonavailability determinations is at 1825.102(b).

(b) Determinations made under paragraph (a) above shall be approved by the Head of the Installation.

1825.205 Solicitation provision and contract clause.

1825.205-70 NASA contract clause.

The clause at 1852.225-71, Nondomestic Construction Materials, shall be included in all contracts for construction, and any article of materials and supplies which have been the subject of additional determinations under 1825.202(a) shall be listed thereunder.

Subpart 1825.3—Balance of Payments Program

1825.304 Excess and near-excess foreign currencies.

The determination of the feasibility of using excess or near-excess currency, required by FAR 25.304, shall be made by the NASA Comptroller. The Director of Financial Management (Code BF-6) maintains a current list of excess and near-excess currency-countries and arranges for its publication in the NASA Travel Regulations.

Subpart 1825.4—Purchases Under the Trade Agreements Act of 1979

1825.401 Definitions.

"Designated country" effective June 29, 1983, Israel is added to the list of countries designated under the Trade Agreement Act of 1979 (see FAR 25.401).

1825.402 Policy.

1825.402-70 Centralization of foreign acquisition.

The requirement of Subpart 1825.70 that the responsibility for foreign contract acquisition be centralized at NASA Headquarters does not apply to acquisitions that are subject to this Subpart. However, each contracting office (including JPL) shall coordinate with Headquarters, Division of International Affairs (Code LI-15), before awarding a contract for a designated-country end product.

1825.403 Exceptions.

1825.403-70 Coordination of arms purchases.

With respect to the exception in FAR 25.403(d), if a contracting office considers an individual acquisition to be a purchase "indispensable for National security or National defense purposes" and appropriate for exclusion from the provisions of this Subpart, a request with supporting rationale shall be submitted to Headquarters, Office of External Relations (Code L) for coordination with the Office of the U.S. Trade Representative.

1825.405 Procedures.

(a) The term "promptly," as used in FAR 14.408–1 and 15.1001(b), shall, for purposes of this Subpart, mean "within seven days."

(b) Solicitations will require that applicable duty charges be included in the offered price, whether or not duty free certificates are obtained. Duty charges will be included in the price evaluation.

Subpart 1825.6—Customs and Duties

1825.604 Exempted supplies.

The following items listed in Schedule 8 of the Tariff Schedules of the United States will be of particular interest when making NASA purchases:

(a) Item 832 of Schedule 8 provides that "emergency war materials purchased abroad" may be imported duty-free upon certification by the Military Departments to the Commissioner of Customs. Accordingly, when a Military Department makes a purchase on behalf of NASA, or when NASA is making a purchase for a Military Department, the above duty-free exemption authority shall be used to the maximum extent practicable.

(b) Item 864.30 of Schedule 8 provides for the duty-free exemption of "articles intended solely for testing, experimental or review purposes including plans, specifications, drawings, photographs, and similar articles for use in connection with experimental study" subject to the limitations in Headnote 1 under Item 862.20 of Schedule 8.

(c) Certain supplies (not including equipment) for vessels or aircraft operated by the United States are exempt from duty under 19 U.S.C. 1309.

(d) Under the Educational, Scientific, and Cultural Materials Importation Act of 1966, NASA has been determined to be an eligible institution to request duty-free entry for instruments or apparatus under Items 851.60 and 851.65 of Schedule 8. Pursuant to this authority, NASA may apply for duty-free entry of instruments or apparatus or related repair components if no instrument or apparatus of equivalent scientific value for the purpose for which the instrument or apparatus is intended to be used is being manufactured in the United States.

1825.670 Legal representation.

The Office of the General Counsel (Code G), NASA Headquarters, shall represent NASA before the Court of Appeals for the Federal Circuit.

Subpart 1825.7—Restrictions on Certain Foreign Purchases

1825.703 Exceptions.

(a) If the proposed procurement is from sources restricted by FAR 25.702 and—

(1) Is a small purchase, the contracting officer shall make a determination of nonavailability as authorized in 1825.102(a)(4) and 1825.202(a)(3). This determination shall also include a finding that there is no known item(s) from sources other than the Communist sources which can be used as a resonable substitute. This determination shall be made a part of the contract file.

(2) Exceeds the small purchase limitation, the contracting officer shall prepare a determination of nonavailability for signature by the Administrator. The format at 1825.102(b) shall be used, and the determination shall include a finding that there is no known item(s) from sources other than the Communist sources which can be used as a reasonable substitute. The determination shall be forwarded in triplicate to the Assistant Administrator for Procurement (Code HS–1).

(b) When it is proposed to procure supplies originating from the Communist areas of North Korea, Vietnam, or Cuba for public use outside the United States or when a construction contractor proposes to use such supplies in the performance of a contract for construction outside the United States, the contracting officer shall make a written finding setting forth the unusual situation, such as an emergency or the nonavailability of acceptable substitute supplies of domestic origin or from sources other than the Communist sources, which justifies the procurement. The finding shall be made a part of the contract file. If the proposed procurement exceeds the small purchase limitation, the finding shall be forwarded in triplicate to the Assistant Administrator for Procurement (Code HS–1), for approval by the Administrator of the exception authorizing the proposed procurement.

Subpart 1825.9—Omission of the Examination of Records Clause

1825.903 Conditions for omission.

A determination by the Administrator under FAR 25.903(a)(2) does not require the concurrence of the Comptroller General or designee. However, where such a determination is the basis for exclusion of the clause at FAR 52.215–1, Examination of Records, the statute requires that a written report be furnished to the Congress. This report, explaining the reasons for the determination, shall be prepared in triplicate, signed by the Head of the Installation concerned, and forwarded to the Assistant Administrator for Procurement (Code HC–1) for processing to the Administrator.

1825.903–70 Request for determination and findings.

Request for determination and findings for exclusion ordinarily will be initiated by the contracting officer. It shall consist of a letter submitted through normal procurement channels, addressed to the Administrator containing the facts necessary to arrive at an appropriate determination and findings.

Subpart 1825.70—Foreign Contracts

1825.7000 Scope of subpart.

This subpart prescribes policy and procedures for the negotiation of foreign contracts.

1825.7001 Definition.

"Foreign contract acquisition," as used in this subpart, means the acquisition by negotiation of supplies or services, including construction work and contracts for research and development, where the work is to be performed outside the United States, its possessions, and Puerto Rico, by a foreign government or instrumentality thereof or a foreign private contractor. The term does not include the following:

(a) Negotiation of government-to-government agreements.

(b) Negotiation of contracts with domestic concerns involving work to be performed outside the United States, its possessions, and Puerto Rico.

(c) Contracts with the Canadian Commercial Corporation.

(d) Acquisition of books and periodicals from foreign sources of supply.

1825.7002 Policy.

Foreign contracts are a specialized area that often requires involved negotiation with instrumentalities of foreign governments. Some of the requirements for contract clauses imposed by United States laws conflict with statutory prohibitions imposed by foreign countries. The resolution of these issues generally involves close coordination between the Office of International Affairs and the Office of General Counsel, NASA Headquarters, and the Department of State. Accordingly, the responsibility for placing foreign contracts has been centralized at NASA Headquarters.

1825.7003 Assignment of responsibility for contract negotiation.

The Headquarters Contracts and Grants Division (Code HW–2), in conjunction with the Offices of International Affairs and General Counsel, is responsible for negotiating and executing contracts with foreign governments and private foreign organizations. This assignment of responsibility is specifically limited to foreign contracts and acquisition, as defined at 1825.7001.

1825.7004 Procedure.

A Headquarters or field installation technical office requiring a foreign contract to be made will submit a properly approved Purchase Request (NASA Form 404, or similar form), through channels to the Headquarters Contracts and Grants Division (Code HW–2) for action. Contract forms and clauses for foreign contracts will be as prescribed on a case-by-case basis by the Assistant Administrator for Procurement.

1825.7005 Assignment of contract administration.

(a) *General.* Assignment of contract administration responsibility will be made by agreement between the initiating office and the Headquarters Contracts and Grants Division. Since principal responsibility for monitoring contract progress and performance generally rests with a field installation, the Headquarters Contracts and Grants Division normally will designate the cognizant Procurement Officer as its authorized representative for contract administration.

(b) *Contracts performed in Canada.* (1) When, in accordance with FAR Part 42 contract administration and related support service functions of the Defense Contract Administration Services are desired on a contract to be performed in Canada (whether placed with Canadian Commercial Corporation or directly with a Canadian firm), a letter or delegation shall be issued to—

Defense Supply Agency, DCASMA, Ottawa 6th Floor, Canadian Building 219 Laurier Avenue, West Ottawa, Ontario, Canada (K1A035)

(2) So that DCASMA, Ottawa, may utilize the capabilities of Canadian Government agencies in the performance of contract administration services functions, each letter of delegation shall provide that DCASMA, Ottawa, is delegated authority to act as the contracting officer's representative with power of further delegation for the performance of the requested services.

1825.7006 Contracts with foreign nationals.

(a) Proposals by NASA staff members which involve program or contract possibilities with foreign nationals shall be coordinated with the Office of International Affairs, NASA Headquarters, before any contracts are made with foreign nationals.

(b) Informal discussions between NASA staff members and foreign nationals could give rise to expectations concerning program or contract possibilities which are not supported by program requirements. Such situations must be avoided to preclude possible embarrassment to the United States as well as to NASA.

(c) Requests or offers by foreign nationals to NASA staff members on program or contract matters shall be reported promptly to the Office of International Affairs.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1828—BONDS AND INSURANCE

Subpart 1828.1—Bonds

Sec.

1828.102 Performance and payment bonds for construction contracts.
1828.102–2 General.
1828.106 Administration.
1828.106–1 Bonds and bond related forms.

Subpart 1828.3—Insurance

1828.305 Overseas workers' compensation and war-hazard insurance.
1828.307 Insurance under cost-reimbursement contracts.
1828.307–2 Liability.
1828.307–70 Insurance of industrial facilities.
1828.309 Contract clauses for workers' compensation insurance.
1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
1828.311–70 NASA Contract clause.
1828.370 Fixed-price contract clauses.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1828.1—Bonds

1828.102 Performance and payment bonds for construction contracts.

1828.102–1 General.

NASA prime contractors who, in the course of their contract performance, will acquire by subcontract construction work determined by NASA to be public work subject to the Miller Act, but who are not required under FAR 28.102 to furnish Miller Act bonds, shall be required to obtain such performance and payment bonds from their subcontractors (see 1828.106–1 below). The contracting officer shall establish the penal amount in accordance with FAR 28.102–2.

1828.106 Administration.

1828.106–1 Bonds and bond related forms.

When performance or payment bonds are required from subcontractors under NASA prime construction contracts (see 1828.102–1 above), the bonds shall be provided on SF 25, Performance Bond, and SF 25A, Payment Bond. These forms shall be modified to name the NASA prime contractor as well as the United States of America as obligees.

Subpart 1828.3—Insurance

1828.305 Overseas workers' compensation and war-hazard insurance.

(a) *Waiver of Defense Base Act.* Applications for waivers under FAR 28.305(d) shall be submitted to the Administrator, through the Assistant Administrator for Procurement. The request for waiver shall include the following:

(1) Name of contractor.

(2) Business mailing address of contractor.

(3) Contract number.

(4) Date of award.

(5) Geographic location where contract will be performed.

(6) Name of insurance company providing the Defense Base Act coverage.

(7) Nationality of employees to whom waiver is to apply.

(8) Reason for waiver.

(b) When the Defense Base Act is waived:

(1) The contractor shall assume liability to such waived employees and their beneficiaries for war-hazard injury, death, capture, or detention. At the option of the Assistant Administrator for Procurement or a designee, either the costs of this liability or the reasonable cost of insurance against this liability shall be allowed as a cost under the contract.

(2) The Schedule of each contract containing the clause at 1852.228–70, Reimbursement for War-Hazard Insurance, shall contain the following:

(i) *The estimated cost for war hazard losses.* The estimated cost will be based on estimates arrived at in the light of experience, taking into account the number of the contractor's employees subject to protection for war-hazard risks, the level of benefits applicable to such employees, location, and nature of the risks to which the contractor's employees are exposed. The amount allotted to the contract will initially be kept as small as reasonably feasible. As

reports are received indicating the need to increase the allotment to a particular contract, these will be evaluated and the allotment increased as necessary. When negotiating for the inclusion in a contract of provisons applicable to war-hazard risks, the contracting officer may include provisions concerning the types of foreign nationals employed by the contractor, the level of benefits applicable to them, and other pertinent provisions relating to the manner in which the program will function to the benefit of all concerned. Advance Agreements under FAR 31.109 may also be advantageous with respect to the levels of proof considered acceptable to justify the contractor commencing payments and being reimbursed therefor prior to the time the contractor is able to work out, in a proper case lump sum settlement of its obligation.

(ii) *An entry similar to the following:*

"The portion of this contract providing for the contractor to afford protection to its employees and subcontractors to their employees against war-hazard risks (see the clauses at FAR 52.228–4 and 1852.228–470) is on a cost reimbursement, no fee basis, notwithstanding the basis of the remainder of the contract."

1828.307 Insurance under cost-reimbursement contracts.

1828.307–2 Liability.

(a)(1) In accordance with FAR 28.307–2(b)(2) examples of special circumstances requiring property damage liability insurance are:

(i) Where a commingling of operations permits property damage coverage at a nominal cost to NASA under insurance carried by a contractor in the course of his commercial operations; and

(ii) Where the contractors are engaged in the handling of high explosives or in extrahazardous research and development activities undertaken in populated areas. Otherwise, prior approval for purchase of property damage liability insurance must be obtained from the Assistant Administrator for Procurement.

(b) The Government normally will assume the risk of a contractor's uninsured third-party liability to the extent provided for by the clause at FAR 52.228–7, Insurance—Liability to Third Persons.

1828.307–70 Insurance of industrial facilities.

When industrial facilities are provided by the Government under a facilities contract or a lease, the contract or lease shall require that during the period of construction, installation, alteration, repair, or use, and at any other time as directed by the installation concerned, the contractor or lessee shall insure or otherwise provide approved security for liabilities to third persons (including employees of the contractor or lessee) in the manner and to the same extent as required in FAR 28.307–2.

1828.309 Contract clauses for workers' compensation insurance.

(a) Insert the clause at 1852.228–470, Reimbursement for War Hazard Losses, in all public-work contracts performed outside the United States where the Defense Base Act is waived (see FAR 28.305) and the Assistant Administrator for Procurement determines that the contractor shall not purchase insurance against the assumed liability to such waived employees and their beneficiaries (see 1828.305(b)(2)).

1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1828.311–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.228–71, Aircraft Flight Risks, in all cost-reimbursement type contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor except where such aircraft are covered by a separate bailment agreement.

1828.370 Fixed-price contract clauses.

(a) The contracting officer shall insert the clause at 1852.228–70, Aircraft Ground and Flight Risks, in all negotiated fixed price contracts for the production, modification, maintenance, or overhaul of aircraft except as provided in paragraph (b) below.

(b) The Government need not assume the risk of damage to, or loss or destruction of, aircraft, as provided by the clause at 1852.228–70 if the best estimate of premium costs which would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than $500. If it is determined not to assume such risk, the clause at 1852.228–70 shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover such risk shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the clause at 1852.228–71, Aircraft Flight Risks, suitably adapted for use in a fixed-price type contract, shall be used.

PART 1829—TAXES

Sec.

1829.101 Resolving tax problems.
1829.170 Exemptions from other Federal taxes.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1829.1—General

1829.101 Resolving tax problems.

(a) The Office of General Counsel, Code G, will represent NASA in all negotiations under FAR Part 29 and shall keep the Assistant Administrator for Procurement fully informed on the status of any such negotiations.

(b) Communications with the Department of Justice for representation or intervention in proceedings concerning taxes shall be made only by the General Counsel.

(c) Matters involving foreign taxes requiring the assistance of other executive departments shall be forwarded to the General Counsel for appropriate action.

(d) Tax problems which cannot be solved readily by reference to FAR Part 29 shall be forwarded to the General Counsel through the field installation Office of Chief Counsel. The forwarding of tax problems to the General Counsel is particularly important where—

(1) The amount of tax actually or potentially involved is substantial;

(2) The legal incidence of a tax appears to be upon the United States or its property, a specific exemption pertinent to the transaction appears to exist, or a State or local tax appears to have a direct effect upon a transaction in interstate commerce;

(3) Judicial or administrative action against a contractor is threatened;

(4) The imposition or potential imposition of a tax is the result of an amendment of a tax law or a change of position by the tax authorities; or

(5) The possibility exists of obtaining refunds of taxes previously paid.

(e) Tax problems forwarded to the General Counsel shall be accompanied by the following material, which shall be furnished by the initiating office or by intervening offices:

(1) A comprehensive statement of pertinent facts, including documents and correspondence.

(2) A copy of the contract.

(3) A thorough review of the legal issues involved and recommended action to be taken.

(4) If appropriate, a statement of the problem's effect(s) on procurement policies and procedures with recommendations.

(f) Information copies of tax-related correspondence shall be sent to the

Assistant Administrator for Procurement.

1829.170 Exemptions from other Federal taxes.

Distilled spirits, and specially denatured spirits of 190 degrees proof or more, may be purchased tax-free by any United States Government agency or its contractors. To obtain alcohol tax free, the Administrator or Assistant Administrator for Procurement is responsible for filing and updating Form ATF 1444/1486, Tax-Free Spirits or Specially Denatured Spirits for Use of United States, with the Treasury Department, Bureau of Alcohol, Tobacco and Firearms, Special Operations Branch. One application shall be submitted for all of NASA's requirements. Copies of the Treasury Department certificates issued shall be furnished to all installation Procurement Officers.

(a) When purchasing spirits for use by Center personnel, the contracting officer shall attach a copy of the certificate to the purchase order/contract. Upon receipt of the spirits, the certificate shall be returned to the contracting officer unless future orders are anticipated.

(b) When a NASA contractor requires spirits to perform a NASA contract, the contracting officer shall give the contractor a copy of the certificate to provide its vendor. Upon receipt of the spirits, the contractor shall return the certificate to the contracting officer unless future orders are anticipated. In any event, the certificate shall be returned upon completion of the contract.

PART 1830—COST ACCOUNTING STANDARDS

Subpart 1830.1—General

Sec.
1830.301 Cost Accounting Standards.

Subpart 1830.3—CAS Contract Requirements

1830.304 Waiver.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1830.1—General

1830.101 Cost Accounting Standards.

To assure uniform administration of CAS requirements, NASA has determined to consider all of its contracts as "National defense" contracts for CAS purposes, whether or not they meet the definitions of "National defense" in FAR 30.102.

Subpart 1830.3—CAS Contract Requirements

1830.304 Waiver.

All requests for waiver of CAS requirements shall be forwarded through the Procurement Officer to the Assistant Administrator for Procurement (Code HC–1) after the contracting officer has made the determination required by FAR 30.304(a).

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.1—Applicability

Sec.
1831.101 Objectives.
1831.102 Fixed-price contracts.
1831.102–70 Contract clause.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1831.1—Applicability

1831.101 Objectives.

The Assistant Administrator for Procurement, NASA Headquarters (Code HP–1), is the Administrator's designee for granting individual deviations to FAR cost principles under FAR 31.101.

1831.102 Fixed-price contracts.

1831.102–70 NASA contract clause.

Include the clause at 1852.231–70, Pricing of Adjustments, in fixed-price contracts that include a Changes clause or provisions for adjustments of the contract price. The clause applies to the requirements of FAR Part 31 to contract price adjustments.

PART 1832—CONTRACT FINANCING

Subpart 1832.1—General

Sec.
1832.111 Contract clauses.
1832.111–70 NASA contract clauses.
1832.170 Voluntary refunds.
1832.171 Withholding under construction contracts.

Subpart 1832.4—Advance Payments

1832.402 General.
1832.406 Letters of credit.
1832.406–70 Federal Cash Transaction Report.
1832.407 Interest.
1832.410 Findings, determination, and authorization.
1832.410–70 Instructions for determinations and findings.
1832.412 Contract clause.
1832.470 Reporting of installation advance payment approvals.

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.
1832.501–2 Unusual progress payments.
1832.502 Preaward matters.
1832.502–2 Contract finance office clearance.
1832.503 Postaward matters.
1832.503–3 Initiation of progress payments and review of accounting system.
1832.504 Subcontracts.

Subpart 1832.7—Contract Funding

1832.702 Policy.
1832.702–70 NASA policy.
1832.704 Limitation of cost or funds.
1832.705 Contract clauses.
1832.705–70 Additional clauses for limitation of cost or funds.

Subpart 18–32.8—Assignment of Claims

1832.806 Contract clauses.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1832.1—General

1832.111 Contract clauses.

1832.111–70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.232–71, Invoices, in all fixed-price contracts and solicitations therefor, except those for construction work, architect-engineer services, or utility service.

(b) The contracting officer shall insert the clause at 1852.232–72, Payments (Letter Contracts), in letter contracts and solicitations therefor.

(c) The contracting officer shall insert the clause at 1852.232–73, Payments (Utility Services), in negotiated utility service contracts and solicitations therefor.

(d) The contracting officer shall insert the clause at 1852.232–74, Payments (Facilities), in consolidated facilities contracts and solicitations therefor.

1832.170 Voluntary refunds.

(a) *General.* A voluntary refund is a payment or credit, not required by any contractual or other legal obligation, made to the Government by a contractor or subcontractor either as a payment or as an adjustment under one or more contracts or subcontracts. It may be unsolicited or it may be made in response to a request by the Government. Where it is desired to solicit a voluntary refund from a subcontractor, the prime contractor should be encouraged to facilitate the making of such refund. In deciding whether to solicit a voluntary refund or to accept an unsolicited refund, the contracting officer shall ask legal counsel to review the contract or contracts and all data relevant thereto to determine whether the Government's rights would be jeopardized or impaired by the contracting officer's proposed action.

(b) *Solicited refunds.* Voluntary refunds may be requested during or after contract performance. They shall be

requested only when it is considered that the Government was overcharged under a contract or was inadequately compensated for the use of Government-owned property or in the disposition of contractor inventory, and retention by the contractor or subcontractor of the amount in question would be contrary to good conscience and equity. Generally, retention by the contractor or subcontractor shall not be considered contrary to good conscience and equity, and thus a voluntary refund shall not be requested, unless the overcharge or inadequate compensation was due, at least in part, to the fault of the contractor or subcontractor. The decision to solicit a voluntary refund shall be made by the Deputy Administrator or designee after coordination with the Assistant Administrator for Procurement.

(c) *Disposition of voluntary refunds.* (1) If a refund is offered prior to final payment, it is preferable that the contract price be appropriately modified to reflect the refund. In such a case, the amount of the refund shall be credited to the applicable appropriation cited in the contract.

(2) In cases where the refund is to be made by check rather than by an adjustment in the contract price, the check shall be made payable to the National Aeronautics and Space Administration and shall be forwarded immediately to the Financial Management Office of the appropriate installation. When forwarded, the check shall be accompanied by a letter identifying it as a voluntary refund, giving the number of the contract or contracts involved and, where possible, giving the account number of the appropriation to which the refund should be credited.

1832.171 Withholding under construction contracts.

This section is applicable only to contracts containing the clause at FAR 52.232–5, Payments Under Fixed-Price Construction Contracts. When satisfactory progress has not been achieved by a contractor during any period for which a progress payment is to be made, a percentage of the progress payment may be retained until completion of all contract requirements. Retainage should not be used as a substitute for good contract management, and contracting officers should not withhold funds without cause. Determinations regarding the use of retainage and the specific levels to be withheld shall be made by the contracting officers on a case-by-case basis. Such decisions will be based on the contracting officer's assessment of past performance and the likelihood that such performance will continue. The level of retainage withheld shall not exceed 10 percent of the amount billed by the contractor in accordance with the terms of the contract and may be adjusted as the contract approaches completion to recognize better than expected performance, the ability to rely on alternative safeguards, and other factors. Upon completion of all contract requirements, retained amounts shall be paid promptly.

Subpart 1832.4—Advance Payments

1832.402 General.

(a) Advance payments are authorized only for contracts with nonprofit organizations and educational institutions.

(b) Determinations, and Findings in support thereof, not required to be made by higher authority including those in paragraphs (b) (1) and (2) below may be made regarding contracts by the Assistant Administrator for Procurement. The contracting officer may make the determinations and findings in paragraph (b)(2) below regarding individual purchases and contracts:

(1) The determination required by 10 U.S.C. 2307(c) and 2310(b) for the basic contract if the advance payment amount equals or exceeds $1,000,000, the advance payment is to a foreign entity, or the organization receiving the advance payment is also receiving a fee for the effort involved. If the amount of the advance payment is under $1,000,000 for the basic contract and a foreign entity or organization receiving a fee is not involved, the Procurement Officer may make the determination required, *Provided*, that such action has been coordinated with the Installation Financial Management Officer.

(2) The determination required by 10 U.S.C. 2307(c) and 2310(b) for all modifications, supplemental agreements, or extensions to an existing contract which require an increase in the amount of an advance payment previously authorized; *Provided*, that such action has been coordinated with the Installation Financial Management Officer.

1832.406 Letters of credit.

For the purposes of FAR 32.406(b)(1), each installation is considered a contracting agency.

1832.406–70 Federal Cash Transaction Report.

The report required by paragraph (m) of the clause at FAR 52.232–12, Advance Payments, shall be submitted on Standard Form 272, Federal Cash Transaction Report, if the letter of credit method is used.

1832.407 Interest.

Advance payments without interest are hereby authorized, pursuant to FAR 32.407(d)(1).

1832.410 Findings, determination, and authorization.

1832.410–70 Instructions for determinations and findings.

(a) A request for Headquarters approval of advance payment provisions in accordance with 1832.402(b)(1) will be prepared in final form (original and one official file copy) and forwarded to the Assistant Administrator for Procurement (Code HS–1). The request should include the following: (1) The name of the cognizant NASA Headquarters Program or Staff Office; (2) the negotiation exception to support the requirement, if it is other than 10 U.S.C. 2304(a)(5); (3) if a fee is contemplated, the estimated cost, amount and percent of fee, the total cost and fee, and the factors that were considered in determining the fee (see Subpart 1815.9); and (4) the name and phone number of the contracting officer or negotiator.

(b) Modifications to adapt to special facts and circumstances are permitted provided that they do not conflict with the statutory requirements set forth in 10 U.S.C. 2307 or other cited statutory authority.

(c) 10 U.S.C. 2307 will normally be the statutory authority cited for authorizing advance payments. When appropriate, advance payments are also authorized pursuant to 42 U.S.C. 2473(c)(5) and Pub. L. 85–804 as implemented by Executive Order 10789 (see FAR Part 50).

(d) Generally, the format in FAR 32.410 should be in accordance with the instructions therein used with the following changes:

(1) In the second sentence of format paragraph (a)(4), delete the reference to a special bank account.

(2) Use format paragraph (a)(6) or (a)(8).

(3) At the end of format paragraph (b), use "is in the public interest."

1832.412 Contract clause.

The contracting officer, in consultation with General Counsel, may require special security provisions if appropriate in particular cases. For example, the clause at 1852.232–75, Security for Advance Payments, may be included in solicitations and contracts with nonprofit organizations or educational institutions that include the

clause at FAR 52.232-12, Advance Payments.

1832.470 Reporting of installation advance payment approvals.

Each Installation shall report to Headquarters by the tenth of January and July each year, Attention: Code BF-6, a listing of Advance Payment amounts and recipients approved at the Installation during the prior six months' period.

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.

1832.501-2 Unusual progress payments.

Requests for unusual progress payments must have the specific approval of the Assistant Administrator for Procurement with the concurrence of the Director, Financial Management Division.

1832.502 Preaward matters.

1832.502-2 Contract finance office clearance.

The approving authority for the actions specified in FAR 32.502-2 is the Assistant Administrator for Procurement. Any such approvals should be coordinated with the Director, Financial Management Division.

1832.503 Postaward matters.

1832.503-3 Initiation of progress payments and review of accounting system.

In connection with the situations mentioned in FAR 32.503-3(b), the Financial Management Officer shall be notified.

1832.504 Subcontracts.

The Government approval mentioned in FAR 32.504(c) shall be as specified in 1832.502-2 above.

Subpart 1832.7—Contract Funding

1832.702 Policy.

1832.702-70 NASA policy.

(a) Cost-reimbursement contracts may be incrementally funded only if—

(1) The total value of the contract (including options as defined in FAR Subpart 17.2) is $1,000,000 or more;

(2) The period of performance under the contract is in excess of twelve months or the period of performance overlaps the succeeding fiscal year; and

(3) Funds are not available to fully fund the total contract value at the time of entering into the contract.

(b) Fixed-price contracts for other than research and development shall not be incrementally funded.

(c)(1) Fixed-price contracts for research and development may be incrementally funded only if—

(i) The total fixed price of the contract (including options as defined in FAR Subpart 17.2) is $1,000,000 or more;

(ii) The period of performance under the contract is in excess of twelve months or the period of performance overlaps the succeeding fiscal year;

(iii) Funds are not available to fund the total fixed price of the contract at the time of entering into the contract; and

(iv) Initial funding of the contract is not less than 50 percent of the total fixed price.

(2) Notwithstanding the grant of authority to incrementally fund contracts under the foregoing circumstances, it is emphasized that fixed-price contracts shall be fully funded wherever possible and that, accordingly, incremental funding of such contracts should be kept to the absolute minimum.

1832.704 Limitation of cost or funds.

When a contract contains the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), the procedures in FAR 32.704 are applicable.

1832.705 Contract clauses.

1832.705-2 Clauses for limitation of cost or funds.

1832.705-270 Additional clauses for limitation of cost or funds.

(a) The contracting officer shall insert the clause at 1852.232-76, Authority to Obligate Funds, in letter contracts and solicitations therefor.

(b) The contracting officer shall insert the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), in fixed-price incrementally funded contracts for research and development, and solicitations therefor.

Subpart 1832.8—Assignment of Claims

1832.806 Contract clauses.

The Prohibition of Assignment of Claims clause prescribed at FAR 32.806(b) shall be inserted in negotiated contracts for utilities services, and solicitations leading thereto, unless a prospective contractor requests and the contracting officer determines that use of the Assignment of Claims clause prescribed at FAR 32.806(a) is in the public interest.

PART 1833—DISPUTES AND APPEALS

Sec.

1833.009 Suspected fraudulent claims.
1833.011 Contracting officer's decision.
1833.014 Contract clause.

Authority: 42 U.S.C. 2473(c)(1).

1833.009 Suspected fraudulent claims.

The contracting officer shall report suspected fraudulent claims to the Office of Inspector General (Code W) and the Office of General Counsel (Code G).

1833.011 Contracting officer's decision.

Contracting officers shall alter the paragraph at FAR 33.011(a)(4)(v) to include (a) the address of the NASA Board of Contract Appeals, Code NC-9, Room 6057, 4th and Maryland Avenue, SW, Washington, DC 20546 and (b) to reference the Board's small claims procedure for claims $10,000 or less and their accelerated procedure for claims $50,000 or less.

1833.014 Contract clause.

The contracting officer shall use the clause at FAR 52.233-1, Disputes, with its Alternate I where continued performance is vital to National security, the public health and welfare, critical/major agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1834—MAJOR SYSTEM ACQUISITION

1834.002 Policy.

NASA's implementation of OMB Circular No. A-109 and FAR Part 34 is contained in NMI 7100.14, Major System Acquisitions.

(42 U.S.C. 2473(c)(1))

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

1835.003 Policy.
1835.003-70 Scientific and Technical Information Service.
1835.015 Contracts for research with educational institutions and nonprofit organizations.
1835.070 NASA contract clauses.
1835.071 Space Transportation System Personnel Reliability Program.

Authority: 42 U.S.C. 2473(c)(1).

1835.003 Policy.

(a) For NASA policy regarding cost sharing see 1816.303.

(b) NASA policy regarding recoupment is in NMI 5109.13, Recoupment Policy for the Use of NASA Technology.

1835.003–70 Scientific and Technical Information Service.

In conformance with section 203(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473) in the interest of conserving time and funds, and to avoid unnecessary duplication of effort, it is NASA policy to encourage contractors to use scientific and technical information in the possession of NASA in direct support of all NASA contracts involving research and development work. This information includes past and current reports on research, development, test, and evaluation. Certain information (*e.g.*, Scientific and Technical Aerospace Reports (STAR), which announces current publications covering aeronautics, space, and supporting disciplines) is available to contractors free of charge; other types of information (*e.g.*, automatic distribution of reports on a specific subject) or services (*e.g.*, searches of the NASA data base or on-line access to the NASA data base through NASA/RECON) may be subject to charges for a contractor. In order that such scientific and technical information may be provided in a timely manner, it is necessary for the contractor to furnish NASA the information specified in the clause at 1852.235–70.

1835.015 Contracts for research with educational institutions and nonprofit organizations.

(a) In addition to the requirements of FAR 35.015(a)(1)(iv), the institution must obtain the contracting officer's approval when it plans to continue the research work during a continuous period in excess of three months without the participation of an approved principal investigator or project leader.

(b) For NASA policy regarding advance payments under contracts with educational institutions see 1832.4.

1835.070 NASA contract clauses.

(a) The Contracting Officer shall insert the clause at 1852.235–70, Scientific and Technical Information Service, in all research and development contracts and in cost-type supply contracts where research and development work is involved.

(b) The Contracting Officer shall insert the clause at 1852.235–71, Key Personnel and Facilities, in contracts when source selection has been substantially predicated upon the possession by a given contractor of special capabilities, as represented by either key personnel or facilities.

1835.071 Space Transportation System Personnel Reliability Program.

The Space Transportation System is a national source providing a capability to support a wide range of scientific, applications, commercial, defense and international uses. Criteria and procedures for assuring the highest standards of reliability in personnel assigned to mission-critical positions in connection with the Space Transportation System are set forth in NMI 8610, Space Transportation System Reliability Program (see 1814.201–5(a) and 1815.406–5(a)(10)).

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1836.2—Special Aspects of Contracting for Construction

Sec.

1836.203 Government estimate of construction costs.
1836.205 Statutory cost limitations.
1836.209 Construction contracts with architect-engineer firms.

Subpart 1836.6—Architect-Engineer Services

1836.600 Scope of subpart.
1836.600–70 Interorganizational acquisition of architect-engineer services.
1836.602 Selection of firms for architect-engineer contracts.
1836.602–1 Selection criteria.
1836.602–2 Evaluation Boards.
1836.602–3 Evaluation Board Functions.
1836.602–4 Selection Authority.
1836.602–5 Short selection processes for contracts not to exceed $10,000.
1836.602–70 Selection of architect-engineers for master planning.
1836.602–71 Conflict of interest.
1836.603 Collecting data on and appraising firms' qualifications.
1836.609 Contract clauses.
1836.609–70 NASA contract clause.
1836.670 Acquisition requiring Headquarters approval.

Subpart 1836.7—Standard Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

1836.702 Forms for use in contracting for architect-engineer services.
1836.770 Binding schedule for construction contracts.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1836.2—Special Aspects of Contracting for Construction

1836.203 Government estimate of construction costs.

(a) The Government estimate shall be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which event it shall be handled in accordance with applicable security regulations. The "For Office Use Only" designation shall be removed only when the estimate is made public in accordance with instructions below.

(b) If the acquisition is by formal advertising, a sealed copy of the detailed Government estimate shall be filed with the bids until bid opening. After the bids are read and recorded, the "For Official Use Only" designation shall be removed and the estimate shall be read and recorded in the same detail as the bids.

(c) If the acquisition is by negotiation, cost breakdown figures in the Government estimate may be disclosed during negotiations but only to the extent deemed necessary for arriving at a fair and reasonable price and provided that the overall amount of the Government estimate, however, is not thereby disclosed prior to award. At the time of award, the "For Official Use Only" designation shall be removed. After award, the Government estimate may be revealed, upon request, to those firms or individuals who submitted proposals.

1836.205 Statutory cost limitations.

The term "statutory cost limitations" refers to cost limitations which may be included in an agency's annual appropriation act.

1836.209 Construction contracts with architect-engineer firms.

(a) Except as provided in paragraph (c) below, offers for the construction of a facility shall not be solicited from the firm furnishing architect-engineer services for that facility, its subsidiaries, or affiliates; and unsolicited offers from that firm, its subsidiaries, or affiliates shall not be considered.

(b) An architect-engineer firm selected for negotiation of an architect-engineer services contract under the procedures set forth in 1836.602 shall be advised of the policy set forth in paragraph (a) above prior to the initiation of negotiations, if that firm possesses construction capabilities either within its own organization or through subsidiaries or affiliates. The firm shall have the option of either—

(1) Declining to enter into contract negotiations in order to be eligible to compete for the related construction contract; or

(2) Entering into contract negotiations with the clear understanding that, if such negotiations are successful, the firm, its subsidiaries, or affiliates will be ineligible to compete for the related construction contract.

(c)(1) The policy in FAR 36.209 is not applicable to—

(i) Those cases where the Assistant Administrator for Procurement specifically authorizes, prior to the initiation of negotiations, the use of a cost-plus-a-fixed-fee contract for both the design and construction of a specialized facility; or

(ii) Those cases in which a contract is awarded on the basis of performance specifications for the construction of a facility, and the contract requires the contractor to furnish construction drawings, specifications, or site adaption drawings of the facility.

(2) Requests for authorization pursuant to paragraph (c)(1)(i) above shall be in sufficient detail to establish the need for procuring both design and construction under one contract. In neither of the excepted cases in paragraph (c)(1) above shall the firm that prepared the drawings and specifications be engaged to supervise and inspect, on behalf of the Government, the construction of the facility involved.

Subpart 1836.6—Architect-engineer Services

1836.600 Scope of subpart.

1836.600-70 Interorganizational acquisition of architect-Engineer services.

Procedures for acquiring architect-engineer services through the construction organization of the Corps of Engineers, Department of the Army, are set forth in "NASA-Corps of Engineers Agreement for Performance of Construction Services."

1836.602 Selection of firms for architect-engineer contracts.

1836.602-1 Selection criteria.

(a) As permitted by FAR 36.602-1(a)(6), in evaluating architect-engineer firms, the architect-engineer selection board shall apply any criteria set forth in the public notice on a particular contract and the volume of work previously awarded to the firm by NASA, with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms including minority-owned firms and firms that have not had prior NASA contracts.

(b) It should be noted that the above evaluation criteria, and those listed in FAR 36.602-1(a), are not listed in order of importance, since the relative weight to be assigned to each criterion may vary with the particular requirements of the individual procurement.

1836.602-2 Evaluation boards.

In compliance with FAR 36.602-2, the Head of each Installation shall establish an architect-engineer selection board to be composed of not less than three members. Appointment of members who are not Government employees is not authorized.

1836.602-3 Evaluation board functions.

The report required by FAR 36.602-3(d) should, as a minimum, speak to each criterion for each offeror and explain why one firm is rated higher than the others.

1836.602-4 Selection authority.

The Head of each Installation is designated as the selection authority for that installation for the purposes of FAR 36.602-4.

1836.602-5 Short selection processes for contracts not to exceed $10,000.

(a) Use of the procedures of FAR 36.602-5 is permitted when authorized by the Head of the Installation.

(b) The Head of the Installation is designated as the selection authority for the purposes of FAR 36.602-5(b)(2).

1836.602-70 Selection of architect-engineers for master planning.

(a) *Definition of master plan.* A master plan is an integrated series of documents which present in graphic, narrative, and tabular form the present composition of the installation and the plan for its orderly and comprehensive development to perform its various missions in the most efficient and economical manner.

(b) *Selection.* Where it is proposed to select an architect-engineer to develop a master plan in connection with the establishment of a new NASA activity or installation, the report prepared by the architect-engineer selection board in accordance with FAR 36.602-3(d) will be forwarded by the Head of the Installation, with that individual's concurrence in the selection, to the cognizant Institutional Director, NASA Headquarters, for the approval of the Administrator and the concurrences of the Deputy Administrator and the Associate Administrator. The cognizant Institutional Director will refer the report for review to the Assistant Administrator for Procurement (Code H), the Facilities Engineering and Computer Management Division (Code NX-2), and to other offices as appropriate under the circumstances. After receipt of comments and recommendations from the reviewing offices, the cognizant Institutional Director will revise, modify, or concur in the report, as appropriate, and forward it to the Administrator, via the Associate Administrator.

1836.602-71 Conflict of interest.

(a) The chairman and members of an architect-engineer selection board will have on permanent file with the appointing official a written certification that their respective participation will not create a conflict of interest within the provisions of the current "Standard of Conduct for NASA Employee" (NHB 1900.1B) regarding Conflict of Interest. Any other participants in an evaluation or selection for a given architect-engineer requirement will file or have on file a similar certification. Personnel unwilling or unable to furnish such a certification will be barred from further participation in the case. The chairman, members, or other participants with certifications on file shall inform the chairman or the appointing official, as appropriate and in writing, if participation in a particular selection or evaluation presents a real or apparent conflict of interest situation. If the situation warrants, the person(s) shall be disqualified from participating.

(b) The chairman, members, or other participants shall promptly report, in accordance with the procedures of NMI 3711.6, Employee-Management Communications Channels, any activity that would give rise to a real or apparent conflict of interest situation, including any indications of extraneous influences being brought to bear on the selection or evaluation process.

1836.603 Collecting data on and appraising firms' qualifications.

The architect-engineer selection boards (see 1836.602-2) are designated as NASA's evaluation boards for the purposes of FAR 36.603.

1836.609 Contract clauses.

1836.609-70 NASA contract clause.

The contracting officer may include the clause at 1852.236-70, Option for Supervision and Inspection Services, in fixed-price architect-engineer contracts, and solicitations therefor, if supervision and inspection services by the architect-engineer during construction are contemplated. The details of such services must be set out in Appendix A of the contract.

1836.670 Acquisition requiring Headquarters approval.

Contracts for architect-engineer services that require the prior approval of the Assistant Administrator for Procurement are specified in 1807.7102(a)(2). The request for approval shall include all information required to be developed by FAR 36.605 and 36.606, and in particular, shall set forth the detailed cost breakdown on which the

determination was based that the proposed fee is fair, reasonable, and consistent with the provisions of FAR 15.903(d)(1)(ii).

Subpart 1836.7—Standard Forms for Contracting for Construction, Architect-Engineer Services and Dismantling, Demolition, or Removal of Improvements

1836.702 Forms for use in contracting for architect-engineer services.

(a) *Architect-Engineer contract (Standard Form 252). Instruction for Block entries are as follows:*

(1) *Block 5-Project Title and Location.* Include a short description of the construction project and the estimated cost of constructing the facilities for the project. If the space provided is insufficient, include a more detailed description in Appendix A of the contract and list the Appendix A in Block 10.

(2) *Block 6-Contract For (General description of services to be provided).* Include a brief description of the services and state that these services are fully set out in Appendix A (Scope of Work). Clearly specify the date by which design services must be completed. If supervision and inspection services during construction are to be procured, also clearly specify the date by which such services must be completed and add a statement that the Government may extend such period as provided in the Changes clause of the contract.

(3) *Block 7-Contract Amount.* If the contract is for both design and supervision and inspection services, set out the figures separately.

(b) *Statement of architect-engineer services.* The services to be furnished by an architect-engineer should be carefully defined during negotiation of the contract and a statement of such services inserted in Appendix A (Scope of Work) of the contract. The statement should clearly state the nature and extent of the services in a concise form and include any special services such as the nature and extent of sub-surface exploration prior to designing foundations, etc. A similar statement of supervision and inspection services should be prepared for inclusion in Appendix A (Scope of Work) of the contract if supervision and inspection services are included.

1836.770 Bidding schedule for construction contracts.

If the work is divided into separate schedules a bidding schedule showing a breakdown for each such separate schedule should be attached to the invitation for bids and a statement referring thereto made on Standard Form 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair).

Bidding Schedule

(To be attached to bid form when required by the Invitation for Bids)

(The following paragraphs shall be printed on the last page of the bidding schedule immediately below the schedule.)

Note.—*Use additional page if necessary.* All extensions of the unit prices shown will be subject to verification by the Government. In case of variation between the unit price and the extension, the unit price will be considered to be the bid.

If a modification to a bid based on unit prices is submitted, which provides for a lump sum adjustment to the total estimated cost, the application of the lump sum adjustment to each unit price in the bid schedule must be stated. If it is not stated, the bidder agrees that the lump sum adjustment shall be applied on a pro rata basis to every unit price in the bid schedule.

PART 1837—SERVICE CONTRACTING

Sec.

1837.000 Scope of part.

Subpart 1837.1—Service Contract—General

1837.104 Personal services contracts.
1837.105 Competition in service contracting.
1837.106 Funding and term of service contracts.

Subpart 1837.2—Consulting Services

1837.200 Scope of subpart.
1837.203 Types of consulting services.
1837.204 Policy.
1837.204–70 NASA policy.
1837.205 Management controls.
1837.205–70 Request for approval.
1837.205–71 Negotiation of contracts.
1837.205–72 Contract award and approval.
1837.205–73 Copies of reports and recommendations.

Authority: 42 U.S.C. 2473(c)(1).

1837.000 Scope of part.

For purposes of this part, construction is not considered a service.

Subpart 1837.1—Service Contracts—General

1837.104 Personal services contracts.

It is NASA policy not to obtain personal services by contract.

1837.105 Competition in service contracting.

(a) See FAR 15.204 and 1815.204 regarding negotiation for personal and professional services.

(b) Frequently it becomes essential to the needs of NASA to contract for certain services which require immediate performance by a contractor after a minimum prior notice to proceed. Typical of such requirements are contracts for engineering services; maintenance, repair or overhaul of specialized equipment; and printing or reproduction and data processing services to be furnished on a "call basis" where time is of the essence to meet priority requirements.

(c) When soliciting prospective contractors to perform services of this nature, the NASA policy of obtaining competition to the maximum practicable extent will be observed. Geographic limitations imposed on prospective contractors are apt to appear arbitrary to the business community and therefore are proper only in those cases where such limitations are demonstrably justifiable. Even in those circumstances, however, no firm desiring to compete for the procurement shall be denied the opportunity to do so, merely because it is located outside the geographic area. Such firms will be permitted to submit provided they can substantiate their capability to establish a facility in a location which complies with any such required geographical limitation.

(d) A preferred method of obtaining services or supplies, which are required on a prompt response basis, is by clearly setting forth in the solicitation such requirement in terms of maximum time which may elapse between placement of the order or call and delivery date. Such time limitations, when required by the nature of the procurement, will normally meet the needs of NASA for prompt delivery without introducing any unnecessary restrictive criteria on the competitive field of prospective contractors.

(e) Solicitations that contemplate either a geographical area or time of performance limitation will be reviewed and approved by the Procurement Officer, or a designee, prior to distribution.

1837.106 Funding and term of service contracts.

See 1817.102(b) for multi-year overseas service contracts.

Subpart 1837.2—Consulting Services

1837.200 Scope of subpart.

This subpart supplements FAR subpart 37.2 and the procedures of NMI 5104.5, Policy and Guidelines for the Use of Consulting Services Obtained by Contract, and, in particular, establishes the procedures to be followed in contracting for consulting services.

1837.203 Types of consulting services.

Consulting services do not include services obtained under OMB Circular A–76 guidelines and services that only provide data in support of NASA

administrative and program management. If the primary purpose of a task is to conduct research and development (such as data analysis, studies related to basic and applied research, technology development, concept and demonstration development, full-scale development and testing, and evaluation), it is not considered a consulting service. In addition, contractor reviews of technical activities such as hardware and hardware-oriented activities, and evaluation of proposals are excluded. See Attachment A of NMI 5104.5 for examples of services to which this subpart does not apply.

1837.204 Policy.

1837.204-70 NASA policy.

In addition to the prohibitions regarding consulting services listed at FAR 37.204(c)—

(a) Consulting services will normally be obtained only on an intermittent or temporary basis; repeated or extended arrangements are not to be entered into except under extraordinary circumstances;

(b) Consulting services of individual experts and consultants will normally be obtained by appointment rather than be contract (see NMI 3304.1, Employment of Experts and Consultants);

(c) Grants and cooperative agreements shall not be used as legal instruments for consulting service arrangements;

(d) Consulting service tasks assigned to the Jet Propulsion Laboratory and amend contract NAS 7-100 must be reviewed and approved by the Associate Administrator for Management Operations (Code N);

(e) Persons or organizations employed as NASA consultants must be free from conflict of interest as delineated in FAR Subpart 9.5 and NMI 5101.19, Avoiding Conflict-of-Interest Situations in Placing of NASA Contracts. Caution will also be exercised when considering former Government employees for consulting-service arrangements in order to avoid potential post-employment statutory prohibition (18 U.S.C. 207).

1837.205 Management controls.

1837.205-70 Request for approval.

(a) When a NASA field installation or NASA Headquarters Office considers that consulting services are necessary and desirable, in accordance with the policy in FAR 37.204 and 1837.204-70, the requiring activity is responsible for preparing the required documentation (see FAR 37.205) and securing the prior approval of the Associate Administrator for Management Operations.

(b) Prior to processing any procurement action for consulting services, the contracting officer shall (1) provide advice, as necessary, to the requiring activity on the preparation of the documentation required by NMI 5104.5 and (2) ensure that the required documentation, including the necessary concurrences/approvals, is included in the official contract file. When there is a question whether a requirement is for consulting services, regardless of dollar value, and such requirement has not been submitted to Code N for review, the contracting officer shall determine if the requirement is for consulting services. If it is the procurement request will be returned to the originating office for processing in accordance with NMI 5104.5. In all such cases, the contracting officer's determination shall be final.

1837.205-71 Negotiation of contracts.

(a)(1) Contracting officers shall include in the solicitation a requirement that each offeror furnish the following information with the proposal notwithstanding the type of contract anticipated:

(i) The name(s) and qualifications of principal members of the contractor organization who will be responsible for the project.

(ii) The title of each official and the number of employees who will participate.

(iii) The estimated number of person-hours that each official and employee will contribute to the proposed project.

(iv) The standard billing rate per hour for each official and employee.

(2) The contract shall establish requirements to ensure that the proposal of the successful offeror will be adhered to (as negotiated and agreed to) in each of the above respects (see 1835).

(b) In addition, the solicitation and the resulting contract shall require that:

(1) The contractor warrant the rates quoted are not in excess of those charged nongovernmental clients for the same services performed by the same individuals;

(2) The Government has the right to the working papers used by the participating officials and employees of the firm or organization in connection with the projects;

(3) Publication or distribution of the study, data, or other related material is prohibited, except to the extent authorized by the contracting officer; and

(4) The contractor agree that any reports regarding organizational matters (as required by the contract) shall include, when feasible, in addition to the recommendations, alternative methods to be considered and the pros and cons of each alternative.

1837.205-72 Contract award and approval.

Unless otherwise required by Subpart 1804.72, or by direction of Code N, awards may be made without further reference to Headquarters after Code N approval has been obtained (1837.205-70(a)).

1837.205-73 Copies of reports and recommendations.

Upon completion of the services required and prior to contract closeout, the initiating office shall forward one copy of the final report or recommendations made by the contractor along with a written evaluation of contractor performance to the Chief, Management Processes Branch, Management Support Office (Code NSM-23). These reports will show the following information on the cover:

(a) Name and business address of the contractor.

(b) Contract number.

(c) Contract dollar amount.

(d) Whether the contract was competitively or noncompetitively awarded.

(e) Name, office identification, and location of the sponsoring individual.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1842—CONTRACT ADMINISTRATION

Subpart 1842.1—Interagency Contract Administration and Audit Services

Sec.
1842.101 Policy.
1842.102 Procedures.
1842.102-70 Management of subcontracts.
1842.170 Assignment of NASA personnel at contractor plants.
1842.171 Contractor performance on a NASA installation.
1842.172 Contract administration by DoD personnel on a NASA installation.
1842.173 Reimbursement for contract administration services.
1842.174 Reporting requirements.
1842.175 Functional management responsibility.

Subpart 1842.2—Assignment of Contract Administration

1842.202 Assignment of contract administration.
1842.202-70 Delegations to contract administration offices.
1842.202-71 Delegations to audit offices.
1842.203 Retention of contract administration.

Subpart 1842.7—Indirect Cost Rates

1842.705 Final indirect cost rates.
1842.705-70 Policy.

1842.705–71 Procedure.
1842.705–72 Coordination.

Subpart 1842.8—Disallowance of Costs

1842.803 Disallowing costs after incurrence.

Subpart 1842.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposed Costs

1842.1004 Location of negotiators in a central office.
1842.1008 Administrative appeals.

Subpart 1842.12—Novation and Change-of-Name Agreements

1842.1200 Scope of subpart.
1842.1202 Responsibility for executing agreements.
1842.1203 Processing agreements.
1842.1203–70 Processing novation agreements and change-of-name agreements by the Department of Defense on behalf of NASA.

Subpart 1842.14—Traffic and Transportation Management

1842.1405 Discrepancies incident to shipment of supplies.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1842.1—Interagency Contract Administration and audit Services

1842.101 Policy.

It is NASA policy to make optimum use of the contract administration audit and related support functions available from the Department of Defense (DOD) and other Government agencies. A list of NASA agreements with Government agencies regarding the delegation and performance of contract administration and related field support functions is published in NMI 1050.4, Listing of NASA Interagency Agreements. NASA shall retain technical direction of all contracts awarded regardless of the agency responsible for contract administration.

1842.102 Procedures.

DOD contract administration and audit offices will accomplish the delegated functions in accordance with DOD regulations and procedures, except that the following shall take precedence over DOD regulations and procedures:

(a) NASA letters of delegation, including any special instructions attached thereto.

(b) Applicable requirements of NASA Quality Publication NHB 5300.4(2B), Quality Assurance Provisions for Government Agencies.

(c) Any written agency agreements between NASA and DOD.

1842.102–70 Management of subcontracts.

Contractors are responsible for managing their subcontracts; therefore, contract administration functions shall be performed by the Government for subcontracts only as necessary to meet specific NASA requirements. Delegations for contract administration at subcontractors' plants normally shall be made by or through contract administration offices that are responsible for the prime contractors. Where a direct delegation is made for performance of contract administration functions at a subcontractor's plant (such as for quality assurance), the contracting officer shall coordinate in advance with the contract administration office responsible for the prime contractor and shall provide copies of the delegation to that office.

1842.170 Assignment of NASA personnel at contractor plants.

(a) NASA personnel normally shall not be assigned at or near a contractor's facility to perform any contract administration functions listed in FAR 42.302(a). Before making such an assignment, a written request shall be forwarded to the cognizant program director for approval and the concurrence of the Assistant Administrator for Procurement. The following supporting information shall be forwarded with the request to make the assignment:

(1) A statement of the special circumstances which necessitate the assignment.

(2) The contract administration services to be performed.

(3) A summary of any discussions held with the cognizant contract administration organization.

(4) A staffing plan for a three year period or such shorter period as may be appropriate. The provisions of this paragraph do not apply to NASA audit personnel assigned to the field installations, to NASA technical personnel covered by 1842.101 and paragraph (b) below, unless they are performing any of the contract administration functions listed in FAR 42.302(a), or to personnel assigned to contractors' plants that are located on either NASA or other Government agency installations.

(b) NASA may assign technical personnel (such as quality assurance, reliability, or engineering representatives) to contractors' plants or laboratories to provide direct liaison with NASA and technical assistance and guidance to the contractor and DOD. The duties and responsibilities of the technical representatives assigned shall be clearly defined and shall not conflict, duplicate, or overlap functions delegated to DOD personnel. All DOD and contractor organizations shall be advised of duties and responsibilities of NASA technical personnel with whom they will be concerned. Where such NASA technical personnel are performing any of the contract administration functions listed in FAR 42.302(a), the provisions of paragraph (c) below apply.

(c) When a NASA resident office and a DOD contract administration office are performing contract administration functions on NASA contracts at the same contractor's facility, the two offices shall execute a written agreement clearly establishing the relationship between the two organizations and the contractor. The agreement should eliminate duplication in the performance of contract administration functions and minimize procedural misunderstandings between the two organizations. Such agreements shall be consistent with existing delegations to the contract administration offices concerned and shall include the relationship of NASA nonprocurement resident personnel with their DOD and contractor counterparts when such personnel are, or intend to be, involved in any aspect of contract administration.

1842.171 Contractor performance on a NASA installation.

When a NASA contract requires contractor performance on another NASA installation or NASA-controlled launch site, a delegation shall be made to the contracting office of the NASA installation on which performance will take place. Normally, delegations will include the functions listed in FAR 42.302(a) less any functions retained under 1842.202, and shall include the contracting officer security functions (when required in the performance of the contract on the installation or site) and the administration of any NASA support to be provided to the contractor.

1842.172 Contract administration by DOD personnel on a NASA installation.

If DOD personnel performing contract administration functions will be required on a NASA installation for more than 30 work days (either continuous or intermittent), the NASA contracting officer shall obtain prior approval of the Head of the Installation where the DOD personnel will be located and the concurrence of the Assistant Administator for Procurement (Code HP). Such approvals will normally be governed by the following criteria:

(a) The delegation of any functional area (e.g., production, property administration, and quality assurance) shall include all of the administrative responsibilities for that functional area listed in FAR 42.302(a) that the DOD

contract administration office is capable of performing.

(b) The delegated functions will be directed by the contract administration office.

1842.173 Reimbursement for contract administration services.

The basis for reimbursement to DOD for contract administration and related support services is the NASA-DOD agreement (see NMI 1050.4A). Budgeting, funding, and payment for these services will be accomplished in accordance with NMI 7410.1, Budgeting, Funding and Payment for Contract Administration and Related Field Services Performed by Others. Budgeting, funding, and payment of carrier bills of lading for transportation performed as a result of a traffic management delegation are the responsibility of the NASA installation issuing the delegation.

1842.174 Reporting requirements.

(a) NASA installations semi-annually shall assess their delegation activity in relation to DOD to determine changes in delegation patterns that could result in significant increases or decreases in future DOD manpower requirements or that could have other important impacts on DOD contract administration activities. Events such as major program cutbacks or expansions, changes in locations of major programs, and sizeable new procurements should be considered in the assessment.

(b) When an event will have a significant impact on DOD manpower matters as described in paragraph (a) above, a summary of the survey shall be submitted to the Assistant Administrator for Procurement (Code HP). The summary shall include at least the following:

(1) A description of the change in work requirements or delegation pattern.

(2) An estimate of the period of time that the impact will be felt.

(3) An estimate of the magnitude of the impact on DOD in terms of changes in manpower requirements or other costs.

(c) The anticipated impact on the DOD shall be discussed with the DOD contract administration offices concerned, and the results of these discussions, such as DOD agreement or disagreement with the estimated impact, shall be included in the report.

1842.175 Functional management responsibility.

NASA contracting officers shall retain functional management responsibility for their contracts. Utilization of the contract administration services of another Government agency or NASA installation in no way relieves the NASA contracting officer of ultimate responsibility for the proper and effective management of the contract. Therefore, the NASA contracting officer must ensure that complete understanding has been achieved with the contract administration office regarding the respective duties and responsibilities of each office in connection with each NASA contract. NASA contracting officers shall also keep themselves fully informed on contractor performance and progress by the establishment and maintenance of effective communications with contract administration offices.

Subpart 1842.2—Assignment of Contract Administration

1842.202 Assignment of contract administration.

(a) *Withholding normal functions.* (1) *Mandatory (to withhold).* The functions listed below are the responsibility of the NASA contracting officer and shall not be delegated to DOD or to another Government agency:

(i) Execution of supplemental agreements involving new procurements, spare parts, or terminations (see FAR 42.302(a) (22) and (23)); however, see 1842.202(a)(2) (i) and (ii) below regarding negotiation.

(ii) Issuance of decisions under the Disputes clause (see FAR 42.302(a)(10)).

(iii) Countersigning NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved (see FAR 42.302(a)(8)).

(iv) Approval of the completion voucher (see FAR 42.302(a)(7)).

(v) Contract payment (see FAR 42.302(a)(13)).

(2) *Optional (to withhold).* The functions listed below may be delegated to DOD or to another Government agency:

(i) Negotiate settlement agreements involving partial or complete contract terminations for convenience upon request of the NASA contracting officer on NASA Form 1432, Letter of Contract Administration Delegation—Termination, and forward for the signature of the NASA contracting officer (see FAR 42.302(a)(23)).

(ii) Negotiate supplemental agreements for spare parts and other items selected through provisioning procedures and forward for the signature of the NASA contracting officer (see FAR 42.302(a)(22)).

(iii) Issue work requests under maintenance, overhaul, and modification contracts insofar as such work requests do not constitute obligation of funds not available under the contract (see FAR 42.302(a)(21)).

(iv) In connection with classified contracts, administer those portions of the Industrial Security Program designated as administrative contracting officer responsibilities in Appendix C, Industrial Security Regulation, DOD 5220.22R (see FAR 42.302(a)(20)).

(v) Consent to placement of subcontracts (see FAR 42.302(a)(51)).

(vi) Perform transportation and packaging functions (see FAR 42.302(a) (35), (36), and (37)).

(vii) Perform reliability and quality assurance functions including reliability and quality assurance engineering functions (see FAR 42.302(a) (38), (40), and (41)).

(viii) Perform systems support engineering functions (as differentiated from production and reliability, and quality assurance engineering) (see FAR 42.302(a)(41)).

(b) When the performance of contract administration functions other than those authorized for retention under 1842.202 is necessary to the administration of a contract and that function is retained for administration or modified by the NASA contracting officer, the NASA contracting officer shall (1) justify, in writing, the retention or modification of that function, (2) obtain written approval of the justification from the Procurement Officer or a designee, and (3) include the approved justification in the contract file. The NASA contracting officer shall then advise the contract administration office of the retention or modification of the function by means of written special instructions on NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions, accompanying the letter of delegation. For any function listed in FAR 42.302(a) that is not necessary to the administration of the contract, no notice of its retention of a function need be issued. The provisions of this paragraph do not apply to contracts and situations described in 1842.203(a), 1842.171, and 1842.172.

(c) *Withholding other than normal functions.* (1) *Mandatory (to withhold).* The functions listed below are the responsibility of the NASA contacting officer and shall not be delegated to DOD or to another Government agency:

(i) Execution of change orders.

(ii) Termination for default or for convenience of the Government.

(2) *Optional (to withhold).* The functions listed below may be delegated to DOD or to another Government agency:

(i) Negotiate supplemental agreements resulting from change orders and forward for the signature of the NASA contracting officer. Prior to completion of negotiations, any delivery schedule change shall be approved by the NASA contracting officer (see FAR 42.302(b) (1) and (3)).

(ii) Negotiate prices and execute priced exhibits for unpriced orders issued by the NASA contracting officer under basic ordering agreements (see FAR 42.302(b)(2)).

1842.202-70 Delegations to contract administration offices.

(a) *General.* The following procedures shall apply for delegations to contract administration offices (for delegations to audit offices, see 1842.202-71):

(1) NASA contracting officers shall review contract performance requirements as early as possible in the acquisition cycle to determine the nature and extent of contract administration functions to be performed. This review shall be coordinated with appropriate installation activities, including program managers, to insure that all essential requirements are incorporated in the delegation. A similar review shall be made before amending letters of delegation under paragraph (a)(7) below.

(2) A planning conference shall be held with representatives of the contract administration office when—

(i) A contract is expected to exceed $5,000,000;

(ii) Contract performance is required at or near another NASA installation or NASA-controlled launch site;

(iii) The delegation will impose an abnormal demand on the resources of the contract administration office receiving the delegation;

(iv) The circumstances indicate that complex contract management problems are anticipated; or

(v) The NASA contracting officer considers it advisable.

(3) Contracting offices shall prepare, within 15 days after contract award, NASA Form 1430, Letter of Contract Administration Delegation, General, for the delegation, redelegating, and amending of Contract Administration functions. NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions, shall be used to supplement NASA Form 1430 to—

(i) Delegate any *optional* functions listed in 1842.202 (a)(2) or (c)(2).

(ii) Modify previously delegated functions.

(iii) Retain the administration of functions listed in FAR 42.302(a).

(iv) Provide additional or peculiar information concerning the contract that may assist the contract administration office to more effectively perform the delegated contract administration responsibilities (except see paragraph (a)(4) below).

(4) Letters of delegation and special instructions shall not include any clauses or other requirements that are or should be contained in the contract and shall not—

(i) Repeat the functions covered in FAR 42.302(a) or other information covered in DOD issuances or cite administrative procedures;

(ii) Place restrictions on administrative contracting officers; or

(iii) Include references to NASA issuances, unless specific written NASA/DOD agreements exist which include references to such issuances, or unless the NASA issuances are a requirement of the contract. Where it is appropriate to cite DOD issuances in a letter of delegation, the NASA contracting officer shall assure that the issuances are applicable to the contract administration office concerned (i.e., that Air Force issuances are not cited in delegations to Navy or DCAS contract administration offices).

(5) Delegations and amendments thereto should be accompanied by documentation and supporting information which will ensure a complete understanding of the contract administration services to be performed. Contract administration offices shall be kept fully informed of all actions which may affect the performance of the delegated functions. Copies of all significant documents should be furnished to the contract administration office throughout the period of performance of the contract. Significant documents include but are not limited to—

(i) All contractual documents such as the contract, specifications and drawings, change orders, supplemental agreements, and contractor proposals when referenced in the contract;

(ii) Negotiation memoranda covering negotiations of contracts or contract changes in excess of $100,000;

(iii) Copies of any delegation and amendments thereto sent to other contract administration offices which have a bearing on the contract, including those issued pursuant to 1842.102-70; and

(iv) Any other correspondence affecting contract performance under the contract.

(6) Amendments to letters of delegation shall be issued when amendments to the contract are of a nature that will change the scope of functions previously delegated, when additional functions are required to be delegated, or when previously delegated functions are to be terminated in whole or part. However, when a contract administration office has retired the original letter of delegation with the records of a physically completed but administratively open contract, a new letter of delegation shall be issued to support any additional reimbursable services required under the delegation. In order to minimize the need for a duplicate delegation to be issued at a later date on a contract that is nearing closeout, the NASA contracting officer shall advise the contract administration office to hold the contract in open status when conditions exist or are anticipated that justify extension of the contract period of performance. Appropriate NASA forms listed in Part 1853 shall be used in the amendment process. The forms shall be clearly annotated as an amendment to the original delegation.

(7) NASA Form 1431, Letter of Acceptance of Contract Administration Delegation, shall be forwarded with each NASA Form 1430 and amendment thereto. The form, when returned, shall be used by the NASA contracting officer as evidence that the delegation has been received and accepted by the contract administration office and as a reference for points of contact for each of the functional areas delegated.

(8) Delegations shall be sent to DOD contract administration offices in accordance with the instructions contained in the DOD Directory of Contract Administration Services Components (DOD 4105.59H).

(9) The distribution of copies of the contract and letters of delegation for contract administration (including amendments thereto) shall be as follows:

(i) DCAS and all other Government contract administration offices except DOD military contract administration offices, when two or more functional areas are delegated: Five copies of the contract and NASA Form 1430 and three NASA Forms 1431.

(ii) DOD military component offices when two or more functional areas are delegated: Three copies of the contract and three NASA Forms 1430 and 1431.

(iii) Any contract administration office when a single functional area is delegated: Two copies of the contract and two NASA Forms 1430 and 1431.

(iv) The contractor: One NASA Form 1430.

(b) *Reliability and quality assurance.* When special instructions for reliability or quality assurance are necessary, the requirements shall be clearly identified by the NASA installation personnel responsible for the reliability and quality assurance function and shall be

furnished to the contracting officer on NASA Form 1430A for inclusion in the letter of delegation. The procedures for arranging, preparing, and finalizing such delegations and the requirements for NASA direction and management of these functions are contained in NHB 5330.7, Management of Government Quality Assurance Functions for Supplier Operations.

(c) *Transportation and packaging.* Transportation and packaging functions may be delegated at the option of the NASA installation personnel responsible for the transportation and packaging function. When such delegations are contemplated on a particular contract, special instructions will be furnished to the NASA contracting officer on NASA Form 1430A. The form shall also specify the limit of the value of Government bills-of-lading that may be issued without further consent of the NASA contracting officer and shall provide appropriate funding information.

(d) *Industrial security.* NASA industrial security policies and procedures are set forth in NMI 1650.1, Industrial Security Policies and Procedures, which stipulates that the industrial security function on NASA contracts will be performed automatically by DOD. The basis for DOD performance of this function is the NASA/DOD Agreement, NMI 1050.4A. Nonindustrial security functions, which are the responsibility of the NASA contracting officer, may be delegated to DOD at the option of the NASA contracting officer and shall be delegated when contract performance is to be accomplished at another NASA installation (see 1842.171). These contracting officer security functions, when delegated to DOD or to another NASA installation, shall be specifically identified on NASA Form 1430A.

(e) *Services not requiring letters of delegation.* (1) When it is desired that a contract administration or audit office perform services which precede the award of a contract such as cost, price, or technical evaluations (but exclusive of preaward surveys), NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services, shall be used. Preaward surveys shall be requested on SF 1403, Preaward Survey of Prospective Contractor (General). Oral requests made to contract administration offices to expedite these services are authorized but shall be confirmed in writing immediately through the use of NASA Form 1434 or SF 1403, as appropriate.

(2) Preaward and postaward services, such as verification of labor and overhead rates, and similar information which is readily available within contract administration and audit offices and which is not normally subject to reimbursement by NASA, may be obtained either orally without written confirmation or through the use of NASA Form 1434, as appropriate.

1842.202-71 Delegations to audit offices.

The following procedures shall apply when delegations are made to audit offices:

(a) NASA installations shall utilize the services of other Government audit organizations for performance of contract cost audit and other audit functions except in those instances where audits are to be performed by NASA auditors. The Defense Contract Audit Agency (DCAA) has been designated as the DOD agency responsible for the performance of audit functions for NASA contracts, except those awarded to educational institutions for which other agencies have audit cognizance pursuant to Federal Management Circular Number 73-6, those with Canadian contractors (see paragraph (e) below), and those accomplished by NASA. To ensure that audit services are performed expeditiously, audit delegations shall be sent to the appropriate audit office immediately after execution of all cost-reimbursement, labor-hour, and time-and-material type contracts, and fixed price contracts containing cost-reimbursement or price adjustment provisions. Audit functions include but are not limited to contract cost and price audits, estimating systems surveys, review of accounting systems, and approval of vouchers for provisional payment.

(b) Delegations shall be sent to cognizant audit offices as listed in the Defense Contract Audit Agency Directory (Headquarters and Field Offices) or in other Government agency directories, as appropriate.

(c) NASA Form 1433, Letter of Audit Delegation, shall be used to delegate the audit function and to amend previous delegations when necessary. The distribution of copies of the contract and NASA Form 1433 shall be as follows:

(1) Audit Office: One copy of the contract and three NASA Forms 1433.

(2) Cognizant NASA Regional Audit Office: One NASA Form 1433.

(3) Contractor: One NASA Form 1433.

(4) Cognizant NASA Fiscal or Financial Management Office: One NASA Form 1433.

(d) NASA contracting officers may request assistance from NASA audit representatives when required. Special audits or additional audit functions may be requested by the NASA audit representative. Arrangements for such audits are the responsibility of the NASA audit representative, unless processed through the NASA contracting officer.

(e)(1) On contracts with the Canadian Commercial Corporation (CCC), audits are automatically arranged by the Department of Defence Production (Canada) (DDP) in accordance with agreements between the National Aeronautics and Space Administration and Department of Defence Production (Canada). Audit reports are furnished to the DDP. Upon advice from DDP, the CCC will certify the invoice and forward it with Standard Form 1034, Public Voucher, to the contracting officer for further processing and transmittal to the fiscal or financial management officer.

(2) On contracts placed directly with Canadian firms, audits are requested by the contracting officer from the Audit Services Branch, Comptroller of the Treasury, Department of Finance, Ottawa, Ontario, Canada. Invoices are approved by the auditor on a provisional basis pending completing of the contract and final audit. These invoices, accompanied by SF 1034, are forwarded to the contracting officer for further processing and transmittal to the fiscal or financial management officer. Periodic advisory audit reports are furnished directly to the contracting officer.

(3) Audits performed by the Audit Services Branch are normally conducted under DDP regulations.

1842.203 Retention of contract administration.

The assignment of contract administration is optional for the contracts and situations listed below:

(a) Research and development study contracts not involving deliverable hardware or Government property in the hands of contractors.

(b) All contracts with delivery schedule of 90 days or less.

(c) Purchase orders having no Government source inspection requirements.

(d) Contract work performed on the installation awarding the contract.

(e) Contract work performed in the vicinity of the installation awarding the contract and for which DOD contract administration services are not reasonably available.

Subpart 1842.7—Indirect Cost Rates

1842.705 Final indirect cost rates.

18-42.705-70 Policy.

(a) Since many NASA contractors are under the Department of Defense (DOD)

negotiated overhead rate procedure, it is the policy of NASA to participate in joint negotiations with the DOD. The NASA participant will be a representative of either the Assistant Administrator for Procurement or an installation contracting office designated by the Assistant Administrator for Procurement.

(b) Where NASA contractors are not under the DOD negotiated overhead rate procedure or negotiation responsibility has not otherwise been assigned to another Government agency, the negotiation or settlement of overhead cost will be conducted by the Assistant Administrator for Procurement or designee.

1842.705-71 Procedure.

When a contractor is under NASA cognizance, the procedure for the establishment and use of negotiated final overhead rates will generally consist of submission by the contractor of an overhead rate proposal, obtaining an advisory audit report from the cognizant auditor, holding a prenegotiation conference for review of the contractor's proposal and the advisory audit report, conduct of negotiation, preparation of a negotiation report or summary, and execution and distribution of the overhead rate agreement.

(a) The contractor shall submit a copy of its proposal to the contracting officer of each NASA installation with which it has contracts, with a copy to the cognizant audit activity and the Assistant Administrator for Procurement (Code HC).

(b) The cognizant audit activity will review the contractor's overhead rate proposal using FAR Part 31 as a basis for determining allowable costs. An advisory audit report will be submitted to the contracting officer of each NASA installation having a contract with the contractor and a copy to the cognizant NASA Regional Audit Office. Such report shall (1) include a list of contracts subject to the overhead rates to be negotiated, (2) identify any advance agreements and special provisions governing specific contracts, (3) set forth the findings of the audit activity, and (4) include the results of any discussions of such findings with the contractor.

(c) A prenegotiation conference will be held by the negotiating authority with attendance by the auditor, representatives of NASA installations as designated by the Assistant Administrator for Procurement (Code HC) and other Government procurement and audit activities interested in or planning to attend the negotiations. This conference will (1) relate to the areas of difference between the advisory audit report and the contractor's proposal and any other factors pertaining to the negotiations, (2) decide upon the approach to the negotiations, and (3) establish a consolidated negotiation position. As a further aid to the negotiating authority, a representative of the audit activity and/or a representative of the NASA Audit Division will, upon request, attend the negotiation conference.

(d) The negotiation conference will be conducted by the Assistant Administrator for Procurement or designee. The allowability of costs and methods of cost allocation will be governed by FAR Part 31 and any advance agreements or special contractual provisions governing specific contract negotiations shall encompass an agreement on final overhead rates, the specific items to be treated as direct charges, and, when applicable, the billing rates for the succeeding period. Such agreement shall be binding on all applicable Government contracts.

(e) At the completion of negotiations, the negotiating authority shall prepare an overhead rate agreement (see FAR 42.705-1(b)(5)(ii)). The agreement shall include a list of affected contracts, identifying those with advance agreements or special provisions and the rates applicable thereto, and shall be executed by the contractor and the NASA negotiating authority. In addition, the negotiating authority shall prepare a negotiation memorandum (see FAR 42.705-1(b)(5)(iii)) listing the names, titles, and organizations of those persons in attendance, the rates negotiated, the reasons for variation from the audit report, if any, the period of rate applicability, the basis for the determination of such rates, the specific items treated as direct costs, and, when applicable, the billing rates agreed upon for application in the succeeding period. A copy of the overhead rate agreement and the negotiation memorandum shall become a part of the official file of each affected contract. Sufficient copies of the agreement and report shall be forwarded to the Assistant Administrator for Procurement for distribution to all affected activities under FAR 42.706.

1842.705-72 Coordination.

In compliance with FAR 42.705-1(b)(3), DOD will, when appropriate, advise the Assistant Administrator for Procurement (Code HC) of a pending overhead rate negotiation. All NASA field installations and headquarters activities having an interest in the negotiation will be notified by the aforementioned office of the scheduled negotiation. The notification will designate the NASA representative in such negotiations. Should it be impossible for the designated representative to attend, the Assistant Administrator for Procurement (Code HC) shall be notified, and arrangements will be made to ensure that NASA is represented. Such representative shall be responsible for prenegotiation coordination with all affected NASA installations and for the furnishing of the overhead rate agreement and the negotiation memorandum (Code HC) for further distribution to interested NASA installations. Final overhead rates negotiated under the above arrangements are those rates contemplated under paragraph (d) of the Allowable Cost and Payment clause at FAR 52.216-7 or the Predetermined Indirect Cost Rates clause at FAR 52.216-15, and such rates shall be automatically incorporated into the contract upon execution of the overhead rate agreement.

Subpart 1842.8—Disallowance of Costs

1842.803 Disallowing costs after incurrence.

(a) Under the authority of FAR 42.803(b), NASA has designated the contract auditor as the authorized representative of the contracting officer for (1) examining reimbursement vouchers received directly from contractors, (2) transmitting those vouchers approved for provisional payment to the cognizant fiscal or financial management officer, and (3) regarding costs claimed but not considered allowable, preparing and sending to the cognizant contracting officer NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved. Normally, the NASA Form 456 is initiated by the auditor; however, the contracting officer also may initiate it or direct its initiation, e.g., contracts with Canadian contractors (see 1842.102). The contract auditor will examine and approve (but see paragraph (b) below) separate fee vouchers and fee portions of vouchers for provisional payment under the contract Schedule and any instructions received from the contracting officer. After examination by the auditor, completion vouchers shall be forwarded to the contracting officer for approval and transmittal to the cognizant fiscal or financial management officer.

(b) When delegating audit functions, special instructions may be issued to the contract auditor to—

(1) Require submission of separate vouchers for reimbursable costs and for payment of earned fee; and/or

(2) Reserve to the contracting officer approval of separate fee vouchers and all vouchers submitted by contractors performing on a NASA installation.

(c) Unless otherwise notified, the contractor shall submit public vouchers to the auditor as follows:

(1) One original SF 1034, SF 1035, or equivalent contractor's attachment.

(2) Seven copies of SF 1034a, SF 1035a, or equivalent contractor's attachment.

(3) The contractor shall mark SF 1034a copies 1, 2, 3, 4, and such other copies as may be directed by the contracting officer by insertion in memorandum block names and addresses as follows:

(i) Copy 1 NASA contracting officer
(ii) Copy 2 Defense Contract Audit Agency auditor
(iii) Copy 3 Contractor
(iv) Copy 4 Contract administration office
(v) Copy 5 Project management office (when required by the NASA contracting officer)

(4) The auditor shall retain an unpaid copy of the voucher.

(5) When a voucher contains one or more individual direct freight charges of $100 or more, an additional copy of SF 1034a and SF 1035a shall be submitted and marked for return to the contractor after payment. This copy shall be transmitted quarterly by the contractor with the freight bills to the General Accounting Office. When a voucher is identified as the "Completion Voucher," an additional copy shall be submitted for transmittal to the NASA contracting officer.

(d) Following a prompt and careful review of the facts and circumstances leading the auditor to initiate the NASA Form 456 and after coordination with other NASA and DOD contracting officers administering contracts with the same contractor where a NASA Form 456, or a DCAA Form 1 in the case of a DOD contract, has been issued for the same items of cost, the contracting officer shall take one of the following actions:

(1) Countersign the NASA Form 456 disapproving the costs.

(2) Countersign the NASA Form 456 suspending the costs.

(3) Issue a new NASA Form 456 suspending the costs rather than disapproving them pending resolution of the issues.

(4) Have the contractor issue a new voucher removing the costs in question from its claim and return the NASA Form 456 to the auditor unsigned.

(5) Return the NASA Form 456 unsigned to the auditor with a detailed explanation of why the suspension or disapproval is not being countersigned, and process the contractor's claim for payment.

(e) The contracting officer, when in agreement with the NASA Form 456 initiated by the auditor, shall assign a notice number and shall countersign the form. An original and three copies (which includes two acknowledgement copies, one each for return to the contracting officer and the auditor) of the form shall be sent to the contractor by certified mail, return receipt requested; one copy shall be attached to the SF 1034 and each copy of the SF 1034a (see paragraph (c) above) on which the deduction is made, and one copy shall be sent to the auditor.

(f) The total amount suspended or disapproved as shown on the NASA Form 456, shall be inserted in the Differences block of the SF 1034 and SF 1034a, as follows:

NASA Form 456 No.: $ _____
Net Amount Approved: $ _____

(g) If the amount of the deduction is more than the amount of the public voucher, the installment method of deduction shall be applied to this and subsequent public vouchers until the amount is fully liquidated. The deductions on any voucher shall not exceed the amount thereof to avoid processing of a voucher in a credit amount. Public voucher(s) with zero amounts must be forwarded to the fiscal or financial management office for appropriate action. If deductions are in excess of contractor claims, recovery may be made through a direct refund from the contractor, in the form of a check payable to the Treasurer of the United States, or by a set-off deduction from the voucher(s) submitted by the contractor under any other contract, except where those contracts contain a "no set-off" provision. If a set-off is effected, the voucher(s) from which the deduction is made should be annotated to identify the contract and appropriation affected and the applicable NASA Form 456.

(h) When necessary, the contracting officer should consult with the auditor or the financial management officer concerning preparation, examination, and payment of vouchers. Functions to be performed by auditors and financial management and fiscal office personnel during the examination of vouchers are in FMM 9630–20b(1).

Subpart 1842.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

1842.1004 Location of negotiators in a central office.

Within NASA, the central office responsible for advance agreements is the Contract Pricing and Finance Office (Code HC), Office of Procurement, NASA Headquarters.

1842.1008 Administrative appeals.

The NASA administrative appeals hearing group shall consist of the Assistant Administrator for Procurement, who shall be chairman, the Deputy Associate Administrator for Aeronautics and Space Technology, and the Deputy General Counsel.

Subpart 1842.12—Novation and Change-of-Name Agreements

1842.1200 Scope of subpart.

This subpart implements and supplements FAR Subpart 42.12 and prescribes policies and procedures for processing novation or change-of-name agreements initiated by either a NASA installation or the DOD on behalf of NASA.

1842.1202 Responsibility for executing agreements.

When none of the affected contracts has been assigned to an Administrative Contracting Officer (ACO) (see FAR 42.1202(a)(2)), the contracting officer shall require the contractor to provide the documentation enumerated in FAR 42.1204(c) or, as appropriate, FAR 42.1205(a) to the NASA installation with which it has the largest amount of unliquidated obligations. This installation shall be the "designated installation" for processing and executing novation agreements and change-of-name agreements with the contractor.

1842.1203 Processing agreements.

(a) The installation shall immediately notify the Assistant Administrator for Procurement (Code HM) of the request to execute a successor-in-interest or change-in-name agreement. The notification shall include (1) the names of the firms involved, (2) the name of the installation which will execute the agreement, and (3) the type of agreement.

(b) When preparing the Standard Form 30 required by FAR 42.1203(f)(1), a supplemental agreement number need not be obtained for contracts other than for the one under which the supplemental agreement is written. For

distribution purposes, the Standard Form 30 will also include the names and addresses of the installations with contracts subject to the agreement.

(c) After execution of the supplemental agreement, the designated installation shall—

(1) Forward one authenticated copy to Code HM; and

(2) Advise each of the affected installations by letter of the consummation of the supplemental agreement, requesting that an administrative change be issued for each affected contract and enclosing a copy of the supplemental agreement.

(d) For each such affected contract, the contracting officer shall prepare an administrative change acknowledging the change in name or successor in interest. The administrative change will receive the same distribution as the affected contract. It will indicate the nature of the transaction, the result attained, and will cite the number of the contract with which the original relevant documents and supplemental agreement are filed.

1842.1203-70 Processing novation agreements and change-of-name agreements by the Department of Defense on behalf of NASA.

(a) Appendix E of the NASA/DOD agreement for contract administration and contract audit services covers the accomplishment of novation and change-of-name agreements by DOD on behalf of NASA.

(b) Installations shall be notified by Code HS when DOD is processing a proposed novation agreement on behalf of NASA. Within 20 days after receiving it, the installation shall submit comments to Code HS for transmittal to DOD. If an installation wishes to make separate agreement with the contractor and presents rationale for doing so with which Code HS concurs, DOD shall be so notified. Code HS will notify the designated NASA installation of its concurrence (see 1842.1202), and a separate agreement shall be processed in accordance with FAR 42.1203.

(c) Copies of agreements entered into by DOD on behalf of NASA shall be maintained by Code HS.

Subpart 1842.14—Traffic and Transportation Management

1842.1405 Discrepancies incident to shipment of supplies.

In addition to the applicable regulations and procedures referenced at FAR 42.1405(a), NASA personnel shall report discrepancies and adjust claims for loss of and damage to Government property in transit as prescribed in NHB 6200.1, NASA Transportation and General Traffic Management.

PART 1843—CONTRACT MODIFICATIONS

Subpart 1843.2—Change Orders

Sec.

1843.205 Contract clauses.

1843.205-70 NASA contract clause.

1843.270 Originating engineering change proposals.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1843.2—Change Orders

1843.205 Contract clauses.

1843.205-70 NASA contract clause.

The contracting officer may use the clause at 1852.243-70 to require a contractor to submit engineering change impact evaluation information, including the maximum equitable adjustment resulting from the change.

(a) Use Alternate I when it is desirable to preclude a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing such changes.

(b) Use Alternate II in cost-reimbursement type contracts.

1843.270 Originating engineering change proposals.

Engineering changes may be originated by either party to the contract. The Government needs to obtain detailed information supporting and documenting the proposed change in order to evaluate the technical, cost, and schedule effects of implementing the change and to price the change in advance when possible (see 1843.205-70).

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1844.1—General

Sec.

1844.102 Policy.

1844.102-70 Special contracting officer consent requirements for critical subcontracts.

1844.102-71 Headquarters review of critical subcontracts.

1844.102-72 New sources of scientific and technical competence.

1844.170 NASA contract clause.

Subpart 1844.3—Contractor's Purchasing Systems Review

1844.302 Requirements.

1844.302-70 Contractor's purchasing system reviews conducted by the Department of Defense.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1844.1—General

1844.102 Policy.

1844.102-70 Special contracting officer consent requirements for critical subcontracts.

If the contracting officer (in conjunction with the technical representative, when appropriate) determines that a proposed subcontract may be critical because of special considerations in the source selection, in the incentive arrangements, or other reasons, provisions shall be included in the Schedule of the prime contract (if not already provided for in the standard Subcontracts clause) for the contracting officer to consent to the critical subcontract prior to award by the contractor.

1844.102-71 Headquarters review of critical subcontracts.

(a) If a requirement is established by the Headquarters Source Selection Official or the Assistant Administrator for Procurement for a Headquarters review of a critical subcontract prior to its award, the contracting officer shall—

(1) Include a provision in the contract Schedule (if not already provided for in the standard Subcontracts clause) for advance notification and consent of the contracting officer prior to award of the subcontract; and

(2) Prior to consenting to the subcontract, submit to the Assistant Administrator for Procurement, Code HS, for review, the—

(i) Subcontract;

(ii) Contractor documentation in support of the subcontract (including that documentation required by notification provisions of the Subcontracts clause); and

(iii) Contracting officer's review and evaluation (in accordance with FAR 44.202) with appropriate recommendations.

(b) Consent shall not be granted by the contracting officer until notification (with limitations and objections, if any) is received from the Assistant Administrator for Procurement.

1844.102-72 New sources of scientific and technical competence.

As a Government agency whose mission calls for substantial Federal expenditures and use of substantial national resources, NASA has a strong interest in assisting in the accomplishment of collateral national economic goals within the framework of applicable statutory and administrative authority in such manner as will not impair program effectiveness. Utilization and the accompanying development of

the potential of all geographical regions in the space program will effectively contribute to achieving national goals. To advance the further development of competence and capacity of sources, it is NASA's policy to encourage the placing of subcontracts over wider geographic areas. To carry out these objectives, the clause at 1852.244–70, Geographic Participation In the Aerospace Program, shall be used as prescribed at 1844.170.

1844.170 NASA contract clause.

The contracting officer shall insert the clause at 1852.244–70, Geographic Participation in the Aerospace Program, in all research and development solicitations anticipated to exceed $500,000 and contracts of $500,000 or over to be performed with the United States.

Subpart 1844.3—Contractors' Purchasing Systems Review

1844.302 Requirements.

1844.302–70 Contractors' purchasing system reviews conducted by the Department of Defense.

(a) Delegation of the contractor purchasing system review (CPSR) function shall include authority for the cognizant DOD contracting officer to grant, continue, withhold, or withdraw approval of the contractor's procurement system.

(b) NASA installations desiring to participate in a DOD CPSR shall forward a request for such participation to the Assistant Administrator for Procurement, Code HP, for approval.

(c) Contracting officers will advise the cognizant DOD contract administration officer of weaknesses in a contractor's procurement system that have come to light during the review of subcontracts or from other sources.

(d) Contracting officers are responsible for reviewing DOD Summary Reports (which include present system status, comments, conclusions, recommendations, and significant changes effected since the review) and notifications to the contractors; and, when there is a determination that is at variance with the Summary Report or actions taken by DOD, the contracting officer will forward a request for approval of alternate actions, with justification, to Code HP. Similarly, a contracting officer desiring the withdrawal of a DOD approval of a contractor procurement system on the basis of a determination that there has been a deterioration of the contractor's procurement system or to otherwise protect the interests of the Government shall forward a request for such withdrawal to Code HP with appropriate justification.

1844.302–71 NASA-conducted contract or purchasing systems reviews.

If a NASA activity is the cognizant administration office, that office may use Supplement No. 1 to the Defense Acquisition Regulation, Contractors Purchasing System Review (CPSR) Program, as a guide.

PART 1845—GOVERNMENT PROPERTY

Subpart 1845.1—General

Sec.

1845.102 Policy.
1845.102–70 Procedures.
1845.104 Review and correction of contractors' property control systems.
1845.104–70 Contract property administration by the Government.
1845.106 Government property clauses.
1845.106–70 NASA contract clauses.

Subpart 1845.3—Providing Government Property to Contractors

1845.301 Definitions.
1845.302 Providing facilities.
1845.302–1 Policy.
1845.302–3 Other contracts.

Subpart 1845.4—Contractor Use and Rental of Government Property

1845.403 Rental—Use and Charge clause.
1845.405 Contracts with foreign governments or international organizations.
1845.407 Non-Government use of plant equipment.

Subpart 1845.5—Management of Government Property in the Possession of Contractors

1845.501 Definitions.
1845.502 Contractor responsibility.
1845.502–1 Receipts for Government property.
1845.502–70 Conditions for the provision of Government property.
1845.502–71 Goverment-furnished property.
1845.502–72 Contractor-acquired property.
1845.505 Records and reports of Government property.
1845.505–6 Special reports of plant equipment.
1845.505–670 Reporting centrally reportable equipment.
1845.505–14 Reports of Government property.
1845.508 Physical inventories.

Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1845.606 Inventory schedules.
1845.606–1 Submission of inventory schedules.
1845.608 Screening of contractor inventory.
1845.608–1 General.
1845.608–6 Waiver of screening requirements.
1845.610 Sale of surplus contractor inventory.
1845.610–2 Exemptions from sale by GSA.
1845.610–4 Contractor inventory in foreign countries.
1845.613 Property disposal determinations.
1845.615 Accounting for contractor inventory.

Subpart 1845.70—Equipment Visibility System

1845.7001 Policy.
1845.7002 Application.
1845.7003 General.
1845.7004 Interface with EVS Coordinators and technical project office.
1845.7005 Retention of EVS equipment.

Subpart 1845.71—Forms Preparation

1845.7101 Instructions for the preparation of NASA Form 1018.
1845.7102 Instructions for the preparation of DD Form 1342.
1845.7103 Instructions for the preparation of DD Form 1419.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1845.1—General

1845.102 Policy.

(a) The reason for the policy in FAR 45.102 that contractors shall ordinarily furnish all property is that providing Government property (whether Government furnished or contractor acquired) increases the Government's administrative burden and requires record keeping and personnel. It may dilute the contractor's overall responsibility and may weaken the effect of guarantees, end item delivery requirements, and other terms of the contract. Furnishing property places NASA between the source of the property and the contractor. When NASA assumes responsibility for scheduling delivery of the property, NASA may be responsible for certain delays.

(b) Nevertheless, there are circumstances where it may be essential to contractor performance or otherwise advantageous to NASA to provide Government property to a contractor. For example, it may be necessary for uniformity of product to provide standardized production property and raw material or to reduce the production cycle by eliminating the lead time necessary for the contractor to acquire or fabricate production property. It may be advantageous to NASA to broaden the competitive base by offering property to firms not otherwise willing (due to risk of program cutback or cancellation) or able to acquire their own, or by offering production property or critical material not generally available throughout the industry. NASA may achieve a lower contract cost by offering existing Government property or new Government property attainable at prices lower than those

available to the contractor. NASA may also provide Government property to educational or other nonprofit institutions to facilitate scientific research.

1845.102-70 Procedures.

(a) The contracting officer shall, when applicable, include in each solicitation a—

(1) List of any Government-furnished property (showing location and condition), including Government-owned tooling, which will be furnished for the performance of the contract and any related special provisions;

(2) Requirement that information be furnished regarding any Government-owned facilities, industrial equipment, or special tooling intended to be used in the performance of the contract, the value thereof, identification of the Government contract under which acquired, rental provisions, and other relevant information;

(3) Requirement that additional facilities to be provided by the Government be described and identified by category, such as "Land," "Buildings," "Machinery," and "Equipment" (see Subpart 1845.71);

(4) Requirement that additional special test equipment to be provided by the Government be described and its intended use, estimated cost, and proposed location be shown.

1845.104 Review and correction of contractors' property control systems.

(a) When review of the contractor's property control system is not delegated to DOD, the NASA contracting officer or property administrator will conduct the review as required in Subpart 1845.70.

(b) The contracting officer shall include in each solicitation under which use of Government property is contemplated a requirement for the offeror to (1) furnish the date of the last review by the Government of its property control and accounting system and describe actions taken to correct any deficiencies found, (2) state that the contractor has reviewed, understands, and can comply with all property management and accounting procedures in the solicitation, FAR Subpart 45.5, and NASA FAR Supplement Subpart 1845.70, and (3) state whether or not the costs associated with paragraph (b)(2) above are included in its cost proposal.

1845.104-70 Contract property administration by the Government.

Contract property administration by the Government shall comply with NASA Procurement Notice 84-1.

1845.106 Government property clauses.

1845.106-70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.245-70, Acquisition of Existing Government Equipment, in all solicitations and contracts which include a Government property clause (see 1852.245-70 and also 1845.7103(f) or instructions for preparing DD Form 1419).

(b) The contracting officer shall insert the clause at 1852.245-71, Installation-Provided Government Property, in solicitations and contracts when Government property is to be provided to on-site contractors:

(1) The clause may also be used when Government property is provided to off-site local support service contractors. In the latter case, the concurrence of the installation supply and equipment management officer must be obtained and indicated in the procurement request. The nature and extent of such property shall be identified in the Schedule of the contract and the property made available to the contractor on a no-charge-for-use basis by the installation supply and equipment management officer. The applicable installation property management directives shall also be listed in the contract.

(2) Any property provided under a Government property clause, but which is not also subject to the clause shall be clearly identified in a separate schedule. Any specific maintenance considerations (for example, requiring use of a central calibration facility) will be addressed elsewhere in the contract.

(3) Requests for deviation (see FAR Subpart 1.4) shall be coordinated with the Chief, Supply and Equipment Management Branch (Code NIE-8), NASA Headquarters, and shall include a determination of costs that will be avoided (for example, additional costs to the installation's property management systems and staffing) and costs that will be incurred (for example, reimbursable costs of the contractor to implement, staff, and operate separate property management systems on-site and resources to be committed to performance of, or reimbursement for, property administration) under the proposed deviation.

(c) The contracting officer shall insert the clause at 1852.245-72, Liability for Government Property Furnished for Repair and Service, in solicitations and contracts for repair (modification, rehabilitation) or other servicing of Government property, when such property is furnished to a contractor for that purpose. If a substantial quantity of parts or material will be furnished to the contractor, or a significant amount of scrap will result from the work to be performed, or if other Government property will be furnished to or acquired by the contractor, the contract will also contain the appropriate Government property clause (see FAR 45.106(b)) and the Schedule of the contract shall provide that such property shall be governed by the terms of the clause. When minor repairs are obtained under small purchases procedures, the procedures of this paragraph will not apply. Contracting officers shall not require additional insurance under the clause unless the circumstances clearly indicate advantages to the Government.

(d) The clause at 1852.245-73, Financial Reporting of Government-Owned/Contractor-Held Property, shall be inserted in all contracts except where it is virtually certain that Government property will *not* be furnished to or acquired by the contractor (i.e., as in most study contracts and certain contracts for services), or where the only property to be provided is provided for the purpose of repair or servicing (see 1852.245-72).

Subpart 1845.3—Providing Government Property to Contractors

1845.301 Definitions.

"Space property" (see 1845.501).

1845.302 Providing facilities.

1845.302-1 Policy.

(a) The Directors of NASA field installations have been designated (see NMI 5101.24, Delegation of Authority—To Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters (Various Officials) to make determinations required by FAR 45.302-1(a)(4) on providing Government facilities.

(b) When one of the conditions listed in FAR 45.302-1(d) is met, the requirements of FAR 45.302-1(a)(4) do not apply.

1845.302-3 Other contracts.

In addition to the conditions listed in FAR 45.302-3, facilities may also be provided to a contractor under a contract other than a facilities contract when the contract is for less than 6 months or provides less than 6 items of plant equipment and no other facilities.

Subpart 1845.4—Contractor Use and Rental of Government Property

1845.403 Rental—Use and Charges clause.

The directors of NASA field installations, with input from the Chief

of Supply and Equipment Management, have been designated (see NMI 5101.24, Delegation of Authority—To Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters (Various Officials) to make the determinations required by FAR 45.403(a) on modified rental rates.

1845.405 Contracts with foreign governments or international organizations.

(a) It is NASA policy that a fair share of the cost of Government production and research property shall be recovered when such property is used in the performance of services or the manufacture of articles for foreign countries or international organizations.

(b) The prior written approval of the Assistant Administrator for Procurement is required for the use of Government production and research property on work for foreign countries or international organizations. Prior to approval the concurrence of the Chief of Supply and Equipment Management, the General Counsel, and the Director, International Affairs shall be obtained.

(c) Requests for approval shall be forwarded to the Asstistant Administrator for Procurement along with a summary of the circumstances involved which includes at least the following:

(1) Names of the requesting contractors.

(2) The number of the contract under which the equipment is controlled.

(3) A description of the equipment in question.

(4) The name of the foreign contractor and its relationship to its government or to an international organization if appropriate.

(5) A description of the articles to be manufactured.

(6) A statement that such will not interfere with the current or foreseeable requirements of the United States or require use of the property beyond the anticipated date that NASA contracts will be compeleted.

(7) A statement that the foreign government's placement of the contract directly with the contractor and the use of the government production and research property is consistent with the best interests of the United States.

(8) A statement that such use is legally authorized.

(9) Evidence, if any, of endorsement by another U.S. Government agency on the basis of National Security or Foreign Policy interest of the United States.

(d) Such use, if approved, shall be subject to rent in accordance with FAR 45.403.

1845.407 Non-Government use of plant equipment.

Consistent with the guidelines in FAR 45.407, the following procedures apply to the non-Government use of plant equipment.

(a) The prior written approval of the contracting officer is required for any non-Government use of active Government-owned plant equipment. Before non-Government use exceeding 25 percent may be authorized, prior approval of the Assistant Administrator for Procurement shall be obtained. In addition, non-Government use of machine tools and secondary metalforming and cutting machines (Federal Supply Classes 3405, 3408, 3410, 3411 through 3419, and 3441 through 3449) in excess of 25 percent shall require the advance approval of the Assistant Administrator for Procurement with the concurrence of the Chief of Supply and Equipment Management. Requests requiring the approval of the Assistant Administrator for Procurement shall be submitted at least six weeks in advance of the projected use and shall include—

(1) The total number of active plant equipment items involved and total acquisition cost thereof; and

(2) An itemized listing of active equipment having an acquisition cost of $25,000 or more, showing for each such item the nomenclature, production equipment code, year of manufacture, and the acquisition cost.

(b) The percentage of Government and non-Government use shall be computed on the basis of time available for use. For this purpose,the contractor's normal work schedule, as represented by scheduled production shift hours, shall be used. All active plant equipment located at any single plant having a unit acquistition cost of less than $25,000 may be averaged over a quarterly period. Equipment having a unit acquisition cost of $25,000 or more shall be considered on an item-by-item basis.

(c) The approvals under paragraph (a) may be granted only when it is in the interest of the Government (1) to keep the equipment in a high state of operational readiness through regular usage, (2) because substantial savings to the Government would accrue through overhead cost sharing and receipt of rental, or (3) to avoid an inequity to the contractor required, at the Government's request, to retain the equipment in place, often intermingled with contractor-owned equipment required for commercial production. Approval for non-Government use shall be for a period of not more than one year. Approval for non-Government use in excess of 25 percent shall be for a period of not less than three months.

(d) Rent-free use of Government property for independent research and development generally will discouraged except in unusual circumstances where it is determined that—

(1) Such use is clearly in the best interests of the Government (for example, the project can reasonably be expected to be of value in specific Government programs; and

(2) The policy in FAR 45.201 is adhered to in that no competitive advantage will accrue to the contractor through such authorized use of Government property.

Subpart 1845.5—Management of Government Property in the Possession of Contractors

1845.501 Definitions.

"Space property" means personal property which is peculiar to aeronautical and space programs of NASA and is not otherwise included in the categories of property in FAR 45.501. It includes such items as aircraft, engines, space vehicles, and other similar components and related support equipment. The term "space property" is synonomous with the term "agency peculiar property" as defined in FAR 45.301.

"Centrally Reportable Equipment" means that plant equipment, special test equipment (including components), special tooling, and non-flight space property (including ground support equipment) which is generally (a) commercially available and used as a separate item or component of a system, (b) is valued at $1,000 or more, and (c) is identifiable by a manufacturer and model number.

1845.502 Contractor responsibility.

1845.502-1 Receipts for Government property.

Receipts for Government property shall comply with the instructions for preparation of NASA Form 1018, Report of Govenment-Owned/Contractor-Held Property (see NASA Procurement Notice 84-1 and 1853.245-1018).

1845.502-70 Conditions for the provision of Government property.

NASA policy on the provision of Government property (both Government furnished and contractor acquired) is prescribed in FAR 45.102 and 1845.102.

1845.502-71 Government-furnished property

(a) All Government-furnished property (GFP) must be described in the

contract schedule or specifications, regardless of property category. Additional GFP must be described in a bilateral modification to the contract with the property categorized and priced. Furthermore, to obtain additional Government-furnished facilities, the contractor must submit a written statement prescribed by FAR 45.302-1(a)(4). In the event a formal facilities application is also required by the contracting officer, its justification statement of financing will satisfy this requirement.

1845.502-72 Contractor-acquired property

All contractor-acquired property must be authorized by the contract and is subject to a determination by the contracting officer that it is allocable to the contract and reasonably necessary. The acquisition (and fabrication) of Government property is further subject to the following conditions, depending on category of property:

(a) *Facilities.* (1) Prior contracting officer approval, if not already described in a contract Schedule as contractor acquired.

(2) Submission of DD Form 1419, DOD Industrial Plant Requisition, and return of Certificate of Nonavailability if it qualifies as Centrally Reportable Equipment (CRE).

(3) Submission of a written statement prescribed by FAR 45.302-1(a)(4).

(b) *Special test equipment.* (1) Contracting officer approval 30 days in advance if not identified in the invitation for bids (on formally advertised procurements) or in the contract (on negotiated procurements).

(2) Submission of DD Form 1419 and return of Certificate of Nonavailability if it (or any component) qualifies as CRE.

(c) *Special tooling.* (1) If a Subcontracts clause is part of the contract, advance notification to the contracting officer and contracting officer consent as may be required by that clause.

(2) If a fixed-price contract, submission of list to the contracting officer within 60 days after delivery of the first production end items (or later as prescribed by the contracting officer) unless already identified in the solicitation.

(3) Submission of DD Form 1419 and return of Certificate of Nonavailability if it (or any component) qualifies as CRE.

(d) *Material.* If a Subcontracts clause is part of the contract, advance notification to the contracting officer and contracting officer consent as may be required by that clause.

(e) *Space Property.* (1) If a Subcontracts clause is part of the contract, advance notification to the contracting officer and contracting officer consent as may be required by that clause.

(2) Submission of DD Form 1419 and return of Certificate of Nonavailability if it (or any component) qualifies as CRE.

1845.505 Records and reports of Government property.

1845.505-6 Special reports of plant equipment.

1845.505-670 Reporting centrally reportable equipment.

(a) NASA requires that certain NASA-furnished or contractor-acquired CRE as defined in 1845.502 be reported to the Equipment Visibility System (EVS). The contractor shall report all unreported items in the contractor's possession and, subsequently, shall report equipment items of EVS (1) at the time of receipt and acceptance of accountability, (2) when major changes occur in the data initially submitted to NASA, and (3) when the equipment is no longer required for or actively being used in pursuit of NASA programs or projects. Reporting will be accomplished by completion of Section I of DD Form 1342, DOD Property Record (see 1853.245-1342), or by other means acceptable to the contracting officer provided DD Form 1342 equivalent-line-item data is furnished. The data furnished at the time the equipment is reported pursuant to subparagraph (a)(3) above will include the equipment's current condition code. Reportable data shall be forwarded through the contracting officer of the cognizant NASA installation marked for the Equipment Visibility System (EVS). Reportable data will be prepared and forwarded within 15 working days after the event which created the need for its preparation and forwarding.

(b) The forms prepared for components will be clearly marked with the word "COMPONENT." Reporting of newly listed items which are in the possession of the contractor shall be accomplished within 180 days following the date of the new handbook or the page change.

(c) Each year as of June 30 the contractor will be provided a verification listing of EVS data bank records for that contractor. The contractor shall verify the correctness of this listing or provide the necessary corrections.

1845.505-14 Reports of Government property.

(a) *Property accounts.* The contractor's property control system shall be such as to provide annually the dollar amount of Government property and material for which the contractor is accountable in the following classifications in accordance with the instructions in Subpart 1845.71:

(1) Land and rights therein.

(2) Buildings.

(3) Other structures and facilities.

(4) Leasehold improvements.

(5) Plant equipment.

(6) Special tooling.

(7) Special test equipment.

(8) Material.

(9) Space hardware.

(b) *Facilities, special tooling, and special test equipment.* The contractor's accounts covering items in paragraphs (a) (1) through (7) above will be susceptible to local reconciliation in totals and subtotals as to whether contractor-acquired or Government-furnished.

(c) *Material and Space Hardware.* The contractor's property control system shall be such as to provide the dollar value of items in subparagraphs (a) (8) and (9) above for which it is accountable. However, reporting of material is required only when the value of this account is $50,000 or more, and, reporting of space hardware is required only by specific direction of the contracting officer.

(d) *Submission of reports.* When required by the contract (see 1845.106-70(d)), the contractor will prepare, annually, a report of Government-Owned/Contractor-Held Property, NASA Form 1018, prescribed in 1853.245 in accordance with the instructions in Subpart 1845.71. Four copies of the NASA Form 1018, or a negative report when appropriate, for the period ending June 30, shall be submitted by the contractor in accordance with the clause at 1852.245-73, Financial Reporting of Government-Owned/Contractor-Held Property, not later than July 31 of each year.

1845.508 Physical inventories.

NASA contractors shall complete reconciliations of inventories described in FAR 45.508 with the official property records and shall submit reports to the property administrator within 30 days after the completion of an inventory. All instances of loss of property and discovery of unrecorded property shall be investigated by the contractor to determine (a) the cause of the discrepancy and (b) actions needed to prevent recurrence of the discrepancy.

Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1845.606 Inventory schedules.

1845.606-1 Submission of inventory schedules.

See 1845.506-6 for special instructions on intra-agency screening of Centrally Reportable Equipment.

1845.608 Screening of contractor inventory.

1845.608-1 General.

In addition to the screening instructions described in FAR 45.608, EVS Coordinators are the focal points of NASA installations for intra-agency screening of Centrally Reportable Equipment (see 1845.506-6). Property Disposal Officers (PDO's) are the focal points at NASA installations for intra-agency screening of all other contractor inventory. EVS Coordinators/PDO's shall acknowledge receipt of inventory schedules within 30 days of receipt and, at the same time, provide the plant clearance officer a NASA screening completion/release date. Screening shall be accomplished in accordance with NHB 4200.1 and NHB 4300.1.

1845.608-6 Waiver of screening requirements.

The Chief of Supply and Equipment Management (Code NIE) has been designated to authorize exceptions to screening requirements.

1845.610 Sale of surplus contractor inventory.

1845.610-2 Exemptions from sale by GSA.

Letters seeking exemptions from GSA-conducted sales shall be directed to the Chief of Supply and Equipment Management, Code NIE.

1845.610-4 Contractor inventory in foreign countries.

Foreign disposals shall comply with NHB 4300.1.

1845.613 Property disposal determinations.

Determinations to abandon or destroy NASA contractor inventory shall be referred to the installation PDO for subsequent review by the Property Disposal Review Board under NHB 4300.1.

1845.615 Accounting for contractor inventory.

In addition to the distribution requirements for SF 142, Inventory Disposal Report, a copy of the form shall be provided to the NASA installation Industrial Property Officer or Property Disposal Officer.

Subpart 1845.70—Equipment Visibility System

1845.7001 Policy.

Consistent with the policies in FAR Part 8, new equipment will not be designed, developed, or procured unless it is determined that the requirement cannot be satisfied with items already available. Accordingly, prior to acquisition by an installation or the issuance of an authorization to a contractor to acquire new Centrally Reportable Equipment (see 1845.501), the Equipment Visibility System (EVS) will first be screened and a certificate of non-availability issued by the cognizant installation EVS Data Center attesting to the non-availability of existing Government-owned equipment to satisfy the acquisition requirement.

1845.7002 Application.

The requirements of EVS are applicable to all NASA acquisitions under which equipment reportable to EVS is acquired either by NASA or a NASA contractor for use in the performance of NASA work.

1845.7003 General.

The EVS is a data acquisition and retrieval system designed to provide basic information for reutilization purposes about items of equipment valued at $1,000 or more held by NASA installations or NASA contractors. General purpose or standard items of commercial manufacture are registered in the EVS Central Data Bank (CDB).

1845.7004 Interface with EVS coordinators and technical project office.

NASA contracting officers with contracts subject to EVS requirements will maintain close interface with the installation EVS Coordinator and the Technical Project Office in (a) the conduct of contractor reporting to the EVS, (b) the screening of EVS records prior to authorizing contractors to acquire equipment, (c) the reporting and processing of equipment no longer required for NASA programs or projects, and (d) in all other matters pertaining to compliance with the property provisions of NASA contracts.

1845.7005 Retention of EVS equipment.

The contracting officer may authorize retention of EVS equipment provided the contractor requests such approval in writing concurrently with reporting to the EVS under the provisions of 1845.505-6 and provided the equipment is (a) being held for approved future NASA programs and projects identified to a specific requirement, or (b) being used on other Government work as approved by the contracting officer. Approval for the use of equipment on other Government work shall not exceed 6 months in duration beyond its use on NASA work unless loan of the equipment under an interagency agreement has been arranged or action has been initiated for transfer of the equipment to the using agency and appropriate time is allowed for completion of the transfer action.

Subpart 1845.71—Forms Preparation

1845.7101 Instructions for the preparation of NASA Form 1018.

This instruction provides guidance in the preparation of NASA Form 1018 which is required annually of all contractors who are furnished, or who have acquired, Government-owned property under the terms of their contract. The classification of property, the related costs to be reported, the reporting requirements and a sample format are set forth below:

1. Property Classification Accounts

The following property classifications and related costs apply only to financial reporting under this Form:

(a) *Land.* The classification "land" includes costs of land, capital improvements thereto (except buildings and other structures and facilities), and costs incidental to the acquisition and preparation of land for use such as appraisal fees, clearing costs, drainage, grading, landscaping, plats and surveys, removal and relocation of the property of others as part of purchase contract, removal or destruction of structures or facilities purchased but not used, and legal fees and expenses.

(b) *Buildings.* The classification "buildings" includes costs of buildings, improvements to buildings, and fixed equipment which is normally required for the functional use of the building and becomes permanently attached to and made a part of the building which cannot be removed without cutting into the walls, ceilings, or floors, such as plumbing, heating and lighting equipment, elevators, central air conditioning systems, and built-in safes and vaults. It also includes the cost of all equipment of any type built-in, affixed to, or installed in real property where the installation cost, including special foundations or unique utilities or services, or the facility restoration cost after removal is substantial.

(c) *Other Structures and Facilities.* The classification "other structure and facilities" includes costs of acquisitions and improvements of other structures and facilities such as airfield pavements; harbor and port facilities; power production facilities and distribution systems; reclamation and irrigation facilities; flood control and navigation aids; storage, industrial, service, and research and development facilities other than buildings; utility systems (heating, sewage, water, and electrical) when they serve several buildings and/or structures; communication systems; traffic aids; roads

and bridges; railroads; monuments and memorials; and other nonstructural improvements such as sidewalks, parking areas, and fences. It also includes the cost of all equipment of any type built-in affixed to, or installed where the installation cost including special foundations or unique utilities or services, or the facility restoration cost after removal is substantial.

(d) *Leasehold Improvements.* The classification "leasehold improvements" includes NASA-funded costs of long-term capital improvements (more then 3 years) to leases, rights, interests, and privileges relating to land such as easements, rights-of-way, permits, use agreements, water rights, air rights, and mineral rights. It also includes the NASA-funded costs of improvements (costing $1,000 or more and determined to be a capital asset) made to land, buildings and other structures and facilities occupied by a NASA contractor but leased either indirectly through contract of directly by NASA rather then owned by NASA. However, the cost of NASA-owned buildings and other structures and facilities (and improvements thereto that meet the criteria for capitalization) occupied by a NASA contractor and located on land not owned by NASA shall be included in the appropriate account(s) described in paragraphs (a), and (b), and (c). A single improvement shall not be accomplished in increments of less than $1,000 in order to avoid adjustment to the fixed asset accounts.

(e) *Plant Equipment.* The classification "plant equipment" includes costs of personal property of a capital nature consisting of furniture, equipment, machine tools, test equipment (but excluding special tooling, special test equipment and space hardware—see paragraphs (f), (g), and (i)), vehicles, and accessory and auxiliary items used or capable of use in the manufacture of supplies, in the performance of services, or for any administrative or general plant purpose which—

(1) Has a unit cost of $500 or more;

(2) Has a life expectancy of more than one year;

(3) Will not be substantially modified so as to lose its identity or will not be incorporated into other equipment; or

(4) Will not be consumed during an experiment.

(f) *Special Tooling.* The classification "special tooling" includes the cost of all jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aides, and replacements thereof, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts thereof, or the performance of particular services. The term includes all components of such items, but does not include—

(1) Consumable property (material);

(2) Special test equipment;

(3) Buildings and collateral structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items; or

(4) Costs that do not materially increase the basic intrinsic value of the item.

(g) *Special Test Equipment.* The classification "special test equipment" includes costs of either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in the performance of the contract. Such testing units comprise electrical, electronic, hydraulic, pneumatic, mechanical, or other items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in the performance of special purpose testing in the development or production of particular supplies or services. The term "special test equipment" does not include—

(1) Consumable property (material);

(2) Special tooling;

(3) Buildings and collateral structures (except foundations and similar improvements necessary for the installation of special test equipment and not included elsewhere);

(4) Plant equipment items used for general plant testing purposes; or

(5) Costs that do not materially increase the basic intrinsic value of the item.

(h) *Material.* The classification "material" includes costs of property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of a contract. It is not intended that this category include material which is part of space hardware work in process reported on NASA Form 1018, Schedule II, when required by the terms of the agreement, or material which has been issued from inventory and charged to a contract item. It is intended to include all Government-owned material which normally would be considered as materials inventory for balance sheet purposes.

(i) *Space Hardware.* The classification "space hardware" applies only to those items of space property, and components thereof, specifically identified in the Annual List of Selected Items of Space Hardware (see paragraph 6). It includes the cost of personal property which is unique to aeronautical and space programs of NASA and is not otherwise included in the classification of property set forth in paragraphs (a) through (h) above. Space hardware is subdivided as follows for financial reporting purposes:

(1) Completed space hardware, systems, and subsystems (includes the cost, actual or estimated, of such items as aircraft, engines, space vehicles, satellites, spacecraft, and rockets including components provided for prototypes, mock-ups, fit checks, or for such other reasons as may be specified in the contract).

(2) Space parts and components (includes the cost, actual or estimated, of deliverable spare parts and components employed as spare parts to be used for the purpose of emergency, replacement, repair, or modification subsequent to the fabrication of space hardware.) These types of property are commonly referred to as "logistics spares" or "test support spares" and do not include components utilized by the contractor which are not deliverable as spares and which are included as work in process.

(3) Space hardware work in process (includes the actual or estimated fabrication costs as of the date of the report of undelivered space hardware and such associated systems, subsystems, spare parts, and components which are provided or acquired and charged to work in process pending incorportion into an end items.) These types of items are included in what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are progress payments to firm fixed-price subcontractors for undelivered items.

2. Transfers of Property

In order for NASA to properly control and account for contractor-held Government property (both Government-furnished and contractor-acquired), all transfers to another contract, contractor, NASA installation, or other Government agency shall be adequately documented. Such transfers shall only be accomplished through the NASA installation responsible for the contract from which the property is being transferred.

(a) *Transfers By Contractors.*

(1) *Approval and Notification.* Property transfers by contractors shall be made only upon the approval of the NASA contracting officer (or designee) of the contractor making shipment. The shipping document shall specify the appropriate property classification such as plant equipment, special test equipment, special tooling, or space hardware. The cognizant property administrator or the shipping contractor shall be informed of property transfers by a copy of the shipping document. Shipping and receiving contractors shall promptly notify their respective NASA financial management office when accountability of Government property reportable on NASA Form 1018 is transferred to, or received from, other contracts, contractors, NASA installations, or other Government agencies. Copies of shipping/receiving documents will suffice in most instances.

(2) *Documentation.* The shipping contractor shall prepare an acceptable form of documentation such as DD Form 250, Material Inspection and Receiving Report, DD Form 1149, Requisition and Invoice/Shipping Document, or similar forms to cover movement of Government property to other Government agencies. Established procedures for the use of such forms shall be strictly followed. As a minimum, each shipping document must contain contract number(s), shipping reference(s), property classification(s) in which the item(s) is (are) recorded, unit price(s), and any other appropriate identifying or descriptive data. Unit prices on the shipping document shall be obtained from records maintained pursuant to the provisions of FAR Part 45 and Part 18-45.

(3) *Reporting.* In addition to the required shipping documentation, all transfers of reportable property which occur during the reporting period shall be reflected in column

(b), Government-Furnished Additions, of NASA Form 1018 by the receiving contractor and in column(e), Disposals, of NASA Form 1018 by the shipping contractor.

(4) *Reclassification.* Reclassifications between property accounts shall be accomplished by the contractor in possession of the property at the time reclassification takes place. Where property is transferred to another contract or contractor, it shall first be recorded by the receiving contractor in the same property classification and amount as reflected on the shipping document. (For example, in the event a contractor received an item by transfer from another contractor or NASA installation which is identified on the shipping document as plant equipment but which the recipient intends to incorporate into special test equipment, the recipient shall first enter the transferred item in the plant equipment account and subsequently reclassify it as special test equipment.) The reclassification of Plant Equipment, Special Tooling, Special Test Equipment, and/or Space Hardware shall not be made without prior notification to the property administrator and approval of the contracting officer.

(5) *Incomplete Documentation.* Where transfer documents are received by contractors without sufficient detail to properly record the transfer (e.g., omission of property classification, unit prices, etc.), the missing data shall be requested directly from the shipper or through the property administrator as provided in FAR 45.505–2. Contractors may append a Government-furnished property list to the NASA Form 1018 report when they are unable to obtain the required data, provided that the list includes the following information:

(i) Description of the property.

(ii) Quantity.

(iii) Shipping document reference.

(iv) Identity of shipper.

(v) Dates shipped and/or received.

(vi) Date(s) price data were requested and from whom requested (shipper or property administrator).

(vii) NASA Form 1018 line item (type/account) to be adjusted.

(b) *Other Transfers.*

(1) *Intra-Contractor Transfers.* Any transfer of Government property between contracts of a single contractor, whether administered by the same NASA installation or by a different NASA installation, requires the same approval, notification, and documentation as set forth in paragraph (a) above.

(2) *Transfer to Government Agencies Other Than NASA.* Transfers of Government property to such other Government agencies can only be accomplished through the NASA contracting officer and requires the same approval, notification, and documentation as set forth in paragraph (a) above.

(3) *Recovered Space Hardware.* Space hardware recovered after flight and transferred to a contractor for analysis, repair, refurbishment, or for other purposes shall not be reported on subsequent NASA Form 1018 as Space Hardware unless accountability has been transferred and the contractor is specifically directed to report the item.

3. Submission of Reports

(a) When the clause entitled "Financial Reporting of Government-Owned/Contractor-Held Property" is included in the contract, the contractor shall prepare a Report of Government-Owned/Contractor-Held Property, NASA Form 1018, in accordance with the instructions set forth herein and on the NASA Form 1018.

(b) Four copies of NASA Form 1018 for the period ending June 30 shall be submitted by the contractor in accordance with the clause entitled "Financial Reporting of Government-Owned/Contractor-Held Property" not later than July 31 of each year.

(c) Negative reports shall be submitted when appropriate.

(d) A final report shall be submitted within 30 days after disposition of all property subject to reporting under the contract and shall not be withheld until the next regular report due date.

4. Report Coverage

(a) The NASA Form 1018 shall include the cost of all Government-owned property, except as noted in Section 5 below, in the possession of the contractor and first-tier subcontractors under each prime contract using the prime contractor's records to the extent practicable where the subcontractor reporting is delayed.

(b) Government-owned material held in storage for issue by the contractor and subcontractor shall be reported only when the balance on hand at the end of the reporting period amounts to $50,000 or more for each prime contract, including subcontracts.

(c) Where materials are accountable under more than one contract with a single NASA installation, the contractor may request the contracting officer to authorize one report covering materials for all such contracts. This exception does not eliminate the requirement to maintain separate records of materials for each contract.

(d) Space hardware shall be reported only if specifically requested in writing by the contracting officer, and reporting shall be limited to those items identified on the Annual List of Selected Items of Space Hardware (see Section 6).

5. Exclusions

The following items shall not be reported on NASA Form 1018:

(a) Plant equipment having a unit cost of less than $500.

(b) Industrial facilities in process of construction or material held for use in construction of industrial facilities.

(c) Scrap or salvage.

(d) Items ordinarily reportable but furnished to the contractor for repair and return to NASA (except as required in subparagraph 2(b)(3)).

(e) Work in process except as required in Schedule II, Space Hardware Reportable Items, of NASA Form 1018.

(f) Materials issued for consumption.

(g) Materials held in storage for issue where the cost at the close of the reporting period is less than $50,000.

(h) NASA shipping containers.

(i) Space hardware on firm fixed-price contracts and subcontracts, except where progress payments are specified (see subparagraph 1(i)(3)).

(j) Space property, except those items specifically identified as space hardware and required to be reported in accordance with Section 6.

(k) Installation property made available pursuant to the clause at 18–52.245–21.

6. Space Hardware Reporting Requirements

(a) Space hardware reporting shall be required on cost and incentive type contracts and first-tier subcontracts on a selective basis where the estimated cost and fee of the total contract exceeds $100,000 and any one or combination of the individual reporting categories (i.e., completed space hardware, components and spare parts, and work in process) exceeds $50,000.

(b) Space hardware items to be reported or deleted shall be specified by the contracting officer prior to June 1 of each year based on the Annual List of Selected Items of Space Hardware issued by the Director of Financial Management, NASA Headquarters.

(c) Reporting shall become effective with the next report period beginning July 1, and will continue annually thereafter until all specified items of space hardware are delivered under the terms of the contract, the contract is terminated, or the item is removed from the Annual List of Selected Items of Space Hardware.

(d) The reports shall contain—

(1) The reportable items on hand, consisting of the cost and quantity of completed space hardware and the cost of related independent completed systems and subsystems;

(2) The total amount for completed spare parts and components relating to item (1), above; and

(3) The total amount for work in process of fabrication relating to one or both of the preceding items.

(e) Costs reported on Schedule II will not be a consideration in reimbursement to the contractor for work performed or for termination proceedings. Costs will be computed in accordance with accepted accounting principle, will be reasonably accurate, and will be the product of any one, or a combination of, the following:

(1) Abstract of cost data from the contractor's property or financial records.

(2) Computations based on engineering and financial data.

(3) Estimates based on NASA Form 533 reports.

(4) Formula procedures (e.g., using a 50 percent factor for work in process items based on updated SF 1411 estimates or the contractor's approved estimating and pricing system).

(5) Other approved methods.

(f) When the same item is being fabricated for more than one project, the completed space hardware, related independent systems and subsystems, spare parts, and work in process shall be reported by contract item.

(g) When a contract provides for two or more different completed space hardware items, some of which are not included in the Annual List of Selected Items of Space Hardware, cost of those items to be reported

shall be determined on an actual basis where possible or on a basis considered reasonable within the contractor's records or as provided in paragraph (e) above.

(h) The cost of items of space hardware, systems, and subsystems shall be reported using the contractor's records which are a part of the prescribed property or financial control system as provided in Section 3; however, fee, tooling, and other nonrecurring costs shall be excluded. Fabrication costs shall be based on the contractor's approved estimating and pricing system or property control system and should include—

(1) Direct labor;

(2) Direct materials and purchased parts (costs of purchased items shall be consistent with the contractor's approved pricing methods);

(3) Other direct costs (e.g., computer costs, travel, and transportation);

(4) Overhead—a percentage factor or rate applied to the direct costs or other applicable base; and

(5) Costs of Government-furnished property applied (data available from the shipping document—e.g., DD Form 250, 1149, or similar form—or estimated where necessary).

7. Completed Space Hardware

(a) Completed space hardware shall include completed configurations of spacecraft, satellites, rockets, etc. (including integrated systems and subsystems) and completed, but not yet integrated, systems and subsystems which are held by the prime contractor and first tier subcontractors.

(b) Deliverable completed items of space hardware covered in paragraph (a) above shall not be broken down into systems and subsystems for the purpose of reporting.

(c) The cost of items returned for modifications or rehabilitation shall be redetermined by the contractor to include the appropriate amount of original costs plus any improvement thereto. Costs to modify single shelf items to perform specific tests shall not be included. Space hardware shall be dropped from reporting by the contractor when launched, delivered to another contractor or to the Government, or disposed of as authorized by the contracting officer.

8. Completed Spare Parts and Components for Space Hardware

(a) The reporting of completed spare parts and component items for space hardware shall include, as a single amount for each contract item (as provided in paragraph 6(d)), the aggregate cost of those spares and components (see subparagraph 1(i)(2)) related to the selected list of completed items.

(b) Standard items available from commercial or other sources and held on an inventory basis until requisitioned for use are excluded here but shall be included in "Material" on NASA Form 1018. Items of spares or components reported in Schedule II, Space Hardware Reportable Items, of NASA Form 1018 shall not be included in "Material" on page 1, NASA Form 1018.

9. Space Hardware Work in Process

(a) Space hardware work in process shall consist of the total costs by contract item as provided in paragraph 6(d). The costs as of the date of the report of those unfinished space hardware units pertaining to the selected list of completed items to be reported shall be computed as provided in paragraph 6(e). This shall include the costs of such associated systems, subsystems, and spare parts and components which are provided or acquired and charged to work in process pending incorporation into a finished item. These types of items comprise what is sometimes called production inventory and includes programmed extra units to cover replacement during the fabrication process (production spares). Also included are end items on which work has begun, either by the prime contractor or a subcontractor.

(b) Space hardware spare parts and components returned for repair or modification normally shall not be included in the in-process inventory (or spare parts and components inventory) unless accountability has been transferred to the contractor. Units or lots which are not complete for any reason, such as obsolescence, faulty fabrication, or by direction of the contracting officer shall not be reported in NASA Form 1018, Schedule II.

(c) "Work in Process" historical costs on NASA Form 533, Contractor Financial Management Reports may be used (see paragraph 6(e)) if such costs apply to the selected items to be reported and are consistent with the costing of completed items. When costs are taken from the NASA Form 533, the cost of applicable Government-furnished property shall be added (where applicable) or listed as provided in subparagraph 2(a)(5). These costs shall then be adjusted for completed items and spare parts, etc., inventoried elsewhere or shipped to and accepted by a third party.

10. Contractor's Privileged Financial and Business Information

Where a transfer of property between contractors involves costs of a proprietary nature, applicable unit prices shall be furnished only on the copy of the shipping documents sent to the shipping and receiving NASA installations. The property shall be transferred to the receiving contractor on a no-cost basis.

1845.7102 Instructions for the preparation of DD Form 1342.

This instruction is to be used in the preparation of DD Form 1342, DOD Property Record, to report newly acquired equipment, items not previously reported, when major changes occur in the data initially submitted, or equipment which is no longer required for or actively being used in the pursuit of NASA programs or projects. Only one initial report is required. In-use items will be reported initially to the Equipment Visibility System (EVS) through the contracting officer (see 1845.505–6) by use of this form by marking "active" and "initial" in Block 1. Idle items being initially reported are to be identified by marking "idle" and "initial" in Block 1.

Block 1. Check appropriate boxes to indicate "Active" or "Idle" report and that the report is an "Initial" or "Changed" report.

Block 2. Enter the Julian date of preparation of the form. The first character will be the last digit of the current calendar year, and the next three characters will be the Julian date of the year.

Block 3. Enter the Identification Number/Government Tag Number as recorded on the identification plate affixed to the equipment.

Section I—Inventory Record

Block 4. Not applicable.

Block 5. Enter the first four digits of the National Stock Number, if known.

Block 6. Indicate in dollars (omit any symbols, decimal points, commas, etc.) the acquisition cost used for property accounting purposes. The acquisition cost will be the price of the basic item plus accessories and auxiliary equipment procured and delivered with the basic unit. If the initial acquisition cost data are not available, an appraised acquisition cost (based on known costs at the time of manufacture of the some or similar equipment), price lists for the period involved, or the best available price from other sources in NASA or DOD should be used, which will achieve conformity of prices for like items of equipment.

Block 7. Not applicable.

Block 8. Enter the last two digits of the year the item was manufactured. If the actual year of manufacture cannot be determined, estimate the date, and place an "E" immediately preceding the entry.

Block 9. Not applicable.

Block 10. Not applicable.

Block 11. Not applicable.

Block 12. Not applicable.

Block 13. Not applicable.

Block 14. Enter the name of the manufacturer of the equipment being reported. Do not use a distributor's or vendor's name.

a. Enter the name of the manufacturer under which the item is listed in the Directory of Metalworking Machinery, Directory of Welding, Heat Cutting, and Metalizing Equipment or appropriate handbook. In some cases, manufacturers have merged or become subsidiaries of another company; therefore, in reporting the manufacturer's name, use the appropriate manufacturing division of subsidiary name and not the parent company.

b. Enter the work "Unknown" when the name of the manufacturer is not known.

Block 15. This is a five digit numerical code identifying the manufacturer. The manufacturer's code will be obtained from Cataloging Handbook H4–1.

Block 16.

a. Enter the manufacturer's model, style, or catalog number for the equipment being reported. Always use the model number, if available. Style number would be next in preference. When the manufacturer does not assign a model, style, or catalog number, the word "None" will be inserted.

b. When unable to locate a model number, refer to manufacturer's brochure or purchase order. If the model number is obtained from other than the equipment, indicate the source in "Remarks," Block 54.

Block 17. Enter the serial number taken from the equipment. If a serial number is not assigned to the item, enter "NONE."

Blocks 18 through 24. Not applicable.

Block 25. Enter the complete contract number which the contractor is accountable for the item. This normally will be a facility contract number. Otherwise, procurement contract number will be entered.

Block 26. Enter the complete description of the item.

Block 27. Not applicable.

Block 28. Enter the NASA installation or company name, street address, city, state, and zip code of the actual location of the equipment. If the actual location is a subcontractor's plant, enter the name of the prime contractor above the subcontractor's name. Do not use the office address if different from the plant address. If no street address exists, insert "No Street Address."

Block 28a. Not applicable.

Block 29. Not applicable.

Section II—Inspection Record

Not applicable, except for Block 52, which should be completed when reporting (in accordance with 1845.505–6) that an item is no longer required for or actively being used in pursuit of NASA programs or projects.

Section III—Remarks

Not applicable.

Section IV—Disposition Record

Not applicable.

Section V—Validation Record

Not applicable.

1845.7103 Instructions for the preparation of DD Form 1419.

(a) The essential information covering Sections I and II is required to be completed prior to submission of DD Form 1419, DOD Industrial Plant Equipment Requisition, to the EVS coordinator who will review each submission for completeness and authenticity. Incomplete or invalid requests will be returned for correction. The original and two copies of the approved DD Form 1419 may be forwarded to DIPEC for screening of inventories. Upon completion of the screening process, DIPEC will annotate the results of the screening in section IV or V. Certification of nonavailability when cited in Section V is evidence that screening has been accomplished by NASA/DIPEC. The original and one copy of the request will be returned by DIPEC to the EVS coordinator of the cognizant NASA installation indicated in Section III.

(b) When a suitable item is allocated in Section IV, inspection of the equipment is recommended. Notification of acceptance or rejection of the item offered must reach NASA/DIPEC within 30 days after allocation. A copy of the DD Form 1419 will serve as the clearance document to inspect the equipment at the storage site. Acceptance or rejection of item, without inspection or after inspection, is to be noted in Section VI. If it is determined that the item is acceptable, Section VII is to be executed. The NASA appropriation symbol must be cited where applicable in Section VII. In either instance, acceptance or rejection, the original of the DD Form 1419 is to be returned to DIPEC by the EVS coordinator when items have been offered by DIPEC.

Requisition Number. The EVS coordinator will assign a requisition number to each DD Form 1419 request. When DIPEC is to be screened, each number assigned will be coded for automatic data processing by DIPEC. It will also identify the requiring installation and provide a serial number and date of submission for subsequent reference. The requisition number will begin with the appropriate FEDSTRIP/MILSTRIP Activity Address Code set forth below:

Ames Research Center	809101
Goddard Space Flight Center	803201
Johnson Space Center	807402
Kennedy Space Center	804200
Langley Research Center	803301
Lewis Research Center	805501
Marshall Space Flight Center	804101
NASA Headquarters	803302
NASA Resident Procurement Office-JPL	809143
National Space Technology Laboratories	804412

Next will be a four digit entry comprised of the last digit of the current calendar year and the Julian date of the year, i.e. 9035 for February 4, 1969. The last entry will be a four digit number from 0001 to 9999 to sequentially number requisition forms prepared on the same date. For example: the ninth requisition prepared on February 1, 1969 would be 9032–0009 preceded by the FEDSTRIP/MILSTRIP Activity Address Code, an example being Langley—"803301 3032–0009." When submitting subsequent DD Forms 1419 related to the item requested, the same requisition number is to be used and alpha code added to the end of the requisition number to indicate a second or third action on the basic request. Alpha "A" would indicate a second request, "B" a third, etc. In this manner, all actions, correspondence, etc., relative to a given request can be identified at all levels of processing by the use of the requisition number.

Section I

Item Description. It is necessary to provide a complete description of the item desired, to obtain maximum screening results. Requests for single purpose or general purpose equipment with special features must contain detailed descriptive data as to the size and capacities, setting forth special operating features or particular operations required to be performed by the item.

Block 1. Not applicable.

Block 2. Enter the manufacturer's name and Federal supply code for manufacturer (Cataloging Handbook H4–1) of the item requested.

Block 2a. Enter the manufacturer's model, style, or catalog number assigned to the equipment being requisitioned. Always use the model number if available. The style number is the next preference. Insert "NONE" in this block if the model, type, or catalog number is not known.

Block 3. Enter the 4 digit Federal Supply Class (FSC).

Block 4. Not applicable.

Block 5. Self-explanatory.

Block 6. Place and "X" in the applicable block to indicate whether physical inspection prior to acceptance is or is not desired.

Block 7. Self-explanatory.

Block 8. Enter the complete description of the item. Continue the item description in Block 51 if additional space is required to describe the item desired.

Section II

Block 9. Enter the contractor's name, street address, city, state, and zip code from which the requisition is being initiated. The address should be the one to which inquiries of a technical nature are to be referred. Include the name and telephone number of the individual to be contacted concerning the item requested.

Blocks 10 and 10a. Enter the contract number or document number and the date of the document which authorizes the acquisition of the items shown in Section I. Normally this will be a facility contract number, otherwise it should be a purchase order number or purchase request number.

Block 11. Not applicable.

Block 12. Disregard the "Military" block. Show NASA contract number and program for which item is to be used.

Block 13. Enter the specific function to be performed by the equipment. When applicable, enter the tolerances, capacities, specifications, etc., which equipment must satisfy.

Block 14. Enter the date the item must be installed in place to meet production requirements. From this date, deduct the estimated number of days required for installation. Enter the adjusted date in this block.

Block 15. Enter the date by which NASA must issue a Certificate of Nonavailability. The date will be developed by subtracting the procurement leadtime and 30 days administrative leadtime from the date shown in Block 14.

Block 16. Enter the Defense Material System Priority Rating that is assigned to the contract or anticipated purchase order, if applicable.

Block 17. Place an "X" in the appropriate box. If for replacement, identify the item to be replaced and the reason for replacement.

Block 18. Enter an "X" in the appropriate box. Show the appropriation symbol if answer is "yes."

Block 19. Not applicable.

Blocks 20 and 21. In addition to the offical's title and signature, enter the signing official's typed name, office symbol or name, and telephone number and extension. The signing official should be the company representative who prepares and submits the requirement to the cognizant NASA certifying office.

Block 22. Self-explanatory.

Block 23. Certification of need for the item requisitioned is the function of the contracting officer of the NASA installation

having jurisdiction over the contract. For NASA in-house requirements, certification can be made by the EVS coordinator.

Block 23a. Not applicable.

Block 23b. Name and address of the installation certifying the requirement.

Block 23c. Signature of the property administrator or contracting officer at plant level.

Block 23d. Self-explanatory.

Block 23e. Signature of NASA installation official certifying the requirement.

Block 23f. Self-explanatory.

Section III.

This section is for the EVS coordinator's certification of the requirement to DIPEC, when applicable.

Block 24. Self-explanatory.

Block 25. Self-explanatory.

Block 26. Self-explanatory.

Block 27. Self-explanatory.

Section IV.

To be completed by DIPEC (copy is used for admittance to storage site for inspection of property offered).

Section V.

To be completed by DIPEC or EVS Coordinator if equipment is not available.

Section VI.

Blocks 42, 43, 44, and 45. To be completed by the requesting official signing the requisition in Section II. (See Block 20.) Reasons for non-acceptance are to be shown in Section VIII, Remarks, or by separate document attached to the DD Form 1419.

Section VII.

Block 46. Enter complete name, street address, city, state, and zip code of the contractor or installation to which the item is to be shipped. Indicate rail head and truck delivery points when other than the address named.

Block 47. Self-explanatory.

Block 48.

Blocks 49a and b. Insure that NASA appropriation symbols are included with work order number.

Block 49c. Enter NASA appropriation symbol chargeable for any special work ordered, i.e., rebuild, repair, accessory replacement.

Block 49b. Enter NASA installation and office symbol which will make payment for transportation and packing, crating, and handling of item requisitioned.

Block 50. Self-explanatory.

Block 51. This block can be used to expand or explain entries made in Blocks 1 through 50. When requisitioning equipment from excess listings, identify issuing office, list number, date, control number, and item number assigned to equipment.

PART 1846—QUALITY ASSURANCE

Subpart 1846.6—Material Inspection and Receiving Reports

Sec.

1846.670 Introduction.
1846.670–1 General.
1846.670–2 Applicability.
1846.670–3 Use.
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Authority: 42 U.S.C. 2473(c)(1).

Subpart 1846.6—Material Inspection and Receiving Reports

1846.670 Introduction.

1846.670–1 General.

(a) This Subpart 1846.6 contains procedures and instructions for the use, preparation, and distribution of the Material Inspection and Receiving Report (MIRR) (DD Form 250 series) and suppliers' commercial shipping/packing lists used to evidence Government Procurement Quality Assurance (PQA).

(b) MIRR's are used to document PQA, acceptance of supplies and services, and shipments; they are used by receiving, status control, technical, contracting, inventory control, requisitioning, and paying activities. MIRR's are not required to be used for—

(1) Shipments by subcontractors where direct shipment is not made to the Government;

(2) Shipment of contractor inventory (see FAR 45.601); or

(3) Movement of Government property unless for original acquisition.

(c) To preclude delays in shipments or payments and avoid multiple corrections, contractors are encouraged to consult with the cognizant Government representative regarding implementation of this Subpart.

1846.670–2 Applicability

(a) The provisions of this Subpart are applicable to all deliveries of supplies or services procured by or for NASA. Exceptions are as follows:

(1) Procurements effected under FAR Part 13.

(2) Negotiated subsistence procurements.

(3) Subcontracts where direct shipment is not made to the Government.

(4) Contracts for which the end item is a technical or scientific report.

(b) When NASA provides PQA and/or Acceptance services for non-NASA activities, the MIRR shall be prepared in accordance with the instructions of this Subpart unless otherwise specified in the contract.

1846.670–3 Use.

(a) The DD Form 250 is a multi-purpose report used for—

(1) PQA—to provide evidence of PQA at origin or destination;

(2) Acceptance—to provide evidence of acceptance at origin or destination;

(3) Packing list;

(4) Receiving;

(5) Shipping;

(6) Contractor invoice;

(7) Contractor invoice support; and

(8) Contractor internal use.

1846.670–4 Application.

(a) The DD Form 250 shall be used for delivery of contract line, subline, exhibit line, or exhibit subline items.

(b) If the "Shipped To," "Marked For," "Shipped From," "PQA," and "Acceptance" data are the same for more than one shipment made on the same day under the same contract one MIRR shall be prepared to cover all such shipments, except that, if the volume of the shipments precludes the use of a single car, truck, or other vehicle, either a copy of the single MIRR or a separate MIRR shall be provided for each vehicle.

(c) The DD Form 250 may be, but is not required to be, used under imprest fund purchases, purchase orders, delivery orders placed against Federal Supply Schedule contracts, delivery orders placed against an indefinite-delivery type contract, delivery orders placed against a blanket purchase agreement, or whenever the purchasing, requisitioning, or ordering document adequately provides for inspection and/or acceptance.

1846.670–5 Forms.

(a) Contractors may obtain from the contracting office upon request and at no cost MIRR forms required for use in connection with Government contracts.

(b) Contractors may print forms provided that the format and dimensions (DD Forms 250 and 250c—$8^1/_2$ in. x 11 in.) are identical to the MIRR forms printed by the Government and that the forms are cast to provide for 78 characters per printed image horizontally and 62 lines vertically border to border for the DD Form 250 and 61 lines vertically border to border for the DD Form 250c.

1846.671 Procurement quality assurance on shipments between contractors.

(a) The suppliers' commercial shipping document/packing list shall indicate performance of required PQA actions at subcontract level. The following entries shall be made on the supplier's

commercial shipping document/packing list:

Required PQA of listed items has been performed.

Date: (Signature of Authorized Government Representative) (Typed Name and Office)

(b) Distribution for Government purposes shall be one copy—

(1) With shipment;

(2) For the Government representative at consignee (via mail); and

(3) For the Government representative at consignor.

1846.672 Preparation of the DD Form 250 and DD Form 250c.

1846.672-1 Preparation instructions.

DD Form 250, Material Inspection and Receiving Report (MIRR), and DD Form 250c, Material Inspection and Receiving Report—Continuation Sheet, shall be prepared as follows:

(a) *General.*

(1) The date, where required, shall utilize seven spaces consisting of the last two digits of the year, three alphabetic month abbreviation, and two digits for the day. For example, 67AUG07, 67SEP24.

(2) The address, where required, shall consist of the name, street address/P.O. Box, city, state, and ZIP code.

(3) When the DD Form 250c is used, the data entered in the blocks at the top of the form shall be identical to the comparable entries as shown in Blocks 1, 2, 3, and 6 of the DD Form 250.

(4) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with appropriate block cross reference. Additional DD Form 250c sheets, solely for continuation of Block 23 data, shall not be numbered or distribted as part of the MIRR.

(b) *Classified information.* Classified information shall not be included in or appear on the MIRR, nor shall the MIRR be classified.

(c) *Block 1*—CONTRACT NUMBER.

(1) Enter the contract number as contained in the contractual document, including the applicable call/order number, if any.

(2) Enter the name of the contracting office immediately below the contract number. This requirement may be satisfied by inclusion of the approved prefix used in the contract number to identify the contracting office.

(d) *Block 2*—SHIPMENT NO.

(1) The shipment number is composed of a three-alpha character prefix and a four-character numeric or alpha-numeric serial number.

(i) The shipment number prefix shall be controlled and assigned by the prime contractor and shall consist of three alphabetic characters for each "Shipped From" address (Block 11).

(ii) The first shipment under a prime contract from each "Shipped From" address shall be numbered 0001; all subsequent shipments under that prime contract shall be consecutively numbered.

(A) Alpha-numeric numbers shall be used when more than 9,999 numbers are required. Alpha-numeric numbers shall be serially assigned with the alpha in the first position followed by the three-position numeric serial number. The following alpha-numeric sequence shall be (the letters I and O shall not be used)—

(*1*) A001 through A999 (10,001 through 10,999);

(*2*) B001 through B999 (11,001 through 11,999); to

(*3*) Z001 through Z999 (34,001 through 34,999).

(B) When this series is completely used, numbering shall revert to 0001.

(2) The shipment number of the initial shipment shall be reassigned where a "Replacement Shipment" is involved (see Block 16(b)(4)).

(3) The prime contractor shall control deliveries and on the last shipment of the contract shall suffix the shipment number with a "Z" in addition to that required for line items (see Block 17). Where the contract final shipment is from other than the prime contractor's plant, the prime contractor may elect to direct the subcontractor to suffix the "Z" or, on receipt of the subcontractor final shipment information, to correct the DD Form 250 (see FAR Subpart 12.1) covering the last shipment from the prime contractor's plant by addition of a "Z" to that shipment number.

(e) *Block 3*—DATE SHIPPED. Enter the date the shipment is released to the carrier or the date of completion of services. If the shipment will be released after the date of PQA and/or Acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after the date. Distribution of the MIRR shall not be delayed for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date.

(f) *Block 4*—B/L TCN. When applicable, enter—

(1) The commercial or Government bill of lading number after "B/L"; and

(2) The Transportation Control Number after "TCN."

(g) *Block 5*—DISCOUNT TERMS. The discount, in terms of percentages and corresponding days allowed, shall be entered as described below:

(1) The contractor may, at its option, enter the discount terms on all copies of the MIRR.

(2) When the MIRR is used as an invoice, see 18-46.672-4.

(h) *Block 6*—INVOICE NO./DATE. Enter the invoice number and date as described below:

(1) The contractor may, at its option, enter the invoice number and date on all copies of the MIRR.

(2) When the MIRR is used as an invoice, see 18-46.672-4.

(i) *Block 7*—PAGE/OF. Consecutively number the pages comprising the MIRR. On each page, enter the total number of pages of the MIRR.

(j) *Block 8*—ACCEPTANCE POINT. Enter an "S" for Origin or "D" for Destination as specified in the contract as the point of acceptance. Enter an alphabetic "O" for Other if the point of acceptance is not specified in the contract.

(k) *Block 9*—PRIME CONTRACTOR. Enter the address.

(l) *Block 10*—ADMINISTERED BY. Enter the address of the contracting office cited in the contract.

(m) *Block 11*—SHIPPED FROM/CODE/FOB.

(1) Enter the code and address of the "Shipped From" location. If identical to Block 9, enter "See Block 9."

(2) For performance of services line items which do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations or if identical to Block 9, enter "See Block 9."

(3) Enter on the same line and to the right of "FOB" and "S" for Origin or "D" for Destination as specified in the contract. Enter an alphabetic "O" if the FOB point cited in the contract is other than origin or destination.

(n) *Block 12*—PAYMENT WILL BE MADE BY. Enter the address of the payment office cited in the contract.

(o) *Block 13*—SHIPPED TO. Enter the address of the consignee as contained in the contract or shipping instructions.

(p) *Block 14*—MARKED FOR. Enter the "Marked For" address and/or other designation as contained in the contract or shipping instructions.

(q) *Block 15*—ITEM NO. Enter the contract line item, subline line, exhibit line, or exhibit subline identification as set forth in the contract. If four or less digits are used, they will be positioned to the left of the vertical dashed line. Where a six-digit identification is used, enter the last two digits to the right of the vertical dashed line.

(r) *Block 16*—STOCK/PART NO./DESCRIPTION.

(1) Enter, as applicable, for each line item, using single spacing between each line item, the following:

(i) The Federal Stock Number (FSN) or noncatalog number and, if applicable, prefix or suffix. When a number is not provided or it is necessary to supplement the number, include other identification, e.g., manufacturer's name or Federal Supply Code, as published in Cataloging Handbook H4-1, and part numbers. Additional part numbers may be shown in parentheses. Also enter the descriptive noun of the item nomenclature and, if provided, the Government-assigned management/material control code. In the case of equal kind supply items, the first entry shall be the description without regard to kind, i.e., "Resistor" or "Vacuum Tube". Below this description, enter the contract line item number in Block 15 and Stock/Part number followed by the size or type in Block 16.

(ii) On the next printing line if required by the contract for control purposes, enter the make, model, serial number, lot, batch, hazard indicator, and/or similar description.

(iii) On the next printing line, enter the FEDSTRIP requisition number(s) when provided in the contract or shipping instructions.

(2) In addition to entries required above, enter on the next line the following as appropriate (where applicable to all line item numbers identified in the MIRR, enter such

data only once after the last line entry. Entries may be extended through Block 20):

(i) Enter in capital letters any special handling instruction/limits for material environmental control, i.e., temperature, humidity, aging, freezing, and shock.

(ii) When an FSN is required by, but not cited in, a contract and has not been furnished by the Government, shipment may be made without such FSN at the direction of the contracting officer. Enter the authority for such shipment.

(iii) When Government-furnished property (GFP) is included with or incorporated into the line item, enter the letters "GFP."

(iv) When shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT." (See subparagraph (s)(3) below for replacement indicators.)

(v) For items shipped with missing components, enter and complete the following: "Item(s) shipped short of the following component(s): FSN or comparable identification ———, Quantity ———, Estimated Value ———, Authority ———."

(vi) When shipment is made of components which were short on a prior shipment, enter and complete the following: "These components were listed as shortages on Shipment Number ———, date shipped ———."

(vii) When shipments involve drums, cylinders, reels, containers, skids, and so forth designated as returnable under contract provisions, enter and complete the following: "Return to ———, Quantity ———, Item ———, Ownership *(Government/contractor)."*

(viii) Enter shipping container number(s), the type, and the total number of the shipping container(s) included in the shipment.

(ix) The MIRR shall be used to record and report the waivers and deviation from contract specifications, including the source and authority for the waiver or deviation; for example, the contracting office authorizing the waiver or deviation and the identification of the authorizing document.

(x) For shipments involving discount terms, enter "DISCOUNT EXPEDITE" in at least one-inch outline-type style letters.

(xi) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer: "Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results." The contracting officer shall advise (A) the consignee of the results (approval/disapproval) and (B) the contractor to withhold invoicing pending attachment to its invoice of the approved test/evaluation results.

(xii) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of the four with shipment) or ARP origin acceptance (additional copy furnished to the QAR) shall be identified entering "PAYMENT COPY" in approximately one-half inch outline-type style letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter inch letters immediately below. Do not obliterate any other entries.

(xiii) A double line shall be drawn completely across the form following the last entry.

(s) *Block 17*—QUANTITY SHIPPED/RECEIVED.

(1) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(2) Enter a "Z" below the first digit of the quantity when—

(i) The total quantity of the line item is delivered, including variations within contract terms; and

(ii) All shortages on items previously shipped short are delivered.

(3) If a replacement shipment is involved, enter below the first digit of the quantity the letter "A" to designate first replacement, "B" for second replacement, and so forth. The final shipment indicator "Z" shall not be used when a final line item shipment is replaced.

(t) *Block 18*—UNIT. Enter the abbreviation of the unit of measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD-129, Marketing and Storage.

(u) *Block 19*—UNIT PRICE. Enter the unit price on all MIRR copies whenever the MIRR is used for voucher or receiving purposes.

(v) *Block 20*—AMOUNT. Enter the extended amount when the unit price is entered in Block 19.

(w) *Block 21*—PROCUREMENT QUALITY ASSURANCE. The words "conform to contract" contained in the printed statements in Blocks A and B relate to contract obligations pertaining to quality and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with appropriate block cross reference.

(1) "A ORIGIN."

(i) The authorized Government representative shall—

(A) Place an "X" when applicable in the appropriate PQA and/or Acceptance box(es) to evidence origin PQA and/or Acceptance. When the contract requires PQA at destination in addition to origin PQA, an asterisk will be entered at the end of the statement and an explanatory note entered in Block 16;

(B) Enter the date of signature;

(C) Sign; and

(D) Enter the typed, stamped, or printed name of the signer and office code.

(2) "B. DESTINATION."

(i) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(ii) When PQA and Acceptance or Acceptance is at destination the authorized Government representative shall—

(A) Place an "X" in the appropriate box(es);

(B) Enter the date of signature;

(C) Sign; and

(D) Enter typed, stamped, or printed name and title.

(x) *Block 22*—RECEIVER'S USE. This block shall be used by the receiving activity (Government or contractor) to denote receipt, quantity, and condition. The receiving activity shall enter in this block the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

(y) *Block 23*—CONTRACTOR USE ONLY. This block is provided and reserved for contractor use.

1846.672-2 Consolidated shipments.

When individual shipments are held at the contactor's plant for authorized transportation consolidation to a single destination on a single bill of lading, the applicable DD Forms 250 may be prepared at the time of PQA or Acceptance prior to the time of actual shipment (see Block 3).

1846.672-3 Correction instructions.

When, because of errors or omissions, it is necessary to correct the MIRR after distribution has been made, it shall be revised by correcting the original master and distributing the corrected form. The corrections shall be made as follows:

(a) Circle the error and place the corrected information in the same block. If space is limited, enter the corrected information in Block 16, referencing the error page and block.

(b) The words "CORRECTIONS HAVE BEEN VERIFIED" shall be entered on page 1. The authorized Government representative shall date and sign immediately below the statement.

(c) MIRR's shall not be corrected for Blocks 19 and 20 entries.

(d) Pages of the MIRR requiring correction shall be clearly marked "CORRECTED COPY," avoiding obliteration of any other entries. Where corrections are made only on continuation sheets, page 1 shall also be marked "CORRECTED COPY."

(e) Page 1 and only those continuation pages marked "CORRECTED COPY" shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

1846.672-4 Invoice instructions.

Contractors are encouraged to use copies of the MIRR as an invoice in lieu of a commercial form, but are not required to do so. When used as an invoice, four copies shall be prepared and forwarded to the payment office as follows:

(a) Complete Blocks 5, 6, 19, and 20.

(b) Mark, in letters approximately one inch high, the first copy "ORIGINAL INVOICE" and the remaining three copies "INVOICE COPY."

(c) Forward the four copies to the payment office (Block 12 address).

1846.672-5 Packing list instructions.

Copies of the MIRR may be used as a packing list. If so, the packing list copies shall be in addition to the copies of the MIRR required for distribution (see 1846.673) and shall be marked "PACKING LIST."

1846.672-6 Receiving instructions.

When the MIRR is used for receiving purposes, procedures shall be as prescribed by local directives. If PQA and Acceptance or Acceptance of supplies is required upon arrival at destination, see Block 21B for instructions.

1846.673 Distribution of DD Form 250 and DD Form 250c.

(a) Subject to the requirements of paragraph 217 of NHB 5330.7, Management of Government Quality Assurance Functions for Supplier Operations, DD Forms 250 and 250c shall be distributed in accordance with the procedures prescribed by the installation.

(b) The contractor is responsible for distributing DD Forms 250 and 250c in accordance with the provisions of the contract or instructions of the contracting officer.

PART 1847—TRANSPORTATION

Subpart 1847.2—Contracts for Transportation or for Transportation-Related Services

Sec.

1847.200 Scope of subpart.

1847.200-70 Charter of aircraft.

Subpart 1847.3—Transportation in Supply Contracts

1847.304 Determination of delivery terms.

1847.304-3 Shipments from CONUS for overseas delivery.

1847.304-370 NASA export privilege.

1847.305 Solicitation provisions, contract clauses, and transportation factors.

1847.305-10 Packing, marking, and consignment instructions.

1847.305-13 Transit arrangements.

1847.305-70 NASA contract clause.

Subpart 1847.5—Ocean Transportation by U.S.-Flag Vessels

1847.506 Procedures.

1847.506-70 Compliance with the Cargo Preference Act.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1847.2—Contracts for Transportation or for Transportation-Related Services

1847.200 Scope of subpart.

1847.200-70 Charter of aircraft.

When procuring aircraft by charter, contracting officers shall comply with NMI 7910.1, NASA Aircraft Management.

Subpart 1847.3—Transportation in Supply Contracts

1847.304 Determination of delivery terms.

1847.304-3 Shipments from CONUS for overseas delivery.

1847.304-370 NASA export privilege.

NASA has certain export licensing privileges for the moving of commodities to foreign destinations. Advice should be obtained from the transportation officer to make full use of these privileges.

1847.305 Solicitation provisions, contract clauses, and transportation factors.

1847.305-10 Packing, marking, and consignment instructions.

In contracts which provide for delivery f.o.b. origin and shipment under Government bills of lading, consignment instructions may be limited to the mail address of the consignee (receiving activity), provided the contract instructions state that "Shipment other than mail shall be consigned as indicated on the Government bill of lading furnished to the contractor." Various receiving activities may have different consignment points for the various transportation media or for particular carriers within a medium, depending on the weight, shape, size, or nature of the shipment involved.

1847.305-13 Transit arrangements.

(a) When using the provision in FAR 52.247-56, the solicitation also shall state that offers will be evaluated on the basis of the lowest overall cost to the Government, including transportation costs to NASA from point of origin to final destination, taking into account any applicable transit privileges.

(b) If the nature of the procurement is such that carload or truckload shipments may be made by the contractor from one point (such as a subcontractor's plant) to another point for processing or fabrication and delivery to the Government, solicitations shall provide for the contractor to furnish information that will enable the Government to benefit from any transit privilege that might apply in shipment to final destination.

1847.305-70 NASA contract clause.

Insert the clause at 1852.247-70, Returnable Gas Cylinders, in contracts involving the purchase of gas in contract-furnished returnable cylinders where the contractor retains title to the cylinders. The clause may be used, with appropriate modification, in contracts for other supplies involving reels, spools, drums, carboys, liquid petroleum gas containers, or other reusable containers, where the contractor is to retain title to the containers.

Subpart 1847.5—Ocean Transportation by U.S.-Flag Vessels

1847.506 Procedures.

1847.506-70 Compliance with the Cargo Preference Act.

(a) A register will be established and maintained by the transportation officer in each field installation to reflect adherence to the Cargo Preference Act. Where there is no transportation officer available, it will be maintained by the procurement office. Such registers shall contain pertinent details of ocean shipments, including, but not limited to, the ports of origin and destination of shipments, commodity descriptions, and gross weight, freight revenue, name of vessel, operator of vessel, and date of loading. Registers shall be maintained on a current basis and organized so that adherence to the Cargo Preference Act can be ascertained at all times. Insofar as practicable, compliance with the 50 percent minimum requirements of the Cargo Preference Act shall be maintained on a quarter-year basis. Any deficiencies to maintain such compliance shall be corrected by the end of the calendar year.

(b) On the basis of the registers maintained under (a) above, quarterly reports reflecting actual ocean shipments shall be submitted to the Division of National Cargo, Maritime Administration, Department of Transportation, Washington, D.C. 20590 (see FAR 47.506(d)). Negative reports are required when applicable. Such reports will be made by the transportation officers and contracting officers responsible for maintaining the registers described in paragraph (a) above.

PART 1848—VALUE ENGINEERING

Subpart 1848.1—Policies and Procedures

Sec.

1848.102 Policies.

Subpart 1848.2—Contract Clauses

1848.202 Clause for construction contracts.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1848.1—Policies and Procedures

1848.102 Policies.

As authorized at FAR 48.102(a), NASA has elected to exempt all contracts other than fixed-price construction contracts from value engineering requirements at FAR Part 48.

Subpart 1848.2—Contract Clauses

1848.202 Clause for construction contracts.

(a) The contracting officer shall insert the clause at FAR 52.248–3, Value Engineering—Construction, only in those fixed-price construction solicitations and contracts when the contract amount is estimated to be $100,000 or more.

(b) Questions on the implementation and administration of this clause that cannot be resolved at the local level should be referred to the Assistant Administrator for Procurement (Code HP–1).

PART 1849—TERMINATION OF CONTRACTS

Subpart 1849.1—General Principles

Sec.

1849.101 Authorities and responsibilities.
1849.101–70 Appointment/Delegation.
1849.101–71 Termination authority.
1849.102 Notice of termination.
1849.102–70 Prior clearance of significant contract terminations.
1849.105 Duties of termination contracting officer after issuance of notice of termination.
1849.105–70 Termination docket checklist.
1849.110 Negotiation memorandum.
1849.111 Review of proposed settlements.
1849.111–70 Settlement Review Boards.
1849.111–71 Required review and approval.
1849.111–72 Scope of review.
1849.111–73 Action by the Board.
1849.111–74 Subcontracts.

Subpart 1849.5—Contract Termination Clauses

1849.502 Termination for convenience of the Government.
1849.503 Termination for convenience of the Government and default.
1849.505 Other termination clauses.

Subpart 1849.6—Contract Termination Forms and Formats

1849.670 Format for Termination Contracting Officer's Settlement Memorandum for fixed-price type contract terminated for convenience of the Government.
1849.671 Format for Termination Contracting Officer's Settlement Memorandum for cost-reimbursement type contracts.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1849.1—General Principles

1849.101 Authorities and responsibilities.

1849.101–70 Appointment/Delegation.

(a) Heads of installations shall appoint a termination contracting officer (TCO) (see FAR 2.101) to perform specific duties relating to contract termination as that individual's primary function. Such duties should include—

(1) Receiving and reviewing NASA Forms 1412, Termination Authority.

(2) Reviewing the contract and other related documents prior to issuing the notice of termination to ensure protection of the Government's rights under the contract.

(3) Issuing notices of termination, reinstatement, and recission to contractors.

(4) Assigning termination docket control numbers.

(5) Developing, maintaining, and managing basic controls relating to contract termination and settlement actions.

(6) Carrying out the duties, functions, and responsibilities in FAR Part 49 and this Part 1849.

(b) Contracting offices shall utilize the services of DOD and other Government agencies whenever possible to administer and negotiate settlement of terminated contracts. Delegation of the termination function will be made in accordance with FAR Subpart 42.2 and Subpart 1842.2.

1849.101–71 Termination authority.

NASA Form 1412, Termination Authority, is prescribed for use by cognizant NASA installations when initiating action to terminate a contract for either convenience of the Government or for default of the contractor. The termination authority shall normally be originated by the project manager or other NASA officials responsible for the decision to terminate and shall be submitted to the contracting office for use in recording subsequent decisions regarding the type of termination and assignment of the responsibility for final settlement.

1849.102 Notice of termination.

1849.102–70 Prior clearance of significant contract terminations.

(a) Prior NASA Headquarters clearance of the information release is required before any notice or any information concerning a proposed contract termination involving a reduction in employment of 100 or more contractor employees is released to a contractor and release of information to Congress or the public is the responsibility of NASA Headquarters through its liaison point designated in paragraph (b) below. In a labor surplus area, a lesser number than 100 may be significant and, if so, should be similarly cleared.

(b) The following information will be submitted to the Office of Legislative Affairs, NASA Headquarters (Code C), which, in coordination with the Office of External Relations (Code L), has been designated the NASA liaison point.

(1) Contract number, date of award, type of contract.

(2) Name of company.

(3) Nature of contract or end item.

(4) Reasons for the termination.

(5) Contract price of items terminated.

(6) Total number of contractor employees involved including the Government's estimate of the number that may be discharged.

(7) Statement of anticipated impact on the company and the community (identify). Identify area labor category and whether contractor is large or small business, and include any known impact on hardcore disadvantaged employment programs.

(8) Total number of subcontractors involved as well as the impact in this area, if known.

(9) Unclassified draft of suggested press release of information.

(c) Clearance to release the information will be requested as soon as possible after the decision has been made to terminate a contract. Pending receipt of clearance to release, information pertinent to the termination will require "For Official Use Only" handling unless a security clearance is required. Copies of the above will be furnished to the Office of External Relations (Code L), the cognizant Program Office, and the Assistant Administrator for Procurement (Code HP–1).

(d) The liaison office will act promptly on the request for clearance to release information (not days after receipt) to avoid the accrual of termination costs.

1849.105 Duties of termination contracting officer after issuance of notice of termination.

1849.105–70 Termination docket checklist.

NASA Form 1413, Termination Docket Checklist, is prescribed for use as a checklist to ensure adequacy of records under FAR 49.105.

1849.110 Negotiation memorandum.

Recommended memorandum formats for settlements requiring review board action appear in 1849.670.

1849.111 Review of proposed settlements.

1849.111-70 Settlement Review Boards.

Procurement Officers at each NASA installation shall establish a Settlement Review Board (the Board) to review proposed settlements or determinations as required by 1849.111-71(a). Each Board should be composed of at least three qualified employees of the installation who shall possess broad business and contracting experience. The membership of each Board should include a lawyer, an engineer or industrial specialist, and, in appropriate cases an accountant. Three members of the Board shall constitute a quorum; the Board may act by a majority of the members present. No person shall serve as a member of a Board in reviewing a settlement in which that member has participated.

1849.111-71 Required review and approval.

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

(1) The settlement or determination involves $50,000 or more (see FAR 49.002(d));

(2) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract and (i) in the case of a complete termination, the fee, as adjusted, is $50,000 or more; or (ii) in the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $50,000 or more;

(3) The Procurement Officer concerned determines that a review is desirable; or

(4) The TCO desires review by the Board.

(b) *Submission of information.* The TCO shall submit to the Board the Termination Settlement Supplemental Agreement, supported by such detailed documentation as is required for an adequate review. The supporting documentation should normally include copies of (1) the contractors's or subcontractor's settlement proposal, (2) the audit report, (3) termination inventory schedules, (4) consolidated SF 1424, Inventory Disposal Report, (5) the TCO's negotiation memorandum explaining the settlement (see FAR 49.110), and (6) when appropriate, the opinion of any other Settlement Review Board which previously reviewed the settlement. The Board will prescribe the number of copies of the information it requires and may require the submission of additional information.

1849.111-72 Scope of review.

The function of the Board is to determine the overall reasonableness of the proposed settlement agreement or determination from the standpoint of protecting the Government's interest. The Board may vary the scope and intensity of the review according to the size and complexity of the proposed settlement agreement or determination and any other relevant factors. It is not intended that the Board examine in detail every element entering into the proposed settlement agreement or determination, but the Board may inquire into selected elements of the proposed settlement agreement or determination to assure that it has been conducted competently and is based on adequate information.

1849.111-73 Action by the Board.

The Board shall submit to the TCO a written opinion regarding the proposed settlement agreement or determination and any other matter considered by the Board setting forth its approval or disapproval thereof or other decision thereon. Failure of the Board to submit a written opinion as to any proposed settlement agreement or determination within 30 days after submission to the Board of all the information required under 1849.111-71(b) shall operate as an approval by the Board.

1849.111-74 Subcontracts.

A TCO may authorize the contract administration office cognizant of an upper-tier subcontractor to grant approval or ratification, including necessary board approvals, of proposed subcontractor settlements described in FAR 49.108-3(c), which are first reviewed and referred by the prime contractor to the TCO. This procedure may be used only for specific contracts and is not applicable to settlements between the contractor and its immediate subcontractors.

Subpart 1849.5—Contract Termination Clauses

1849.502 Termination for convenience of the Government.

The clause at 1852.249-70 shall be used in all letter contracts contemplating fixed-priced type definitive contracts.

1849.503 Termination for convenience of the Government and default.

The clause at 1852.249-71 shall be used in all letter contracts contemplating cost reimbursement type definitive contracts.

18-49.505 Other termination clauses.

The contracting officer shall insert the clause at 1852.249-72, Termination (Utilities), in all contracts for utilities services.

Subpart 1849.6—Contract Termination Forms and Formats

1849.670 Format for Termination Contracting Officer's Settlement Memorandum for fixed-price type contract terminated for convenience of the Government.

The following settlement memorandum is required for use by TCO's (see FAR 18-49.110). Contractors and subcontractors should be encouraged to use this format appropriately modified to cover subcontract settlements submitted for review and approval.

Part I—General Information

(a) *Identification.* (Identify memorandum as to its purpose and content.)

(1) Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

(2) Name and titles of both contractor and Government personnel who participated in the negotiation.

(b) *Description of terminated contract.*

(1) Date of contract and contract number.

(2) Type of contract.

(3) General description of contract items.

(4) Total contract price.

(5) Cite the applicable contract termination provisions and clause.

(c) *Termination notice.*

(1) Reference termination notice and state effective date of termination.

(2) Scope and nature of termination (complete or partial), items terminated, unit price, and total price of items terminated).

(3) State whether termination notice was amended, and if so, explain.

(4) State whether contractor stopped work on effective termination date. If it did not, furnish details. Also state whether subcontracts were terminated promptly.

(5) Statement as to diversion of common items and return of goods to suppliers, if any.

(6) Furnish information as to contract performance and timely deliveries on part of contractor.

Part II—Contractor's Settlement Proposal

(a) *Date and amount.* Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

(b) *Basis of claim.* State whether claim was filed on inventory, total cost, or other basis. Explain approval granted in connection with submission on other than inventory basis.

(c) *Examination of proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

Part III—Tabular Summary of Contractor's Claim

Prepare a summary substantially as follows:

(WHERE FIELD RECOMMENDATIONS ARE TO BE CONSIDERED, EXPAND THE FORMAT TO INCLUDE SUCH RECOMMENDATIONS.)

Auditor's Recommendation	Item Claimed	Contractor's Proposal	$ Accepted		TCO Negotiated Amount
			Cost Questioned	Unresolved Items	
1. Contractor's Costs as set forth on Settlement Proposal, Metals, Raw materials, etc. Total					
2. Profit					
3. Settlement Expense					
4. Total					
5. Settlement with Subs					
6. Acceptable Finished Product					
7. Gross Total					
8. Disposal and Other Credits					
9. Net Settlement					
10. Partial, Progress & Advance Payments					
11. Net Payment Requested					

Part IV—Discussion of Settlement

(a) Contractor's cost.

(1) If the settlement was negotiated on the basis of individual items, specify the factors and consideration with respect to each item.

(2) In the case of a lump sum settlement, comment on the general basis for and major factors concerning each element of cost and profit included therein.

(3) Comment on any important adjustments made to costs claimed or any significant amounts in relation to the total claim.

(4) If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.

(5) Comment on any unadjusted contractual changes which are included in the settlement.

(6) Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.

(7) Furnish other information believed helpful to the Settlement Review Board or any reviewing authority in understanding the recommended settlement.

(b) *Profit.* Explain the basis and factors considered in arriving at a fair profit.

(c) *Settlement expenses.* Comment on and summarize those expenses not included in audit review.

(d) *Subcontractor's settlements.*

	No. of Settlements	Net Amount
Approved by contracting officer		
Concluded by contractor under delegation of authority		
Approved by Settlement Review Board		
No Cost Settlements		
Total		

(e) *Partial payments.* Furnish total amount of partial payments, if any.

(f) *Progress or advance payments.* Furnish total of unliquidated amounts, if any.

(g) *Claims of the Government against the contractor included in Settlement Agreement reservations.* List all outstanding claims, if any, which the Government has against the contractor in connection with the terminated contract or terminated portion thereof.

(h) *Assignments.* List any assignments, giving name and address of assignee.

(i) *Disposal credits.* Furnish information as to applicable disposal credits and, give dollar amounts of all disposal credits.

(j) *Plant clearance.* State whether all plant clearance action has been completed and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearance. Consolidated closing plant clearance report is attached.

(k) *Government property.* State whether all Government property has been accounted for.

(l) *Special tooling.* If involved, furnish comment on disposition.

(m) *Summary of settlement.* Summarize the settlement in tabular form substantially as follows:

TABULAR SUMMARY FOR COMPLETE OR PARTIAL TERMINATION

	Amount Claimed	Allowed Amount
Prime Contractor's Charges (before disposal credits)		
Plus: Subcontractor charges (after disposal credits)		
Gross Settlement		
Less: Disposal Credits—Prime		
Net Settlement		
Less: Prior Payment Credits (This Settlement)		
Previous Partial Settlements		
Other Credits or Deductions		
Total		
Net Payment		
Total Contract Price (Complete Termination)		
CPIT (for partial termination)		
Less: Total Payments to date		
Net Payment from this Settlement		
Fund Reserved for Reservations		
Final Contract Price (Terminated Portion for partial termination)		
Reduction in Contract Price		

(n) *Exclusions.* Describe any proposed reservation of rights to the Government or to the contractor.

Part V—Recommendation

(a) *Recommendation.* Include statement as to the amount of the gross settlement and recommendation that it is fair and reasonable to the Government and the contractor.

(b) *Signature.* The Contracting Officer will sign and date the memorandum.

1849.671 Format for Termination Contracting Officer's Settlement Memorandum for cost-reimbursement type contracts.

The following settlement is required for use by TCO's (see FAR 1849.110). This format may be appropriate by modified and used to cover subcontract settlements.

Part I—General Information

(a) *Identification.* (Identify memorandum as to its purpose and content.)

(1) Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

(2) Names and titles of contractor and Government personnel who participated in the negotiation.

(b) *Description of terminated contract.*

(1) Date of contract and contract number.

(2) Type of contract.

(3) General description of contract items.

(4) State total contract cost and fee data if complete termination.

(5) Cite the applicable contract termination provisions and clauses.

(c) *Termination notice.*

(1) Reference termination notice and state effective date of termination.

(2) Scope and nature of termination (complete or partial, items terminated, estimated costs and fee data applicable to items terminated).

(3) State whether termination notice was amended, and if so, explain.

(4) Explain scope of the settlement as to whether settlement concerns fee only or whether costs are also included.

Part II—Contractor's Settlement Proposal

(a) *Date and amount.* Indicate data and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

(b) *Examinations of proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

Part III—Tabular Summary of Settlement

(a) *Summary.* Summarize the proposed settlement in tabular form substantially as shown in Attachments A and B. Partial settlements may be summarized on Attachment B.

(b) *Comments.* Furnish comments in amplification of tabular summaries. Summary of final settlement is at Attachment A.

(1) If the auditor's final report was not available for consideration, state the circumstances.

(2) Explain how the fixed fee was adjusted. Identify basis used, such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process.

(3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.

(4) Identify reservations included in the settlement that are other than standard reservations required by regulations and which are concerned with pending claims and refunds.

(5) Explain substantial or otherwise-important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.

(6) If unreimbursed costs were settled on a lump-sum basis, explain the general basis for and the major factors considered in arriving at this settlement.

(7) Comment on any unusual items of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.

(8) If auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why they were not.

(9) On items recommended for further consideration by the auditor, explain, in general, the basis for the action taken thereon.

(10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.

(11) Show settlements with subcontractors by breakdown as follows:

	Number Settlements	Total Dollar Amount
Approved by Termination Contracting Officer		
Concluded by contractor under delegation of authority.		
Approved by Settlement Review Board		
No Cost Settlements		
Total		

(12) The following summary will be followed where settlement includes costs and fixed fee in a complete termination.

Gross Settlement	
Less: Disposal credits	
Net Settlement	
Less: Prior Payments	
Other credits or deductions	
Total	
Net Payment	
Total contract estimated cost plus fixed fee	
Less: Net settlement	
Estimated reserve for exclusions	
Final contract price (Consisting of $—— for reimbursement of costs and $—— for adjusted fixed fee)	
Reduction in contract price (credit)	

(13) If the settlement is restricted to an adjustment of the fixed fee only, then the following summary will be included.

Amount of reduction in estimated costs	
Amount of reduction in fixed fee	
Reduction in contract price (credit)	

Part IV—Recommendation

(a) *Recommendation.* Set forth the amount of the proposed negotiated settlement and make recommendation that the settlement is fair and reasonable to the Government and the contractor and should be approved.

(b) *Signature.* The termination contracting officer and negotiator will sign and date the memorandum.

Attachment A

SUMMARY OF SETTLEMENT—COST TYPE CONTRACT[1]

Contract No. —— Termination No. ——

	Amount Claimed	Amount Allowed
1. Previous Reimbursed Costs—Prime and Subs	$	$
2. Previous Unreimbursed Costs		
3. Total Cost Settlement	$	$
4. Previous Fees Paid—Prime	$	$
5. Previous Fees Unpaid—Prime		
6. Total Fee Settlement	$	$
7. Gross Settlement	$——	$——
Less: Deductions not reflected in Items 1-7:		
a. Disposal credits	$——	
b. Other charges against contractor arising from contract	$——	
8. Net Settlement		$
Less: Prior Payment Credits		
9. Net Payment		$
10. Amount allowed for prime contractor acquired property taken over by Government in connection with this settlement		$
11. Recapitulation of previous settlements (insert number of previous partial settlements effected on account of this particular termination):		
Aggregate gross amount of previous partial settlements		$——
Aggregate net amount of previous partial settlements		$——
Aggregate net payment provided in previous partial settlements		$——
Aggregate amount allowed for prime contractor acquired property taken over by the Government in connection with previous partial settlements		$——
12. Status of Contract (Fill out to extent applicable):		
a. Date of discontinuance of Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal		Date
b. Audit Status Date		Date
c. Total amount of any GAO Exceptions outstanding at date of settlement		$——

[1] Use applicable portion for partial settlement.

Attachment B

UNREIMBURSED COSTS SUBMITTED ON DD FORM 547 [1]

Costs	Amounts claimed by Contractor's Proposal	Auditor's Recommendation		TCO's Computation
		Cost Questioned	Unresolved Items	
1. Direct material.				
2. Direct labor.				
3. Indirect factory expense.				
4. Dies, jigs, fixtures and special tools.				
5. Other costs.				
6. General and administrative expense.				
7. Fee.				
8. Settlement expense.				
9. Settlement with subs.				
10. Total costs (Items 1-9)				

[1] Expand the format to include recommendations of technical personnel as required.

PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 1850.1—General

Sec.

1850.102 Policy.

Subpart 1850.2—Delegation of and Limitations on Exercise of Authority

1850.202 Contract adjustment boards.

Subpart 1850.3—Contract Adjustments

1850.305 Processing cases.
1850.305-70 Submission of request to the Contract Adjustment Board.
1850.306 Disposition.

1850.306–70 Implementation of Contract Adjustment Board's decision.

Subpart 1850.4—Residual Powers

1850.401 Standards for use.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1850.1—General

1850.102 Policy.

It is NASA policy not to use the "residual powers" authorized by the Act and FAR Subpart 50.4. It is also NASA's policy not to include in its contracts the clause at FAR 52.250–1, Indemnification Under Pub. L. 85–804.

Subpart 1850.2—Delegation of and Limitations on Exercise of Authority

1850.202 Contract adjustment boards.

NMI 1152.5, Contract Adjustment Board, establishes the Contract Adjustment Board as the approving authority to consider and dispose of requests for extraordinary contractual adjustments by NASA contractors.

Subpart 1850.3—Contract Adjustments

1850.305 Processing cases.

1850.305–70 Submission of request to the Contract Adjustment Board.

(a) After completing the investigation of the facts and issues relevant to the contractor's request, the cognizant contracting officer shall forward the request to the Chairman, Contract Adjustment Board (CAB), NASA Headquarters (Code GG–1), and shall include the following in the forwarding letter:

(1) The nature of the case.

(2) The disposition recommended for the request.

(3) If contractual action is recommended, the opinion of the contracting officer that such action will facilitate the national defense.

(b) The forwarding letter shall enclose the contractor's request and all supporting material submitted by the contractor together with such additional material as the contracting officer has obtained from Government sources or personnel in the course of investigating the facts and issues relevant to the request. The contracting officer's forwarding letter and all enclosures shall be submitted in duplicate. Any classified information included in the material forwarded shall be so identified. The CAB, acting through its Counsel, may further investigate the facts and issues involved to obtain such additional facts and evidence, from the contractor, the contracting officer, or others, as are necessary to make a determination on the contractor's entitlement to the relief requested or to other equitable relief.

1850.306 Disposition.

1850.306–70 Implementation of Contract Adjustment Board's decision.

(a) Copies of the CAB's decision will be transmitted to the cognizant contracting officer, who shall take such action as is authorized by the decision. Where the CAB's decision is to reject the contractor's request for relief, the cognizant contracting officer shall advise the contractor of that decision.

(b) Except as provided in paragraph (c) below, immediately upon execution of a contract or contract amendment implementing the CAB decision, the contracting officer shall forward two copies of the contractual document to the CAB Chairman, marked for the attention of its Counsel, for retention with the CAB's permanent files.

(c) Contracts or contract amendments for which approval of NASA Headquarters is otherwise required under the provisions of the FAR or this Regulation shall be forwarded for such approval. After approval has been received, the contracting officer shall comply with paragraph (b) above.

Subpart 1850.4—Residual Powers

1850.401 Standards for use.

See 1850.102.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 1851.1—Contractor Use of Government Supply Sources

1851.101 Policy.

1851.102 Authorization to use Government supply sources.

1851.102–70 Acquisition of filing cabinets by contractors.

1851.103 Ordering from Government supply sources.

1851.104 Furnishing assistance to contractors.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1851.1—Contractor Use of Government Supply Sources

1851.101 Policy.

The policy governing the use of official Government mailing privileges by NASA contractors is in NMI 1450.11, NASA Mail Management Program.

1851.102 Authorization to use Government supply sources.

(a) In addition to the requirements of FAR 51.102(a) (1) through (5), the contracting officer shall also consider the potential for abuse by contractors authorized access to Government supply sources.

(b) Letters of authorization shall be forwarded by the contracting officer to the installation Supply and Equipment Management Officer, Attention: Activity Address Code Coordinator, who will forward the authorization to the Supply and Equipment Management Division, NASA Headquarters (Code NIE–8), for verification and transmittal to the General Services Administration. Letters of autorization forwarded to Headquarters must include copies of the supporting determination and findings. This latter document will not be forwarded to GSA.

(c) Substantially the following format shall be used for the determination and findings authorizing contractor use of Government supply sources:

Subject: Authorization to Lease, Rent or Purchase from General Services Administration Supply Sources

(Contractor's name)
(Address)

(1) You are hereby authorized to act for the Government in the following matters:

(i) The acquisition of property under Contract No. —— which is available for purchase by Government agencies either directly from the General Services Administration stock or under Federal Supply Schedules, including GSA nonmandatory ADTS/ADP schedule contracts and GSA ADP requirements contracts, subject to the limitations set forth herein.

(ii) The leasing or rental of equipment for use on Contract No. —— which is available for lease or rental by Government agencies under Federal Supply Schedules, including GSA nonmandatory ADTS/ADP schedule contracts and GSA ADP requirements contracts, subject to the limitations set forth herein.

(iii) The issuance of tax exemption certificates in lieu of the payment of State or other taxes for which the Government is not liable on property purchased under this authorization.

(2)(i) *Purchase orders under GSA schedules and contracts.* Orders shall be placed in accordance with the terms and conditions of GSA schedules and/or contracts and this authorization. A copy of this authorization shall be attached to the order (unless a copy was previously furnished to the applicable GSA contractor) and shall contain the following statement:

This order is placed on behalf of the National Aeronautics and Space Administration in furtherance of United States Government Contract No. (———), pursuant to written authorization dated ——, a copy of which (is attached) (you have on file). In the event of any inconsistency between the terms and conditions of this order and those of the applicable GSA schedule/contract, the latter will govern.

(ii) *Orders for items in the General Services Administration Supply Catalog.* Orders shall be placed in accordance with the General Services Administration Supply Catalog and this authorization. Include the

address to which billings are to be sent. Bills are not issued by General Services Administration until after shipment has been made and should therefore be paid promptly. Necessary adjustments, if any, will be made by General Services Administration subsequent to payment. All orders shall contain the following statement:

This order is placed on behalf of the National Aeronautics and Space Administration, in furtherance of United States Government Contract No. (———), pursuant to written authorization dated ——, a copy of which (is attached) (you have on file).

(iii) (Insert any other provisions and restrictions.)

(iv) This authority hereby granted is not transferable or assignable.

———— *(Contracting Officer)*

(d) When requisitioning from the Veterans Administration, the contractor should use FEDSTRIP or MILSTRIP, as appropriate, Optional Form 347, or Center-prescribed form.

1851.102-70 Acquisition of filing cabinets by contractors.

(a) Prior to ordering filing cabinets where title to such equipment vests in the Government, NASA contractors are required to take the following actions:

(1) Transfer inactive records to contractor storage areas.

(2) Dispose of unnecessary records in accordance with their corporate procedures.

(3) Use less expensive shelf filing methods.

(4) Take other actions which will reduce needs for filing cabinets.

(5) Furnish statement to cognizant contracting officer that the above prerequisite actions have been taken and that sufficient additional filing capacity has not been produced.

(b) The contractor will then submit its request to the contracting officer who will confer with the Records Management Officer, Property and Supply Officer, and Project Officer and, if appropriate, will certify on all letter requests that the prerequisite actions have been taken by the contractor and that such actions have not produced the required filing cabinets.

(c) If the need for the filing cabinets is approved by the contracting officer, excess items of the type requested will be furnished, if available, through appropriate property accountability channels.

(d) Approved requests which cannot be filled from excess will be returned to the originating contractor, with an authorization to obtain file cabinets, preferably through GSA.

1851.103 Ordering from Government supply sources.

(a) All orders for GSA stock shall contain the statement in paragraph (c)(2)(ii) of the format for authorization in 1851.102(f).

(b) Contracting officers shall use NMI 4050.2, Assignment and maintenance of FEDSTRIP and MILSTRIP Activity Address Codes, to obtain FEDSTRIP/MILSTRIP activity codes.

1851.104 Furnishing assistance to contractors.

When necessary, assist the contractor in preparing and submitting the initial FEDSTRIP or MILSTRIP requisitions, the Optional Form 347, or Center-prescribed forms.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

1852.000 Scope of part.

Subpart 1852.1—Instructions for Using Provisions and Clauses

1852.101 Using FAR Part 52.
1852.102 Incorporating provisions and clauses.
1852.102-2 Incorporation in full text.
1852.103 Identification of provisions and clauses.
1852.104 Procedures for modifying and completing provisions and clauses.
1852.107 Provisions and clauses prescribed in FAR Subpart 52.1.
1852.107-70 NASA contract clause.

Subpart 1852.2—Tests of Provisions and Clauses

1852.203-70 Contracts between NASA and former NASA employees.
1852.204-70 Report on NASA subcontracts.
1852.204-71 NASA Financial Management Reporting.
1852.204-72 NASA Financial Management Reporting (Monthly Analysis Report).
1852.208-7000 [Reserved]
1852.208-7001 [Reserved]
1852.208-7002 Rates.
1852.208-7003 Public regulation and change of rates.
1852.208-7004 Change in class of service.
1852.208-7005 Contractor's facilities.
1852.208-7006 Technical provisions.
1852.208-7007 Renewal of contract.
1852.208-7008 Change in rates.
1852.208-7009 Connection charge.
1852.208-7010 Termination charge.
1852.208-7011 Multiple service locations.
1852.208-7012 Contractor's facilities (short form).
1852.209-70 Product removal from qualified products list.
1852.209-71 Limitation of future contracting.
1852.210-70 Brand name or equal.
1852.212-13 Stop-work order.
1852.212-70 Notice of delay.
1852.214-23 Late submissions, modifications, and withdrawals of technical proposals under two-step formal advertising.
1852.215-2 Audit—negotiation.
1852.215-10 Late submissions, modifications, and withdrawals of proposals.
1852.215-70 Increase in estimated costs.
1852.215-71 Adjustment for subcontract price redetermination.
1852.216-7 Allowable cost and payment.
1852.216-13 Allowable cost and payment—facilities.
1852.216-7001 Economic price adjustment—basic steel, aluminum, brass, bronze, or copper mill products.
1852.216-7002 Economic price adjustment—nonstandard steel items.
1852.216-7003 Evaluation of bids subject to economic price adjustment.
1852.216-7004 Estimated cost and cost sharing.
1852.216-7005 Estimated cost and fixed fee.
1852.216-7006 Payment of fixed fee.
1852.216-7007 Award fee.
1852.222-70 Facilities nondiscrimination notice.
1852.222-71 Facilities nondiscrimination.
1852.223-70 Safety and health.
1852.223-71 Frequency authorization.
1852.225-70 Percent foreign content.
1852.225-71 Nondomestic construction materials.
1852.228-70 Aircraft ground and flight risk.
1852.228-71 Aircraft—flight risks.
1852.228-470 Reimbursement for war hazard losses.
1852.231-70 Pricing of adjustments.
1852.232-1 Payments.
1852.232-2 Payments under fixed-price research and development contracts.
1852.232-4 Payments under transportation contracts and transportation-related services contracts.
1852.232-7 Payments under time-and-materials and labor-hour contracts.
1852.232-10 Payments under fixed-price architect-engineer contracts.
1852.232-70 [Reserved]
1852.232-71 Invoices.
1852.232-72 Payments (letter contracts).
1852.232-73 Payments (utility services).
1852.232-74 Payments (facilities).
1852.232-75 Security for advance payments.
1852.232-76 Authority to obligate funds.
1852.232-77 Limitation of funds (fixed-price-contract).
1852.233-1 Disputes.
1852.235-70 Scientific and Technical Information Service.
1852.235-71 Key personnel and facilities.
1852.236-70 Option for supervision and inspection services.
1852.243-70 Engineering change proposals.
1852.244-70 Geographic participation in the aerospace program.
1852.245-70 Acquisition of existing Government equipment.
1852.245-71 Installation-provided Government property.
1852.245-72 Liability for Government property furnished for repair or other services.
1852.245-73 Financial reporting of Government-owned contractor-held property.

1852.247–70 Returnable gas cylinders.
1852.249–70 Termination—fixed-price letter contract.
1852.249–71 Termination—cost-reimbursement type letter contract.
1852.249–72 Termination (Utilities).
1852.250–1 Indemnification under Public Law 85–804.
1852.252–70 Compliance with NASA FAR Supplement.

Authority: 42 U.S.C. 2473(c)(1).

1852.000 Scope of part.

This part, in conjunction with FAR Part 52, (a) gives instructions for using provisions and clauses prescribed by this regulation, (b) contains those solicitation provisions and contract clauses, and (c) presents composite matrices listing both the FAR and NASA FAR Supplement provisions and clauses applicable to each principal contract type and/or purpose.

Subpart 1852.1—Instructions for Using Provisions and Clauses

1852.101 Using FAR Part 52.

NASA contracting offices prescribing or developing clauses under the authority of FAR 52.101(b)(2)(i) (B) or (C) shall ensure that the requirements of FAR Subpart 1.4 and Subpart 1801.4 are met.

1852.102 Incorporating provisions and clauses.

1852.102–2 Incorporation in full text.

All provisions and clauses prescribed or developed by NASA contracting offices (see FAR 52.101(b)(2)(i) (B) or (C)) shall be incorporated in solicitations and/or contracts in full text as required by FAR 52.102–2(a)(4).

1852.103 Identification of provisions and clauses.

In the hypothetical example of clause identification at FAR 52.103(d)(2), NASA contracting offices shall number their first clause 52.236–90, the second clause 52.236–91 etc. (see FAR 1.303(a) and 1801.104–2(b)).

1852.104 Procedures for modifying and completing provisions and clauses.

NASA FAR Supplement provisions and clauses shall not be modified (see FAR 52.101(a)) unless authorized by this regulation, and when authorized, contracting officers must comply with the procedures in FAR 52.104.

1852.107 Provisions and clauses prescribed in FAR Subpart 52.1.

1852.107–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.252–70, Compliance with the NASA FAR Supplement, in all contracts including letter contracts.

1852.203–70 Contracts between NASA and former NASA employees.

As prescribed at 1803.7002, insert the following provision in all solicitations:

Contracts Between NASA and Former NASA Employees (April 1984)

The offeror represents that he or she () is, or () is not, an individual who was employed by NASA during the past two (2) years, or a firm in which such former employee is a partner, principal officer, majority shareholder, or which is otherwise controlled or predominantly staffed by such former employees.

(End of provision)

1852.204–70 Report on NASA subcontracts.

As prescribed in 1804.672–1, insert the following clause in all NASA contracts of $500,000 or more and contracts where a modification increases the contract amount to $500,000 or more.

Report on NASA Subcontracts (April 1984)

(a) The Contractor agrees to submit information on NASA Form 667 to the National Aeronautics and Space Administration (Code HM–1), Washington, DC 20546, substantially as follows with respect to each subcontract or modification thereof exceeding $10,000 as soon as possible after execution thereof:

(1) The name and address of the prime contractor and the NASA prime contract number;

(2) The name and address of the subcontractor;

(3) Whether the subcontractor is a large or small business concern and/or a minority business concern;

(4) Whether the type of effort being performed involves research and development;

(5) A brief description of the subcontract work;

(6) The amount of the subcontract; and

(7) The principal location where the subcontract work is to be performed, if known.

(b) The Contractor and its subcontractors will submit negative reports annually, when applicable, on each prime contract and first-tier subcontract subject to this reporting requirement. The negative reports will be submitted not later than October 31 for the 12 months' period ending September 30th of each year. The negative reporting will be continued until the contract or subcontract has been physically completed and the National Aeronautics and Space Administration (Code HM–1), Washington, DC 20546, so notified by the Contractor or subcontractor.

(c) The term "subcontract" as used herein means procurement in excess of $10,000 by the Contractor or first-tier subcontractor of articles, materials, or services entering into the performance of this contract, except purchases, regardless of amount, of stock items, materials, or services which cannot be specifically identified with this contract.

(d) The term "research and development" as used herein means basic and applied research, and design and development of prototypes and processes to (1) pursue a planned search for new knowledge, with or without reference to a specific application, (2) apply existing knowledge in the creation of new products or processes and (3) apply existing knowledge in the improvement or modification of present products and processes. It excludes subcontracts for the purchase of standard commercial items and services.

(e) The Contractor further agrees to insert the provisions of paragraphs (a), (b), (c) and (d) of this clause in each subcontract in excess of $50,000. The Contractor will instruct its subcontractors to submit their reports directly to the National Aeronautics and Space Administration (Code HM–1), Washington, DC 20546, and will provide its subcontractors with the number of the NASA prime contract.

(End of clause)

1852.204–71 NASA Financial Management Reporting.

As prescribed by 1804.675–1(a), insert the following clause in contracts that require financial management reporting in accordance with NMI 9501.1B and NHB 9501.2A.

NASA Financial Management Reporting (April 1984)

(a) Financial Management Reports shall be submitted by the Contractor on NASA Form 533 series of reports in accordance with the instructions set forth in NASA Handbook "Procedures for Contractor Reporting of Correlated Cost and Performance Data" (NHB 9501.2A) and on the reverse side of the form, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall be correlated with the technical/schedule reporting, will be set forth in the Schedule of this contract. Implementation by the Contractor of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category, and will give due regard to the Contractor's established financial management information system.

(b) Lower level detail, which the Contractor utilizes for its own management purposes to validate information reported to NASA, shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the Schedule of this contract or as designated administratively in writing by the Contracting Officer. Upon completion, and acceptance by NASA, of all contract schedule line items, the contractor, unless otherwise directed in writing by NASA, shall discontinue submitting the detailed NASA Form 533 report, and shall limit subsequent reporting to specific line items reflecting cost increases or decreases on a quarterly basis.

(d) The Contractor agrees to insert the substance of this clause in all first-tier cost type subcontracts specifically identified in writing by the Contracting Officer and shall include the cost of such subcontracts in his cost reports.

(e) During the performance of this contract, if NASA requires a change, either an increase or decrease in the information or reporting requirements specified in the Schedule, or as provided for in (a) or (c) above, such change shall be effected by the Contracting Officer in accordance with the procedures of the Changes clause of this contract.

(End of clause)

1852.204-72 NASA Financial Management Reporting (Performance Analysis Report).

As prescribed in 1804.675-1(b), insert the following clause in contracts that require the Monthly Performance Analysis Report in accordance with NMI 9501.1B and NHB 9501.2A.

NASA Financial Management Reporting (Performance Analysis Report) (April 1984)

Monthly reporting of contract performance shall be accomplished on the NASA Monthly Contractor Financial Management Performance Analysis Report (NASA Form 533P) in accordance with the instructions set forth in NASA Handbook "Procedures for Contractor Reporting of Correlated Cost and Performance Data" (NHB 9501.2B) and on the reverse side of the form, as supplemented in the Schedule of this contract.

(End of clause)

1852.208-7000 [Reserved]

1852.208-7001 [Reserved]

1852.208-7002 Rates.

Insert the following clause as prescribed in 1808.309(a)(1).

Rates (April 1984)

(a) For and in consideration of the faithful performance of the stipulations of this contract, the Contractor shall be paid at the rates set out in Appendix A, *provided* that the Government shall be liable for the minimum monthly charge, if any, specified in this contract commencing with the billing period in which service is initially furnished thereto, and continuing until this contract is terminated, except that the minimum monthly charge, if any, specified in this contract shall be equitably prorated for the billing periods in which commencement and termination of this contract shall become effective.

(b) The Contractor hereby declares that the rates applicable to the service furnished under this contract are not in excess of the lowest rates available to any prospective customer under like conditions, and agrees that during the life of this contract the Government shall continue to be billed at the lowest rates applicable for similar conditions of service.

(End of clause)

1852.208-7003 Public regulation and change of rates.

Insert the following clause as prescribed in 1808.309(a)(2).

Public Regulation and Change of Rates (April 1984)

(a) Rates established under this contract shall be subject to regulation in the manner and to the extent prescribed by law by any Federal, State, or local regulatory agency having jurisdiction. The Contractor agrees to give the Contracting Officer written notice of the filing of an application for rate changes concurrently with the filing of the application. Such notice shall fully describe the proposed rate change. If during the term of this contract the public regulatory agency having jurisdiction approves rates that are higher or lower than those stipulated herein, for like conditions of service, the Contractor agrees to continue to furnish service as stipulated in this contract and the Government agrees to pay for such service at the higher or lower rates from and after the date when such rates are made effective. In the event that the regulatory agency promulgates any regulation concerning matters other than rates which affects this contract, the Contractor shall immediately notify the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(b) In the event the Contractor, during the term of this contract, shall make effective any new rate schedule or amended rate schedule applicable to the class of service furnished the Government at the service location, which may contain a lower rate or conditions more favorable to the Government for such class of service, the Contractor shall forward to the Contracting Officer a copy of such rate schedule or amended rate schedule within 15 days after the effective date thereof, and, upon receipt of written request from the Government, shall substitute such rate schedule or amended rate schedule for the rate schedule then in effect hereunder for such service location, commencing with the billing period in which such written request is received.

(End of clause)

1852.208-7004 Change in class of service.

Insert the following clause as prescribed in 1808.309(a)(3).

Change in Class of Service (April 1984)

(a) In the event of a permanent change in the class of service furnished the Government at the service location, service shall be furnished to such service location at the lowest available rate schedule of the Contractor which is applicable to the class of service furnished following such permanent change subject to the clause hereof entitled "Rates."

(b) Where the Contractor's rate schedule on file with the regulatory agency and applicable to services provided by the Contractor does not contain a schedule applicable to the class of service furnished the Government, no clause in this contract shall preclude the parties from negotiating a rate schedule applicable to the class of service finished.

(End of clause)

1852.208-7005 Contractor's facilities.

Insert the following clause as prescribed in 1808.309(a)(4).

Contractor's Facilities (April 1984)

(a) The Contractor, at its expense, shall furnish, install, operate, and maintain all facilities required to furnish service hereunder to, and measure such service as of, the point of delivery specified in the Service Specifications. Title to all such facilities shall be and remain in the Contractor and the Contractor shall be responsible for all loss or damage to such facilities.

(b) The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to the limitations specified in this contract, a revocable permit or license to enter the service location for any proper purpose under this contract, including use of the site or sites agreed upon by the parties hereto for the installation, operation, and maintenance of the facilities of the Contractor required to be located upon Government premises, all of which facilities shall be and remain the sole property of the Contractor and shall, at all times during the life of this contract, be operated and maintained by the Contractor at its expense; and all taxes and other charges in connection therewith, together with all liabilty of the Contractor in construction, operation, or maintenance of such facilities, shall be assumed by the Contractor. Authorized representatives of the Contractor will be allowed access to the facilities of the Contractor at suitable times to perform the obligations of the Contractor regarding such facilities. Such facilities shall be removed and Government premises restored to their original condition by the Contractor at its expense within a reasonable time after the Government shall revoke the permit or license herein granted and in any event a reasonable time after termination of this contract, *provided* that in the event of termination of this contract due to the fault of the Contractor such facilities may be retained in place at the option of the Government until service comparable to that provided for hereunder is obtained elsewhere. It is expressly understood, however, that proper Government authority may limit or restrict the right of access herein granted in any manner considered by such authority to be necessary for the National security.

(End of clause)

1852.208-7006 Technical provisions.

Insert the following clause as prescribed in 1808.309(a)(5). Minor changes may be made in the following clause when insisted upon by the contractor to conform with established procedure or with procedures contained in the contractor's published rates filed with a regulatory agency. The following types of changes, when made for this purpose, are not considered within the intent of 1808.307-71 relating to contracts requiring NASA Headquarters approval.

(a) *Measurement of service.* (1) The words "billed conjunctively" in the second sentence of paragraph (a)(1) refer to the combination of similar quantities measured by two or more meters into a single quantity for the purpose of billing as if the bill were prepared for a single meter. This

sentence may be deleted, or the word "separately" may be inserted in lieu of the word "conjunctively" to conform to the contractor's regulated practice and/or when the schedule under which bills are computed is such that billing separately will be more economical than billing conjunctively.

(2) In paragraph (a)(2), the periodic intervals prescribed between meter readings may be changed to conform to the contractor's regulated practice.

(b) *Meter test.* (1) The first sentence of paragraph (b), requiring testing at intervals not exceeding one year, may be changed to provide for meter tests in accordance with the Contractor's regulated practice.

(2) In the third sentence of paragraph (b), the percentage error (shown as 2 percent) may be changed to comply with the Contractor's regulated practice.

(c) *Continuity of service and consumption.* (1) In paragraph (d)(1), the adjustment provision may be deleted or changed, if necessary, to conform with the provisions of the Contractor's field rate schedules. This subparagraph may be ended after the word "facilities" and before the word "provided" for the period "10 hours" may be changed.

(2) Paragraph (d)(2) may be deleted or changed, if the contractor's filed rates contain a provision requiring a continuation of demand, or similar charges, on a ready-to-serve basis during a period that the Government is unable to operate the service location for any cause beyond its control.

Technical Provisions (April 1984)

(a) *Measurement of service.*

(1) All service furnished by the Contractor shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, calibrated, and read by the Contractor at its expense. When more than a single meter is installed at the service location, the readings thereof shall be billed conjunctively. In the event any meter fails to register or registers incorrectly the service furnished therethrough, the parties shall agree upon the length of period during which such meter failed to register or registered incorrectly and the quantity of service delivered therethrough during such period and, upon agreement, an appropriate adjustment based thereon shall be made in the Government's bills. For the purpose of the preceding sentence, any meter which registers not more than 2 percent slow or fast shall be deemed correct.

(2) The Contractor shall read meters on the same day of each month; if, however, that day falls on a Saturday, Sunday, or legal holiday, or if the Contractor is otherwise prevented from reading the meters on that day, the Contractor shall read the meters on the next succeeding business day on which it is able to do so, *providing* that all bills based on meter readings of less than 27 days or more than 33 days shall be prorated accordingly, and *providing further* that there shall be no more than 12 billings in any one year.

(b) *Meter test.* The Contractor, at its expense, shall periodicaly inspect and test the meters installed by it at intervals not exceeding 1 year. At the written request of the Contracting Officer, the Contractor shall make additional tests of any or all of such meters in the presence of Government representatives. The cost of such additional tests shall be borne by the Government if the percentage of errors is found to be not more than 2 percent slow or fast. No meter shall be placed in service or allowed to remain in service which has an error in registration in excess of 2 percent under normal operating conditions.

(c) *Change in volume or character.* Reasonable notice shall, so far as possible, be given by the Contracting officer to the Contractor regarding any material changes proposed in the volume or characteristics of the utility service required at each location.

(d) *Continuity of service and consumption.* (1) The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at the service location, but shall not be liable for damages, breach of contract or otherwise to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the control of the Contractor, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, or other catastrophes, strikes, or failure or breakdown of transmission or other facilities; *provided* that when any such failure, suspension, diminution, or variation of service shall aggregate more than 10 hours during any billing period hereunder, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge).

(2) In the event the Government is unable to operate the service location in whole or in part for any cause beyond its control, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, other catastrophes, or strikes, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge) if the period during which the Government is unable to operate such service location in whole or in part shall exceed 15 days during any billing period hereunder.

(End of clause)

1852.208-7007 Renewal of contract.

Insert the following clause as prescribed in 1808.309(b)(1).

Renewal of Contract (April 1984)

This contract is renewable on an annual basis at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor at least — days before this contract is to expire. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed — years.

(End of clause)

1852.208-7008 Change in rates.

Insert the following clause, as prescribed in 1808.309(b)(2), in lieu of the clause in 1852.7003 if the rates applicable to the service furnished under the contract are negotiated between the contractor and the Government without recourse to the approval of any Federal, State, or local regulatory agency, or if the service to be furnished under the contract is otherwise not subject to regulation by any Federal, State, or local regulatory agency, or if the contractor also acts as the local public regulatory agency and its decisions are not subject to review by a higher regulatory agency.

Change in Rates (April 1984)

(a) If at any time during the term of this contract either of the parties hereto considers it appropriate that all or part of the rates applicable to the service furnished under this contract be changed, the parties agree to promptly negotiate such rates upon receipt by one party of a written request from the other (1) specifying the rates as to which a change is considered appropriate, (2) setting forth the proposed change in rates, and (3) stating in detail the reasons for the proposed changes. Any rate changes agreed to by the parties as the result of such negotiations shall be made a part of this conract by the issuance of a supplemental agreement hereto and shall become effective as of the date of the request for a change in rates, unless otherwise agreed to by the parties.

(b) The Contractor agrees that a duly authorized representative of NASA shall have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor relating to costs which form the basis for the rate.

(End of clause)

1852.208-7009 Connection charge.

Insert the following clause, as prescribed in 1808.309(b)(3) when (a) a connection charge is to be paid by the Government, and (b) the conditions permitting the incorporation of a nonrecurring, nonrefundable fee in Appendix A do not exist. Also attach Appendix C to the contract (see 1808.304-572(a)(4)).

Connection Charge (April 1984)

(a) *Charge.* The Government, in consideration of the furnishing and installation by the Contractor at the Contractor's expense of the New Facilities described in Appendix C, attached hereto and made a part hereof, shall pay the Contractor, as a connection charge, after receipt of satisfactory evidence of completion of the facilities, the sum $ — representing the sum of $ — less the agreed salvage value in the amount of $ — as shown in Appendix C; *provided* that, as a condition precedent to final payment, the Contractor shall, if

required by the Contracting Officer, execute a release in terms acceptable to the Contracting Officer, of claims against the Government arising under or by virtue of such installation.

(b) *Ownership, operation, and maintenance of new facilities to be provided hereunder.* The facilities to be supplied by the Contractor under this clause, notwithstanding the payment by the Government of a connection charge, shall be and remain the property of the Contractor and shall, at all times during the life of this contract or any renewals thereof, be operated and maintained by the Contractor at its expense, and all taxes and other charges in connection therewith, together with all liability arising out of the construction, operation, or maintenance of such facilities, shall be the obligation of the Contractor.

(c) *Credits.* (1) The Contractor agrees to allow the Government on each monthly bill for service furnished under this contract to the Service Location, a credit of — percent of the amount of each such bill as rendered until the accumulation of credits shall equal the amount of such connection charge, provided that the Contractor may at any time so allow a credit up to 100 percent of the amount of each such bill.

(2) In the event the Contractor, prior to any termination of this contract but subsequent to completion of the facilities provided for in this clause, serves any customer other than the Government (regardless of whether the Government is being served simultaneously, intermittently, or at all) by means of such facilities, the corresponding benefit to the Contractor is hereby recognized. It is therefore agreed that upon initiation of such service, the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge, or accelerate the credits provided for under subparagraph (c)(1) of this clause to 100 percent of each monthly bill until there is fully credited a sum equitably representing the same proportion of the uncredited balance of the connection charge as of the date of initiation of such service, as agreed upon by the parties hereto, as the portion of the facilities utilized in serving such customer bears to complete facilities described in Appendix C.

(d) *Termination prior to completion of facilities.* The Government reserves the right to terminate this contract at any time prior to completion of the facilities provided for herein with respect to which the Government is to pay a connection charge. In the event the Government exercises this right, the Contractor shall be paid fair compensation, exclusive of profit, with respect to such facilities.

(e) *Termination subsequent to completion of facilities.*

(1) *Termination by the Government.* In the event the Government terminates this contract subsequent to completion of the facilities provided for herein with respect to which the Government is to pay a connection charge, but prior to the crediting in full by the Contractor of any connection charge in accordance with the terms of this contract, the possible continued usefulness of such facilities is hereby recognized. It is, therefore, agreed that upon such termination the Contractor shall have the following options:

(i) To retain in place for twelve months or more after the notice of termination by the Government such facilities on condition that (A) if, during such twelve month period, the Contractor serves any other customer by means of such facilities, the Contractor shall, in lieu of allowing credits, pay the Government during such period installments in like amount, manner, and extent as the credits provided for under paragraph (c) of this clause prior to such termination and (B) immediately after such twelve-month period the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge.

(ii) To remove such facilities at the Contractor's own expense within twelve months after the effective date of the termination by the Government; *provided,* that if the Contractor elects to so remove such facilities, the Government shall then have the option of purchasing such facilities at the agreed salvage value set forth in Appendix C hereto; and *provided further,* that the Contractor will, at the request of the Government, leave in place such facilities located on Government property which the Contractor elects to so remove and which the Government elects to purchase at the agreed salvage value.

(2) *Termination by the Contractor.* In the event the Contractor terminates service under, or otherwise defaults in performance of, this contract prior to the crediting in full, in accordance with the terms of this contract, of any connection charge paid by the Government, the Contractor shall pay to the Government an amount equal to the uncredited balance of the connection charge as of the date of such termination.

(End of clause)

1852.208-7010 Termination charge.

Insert the following clause, as prescribed in 1808.309(b)(4), and also attach Appendix C to the contract when a payment is to be made to the contractor upon termination of service in lieu of a connection charge upon completion of the facilities. The length of time, not in excess of 60 months, as negotiated with the contractor will be entered in the first blank. In the second blank enter the amount of the maximum termination charge as negotiated with the contractor, but not in excess of cost of facilities furnished and installed by the contractor less the agreed salvage value, as shown in Appendix C. Enter in the third blank the figure obtained by dividing the figure in the second blank by the figure in the first blank. The use of this clause does not affect the term of the contract; however, its use is subject to Headquarters approval in accordance with 1808.307-71.

Termination Charge (April 1984)

In consideration of the furnishing and installation by the Contractor at its expense of the New Facilities described in Appendix C, attached hereto and made a part hereof the Government shall, in the event of termination of this contract by the Government prior to ——— months from the date on which service commences, pay the Contractor as a termination charge ——— less ——— multiplied by the number of months service has been received prior to the date of such termination.

(End of clause)

1852.208-7011 Multiple service locations.

Insert the following clause, as prescribed in 1808.309(b)(5), when it is desired to provide for possible alternative service locations.

Multiple Service Locations (April 1984)

(a) The Contracting Officer may at any time, by written order, designate any service location within the service area of the Contractor at which service shall be furnished or discontinued thereunder, and the contract shall be modified in writing accordingly by adding to or deleting from the Service Specifications the name and location of the appropriate service location, by specifying a different rate if applicable, the appropriate point of delivery, different service specifications if applicable, and any other appropriate terms and conditions.

(b) The minimum monthly charge specified in this contract shall be equitably prorated from the billing period in which commencement or discontinuance of service at any service location designated under the Service Specifications shall become effective.

(End of clause)

1852.208-7012 Contractor's facilities (short form).

As prescribed in 1808.309(a)(6) insert the following clause only when the estimated annual cost is $2,500 or less.

Contractor's Facilities (Short Form) (April 1984)

The Contractor, at its expense, shall furnish, install, operate, maintain, retain title to, and be responsible for all loss of or damage to all facilities required to furnish the service provided for herein. The Contractor will be allowed access to its facilities on Government premises at suitable times and shall, at the Contractor's expense, remove them and restore the premises to original condition within a reasonable time after termination of this contract.

(End of clause)

1852.209-70 Product removal from qualified products list.

As prescribed in 1809.206-71, the contracting officer shall insert the following clause in all solicitations/contracts that contain either of the clauses at FAR 52.209-1 or 52.209-2.

Product Removal From Qualified Products List (April 1984)

If, during the performance of this contract, the product being furnished is, for any reason, removed from the Qualified Product

List, the Government may terminate this contract for default pursuant to the clause of this contract entitled Default, in the case of fixed-price contracts, or Termination in the case of cost-reimbursement type contracts.

(End of clause)

1852.209-71 Limitation of future contracting.

As prescribed in 1809.508-2, the contracting officer may insert a clause substantially as follows in solicitations and contracts in compliance with FAR 9.508.

Limitation of Future Contracting (April 1984)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of all prospective offerors is invited to FAR Subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is (describe the conflict).

(c) The restrictions upon future contracting are described below:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described within that solicitation as a prime or first-tier subcontractor under an ensuing NASA contract. Such restrictions shall remain in effect for a reasonable time as agreed to by the Contracting Officer and the Contractor sufficient to avoid the circumstances of unfair competitive advantage or potential bias; but, usually for a period no less than when the first production contract using the Contractor's specifications or work statement is awarded. It is further agreed that NASA will not unilaterally require the Contractor to prepare such specification or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(End of clause)

1852.210-70 Brand name or equal.

As prescribed in 1810.011, insert the following provision in solicitations where a "brand name or equal" purchase description is included. The provision may be modified for use in negotiated procurements:

Brand Name or Equal (April 1984)

(a) As used in this provision the term "brand name" includes identification of products by make and model.

(b) If items called for by this Invitation for Bids have been identified in the Schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products, including products of the brand name manufacturer other than the one described by brand name will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the Invitation for Bids.

(c) Unless the offeror clearly indicates in the bid that it is offering an "equal" product, the bid shall be considered as offering a brand-name product referenced in the Invitation Bids.

(d)(1) If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in the bid, as well as other information reasonably available to the contracting activity. CAUTION TO OFFERORS. The contracting office is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the contracting office. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to (i) determine whether the product offered meets the salient characteristics requirements of the Invitation for Bids and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting office.

(2) If the offeror proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, it shall (i) include in the bid a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of provision)

1852.212-13 Stop-work order.

The clause at FAR 52.212-13 is not authorized for use in research contracts with educational or other nonprofit institutions.

1852.212-70 Notice of delay

As prescribed at 1812.104(a), insert the following clause when desired:

Notice of Delay (April 1984)

If the Contractor becomes unable to complete the contract work at the time specified because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons therefor. Such notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than forty-five (45) days before the completion date specified in this contract, unless otherwise directed by the Contracting Officer. When notice is so required, the Contracting Officer may extend the time specified in the Schedule for such period as deemed advisable.

(End of clause)

1852.214-23 Late submissions, modifications, and withdrawals of technical proposals under two-step formal advertising.

Deviation. As prescribed at 1814.20-6, substitute the following for paragraphs (a) and (b) of the provisions at FAR 52.214-23 in step one of all two-step formally advertised procurements:

(a) Any technical proposal or any modification of a technical proposal under step one of two-step formal advertising received at the office designated in this solicitation after the exact time specified for receipt need not be considered unless it is received before the invitation for bids in step two is issued and it—

(1) Was sent by registered or certified mail not later than the 5th calendar day before the date specified for receipt of technical proposals (e.g., a technical proposal submitted in response to a solicitation requiring receipt of technical proposals by the 20th of the month must have been mailed by the 15th);

(2) Was sent (i) by mail, or (ii) if authorized, by telegram (including mailgram) (a telegram (or mailgram) is authorized for submitting modifications to technical proposals), and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or;

(3) Is the only technical proposal received.

(b) However, the Government reserves the right to consider technical proposals for modifications thereof received after the date indicated for such purpose, but before the invitation for bids in step two is issued, should such action be in the best interest of the Government.

1852.215-2 Audit—negotiation.

As prescribed at 1815.106-270 insert the clause at FAR 52.215-2 in the supplemental agreement and make it applicable to the set-aside portion only.

1852.215-10 Late submissions, modifications, and withdrawals of proposals.

As prescribed in 1815.407, substitute the following Alternate I for paragraphs (a) and (b) of FAR 52.215-10 in NASA solicitations:

NASA Alternate I (April 1984)

(a) Any proposal or any modification of a proposal (except a modification resulting from the Contracting Officer's request for "best and final" offers) received at the office designated in the solicitation after the exact time specified for receipt need not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(3) Is the only proposal received.

(b) However, the Government reserves the right to consider proposals or modifications thereof received after the date indicated for such purpose, but before award is made, should such action be in the best interest of the Government.

1852.215-70 Increases in estimated costs.

The contracting officer shall insert the following solicitation provision, as prescribed at 1815.613-72:

Increases in Estimated Costs (April 1984)

Once the prospective Contractor has been selected, the estimated costs submitted with its proposal shall not be subject to increase, except for changes in certified cost or pricing data submitted with the proposal, unless changes are made in the requirements of the request for proposals. Furthermore, increases shall be considered only in regard to those requirements that are actually affected by the changes (whether the changes result in an increase or decrease in the requirements and whether they are initiated by the Government or the offeror), and then only to the extent that such changes are specifically identified and justified. Negotiation of such increases will be conducted separately, and not as part of a combined overall negotiation of the estimated cost and fee of the proposed contract.

(End of provision)

1852.215-71 Adjustment for subcontract price redetermination.

In accordance with 1815.870-2, insert the clause below in contract modifications to price redetermination or fixed-price incentive contracts that established revised contract prices in those cases when final subcontract prices have not been determined. The clause provides for adjustment of the total amount paid or to be paid under the contract due to subsequent redetermination of the specified subcontracts:

Adjustment for Subcontract Price Redetermination (April 1984)

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

[List Subcontracts]

(End of clause)

1852.216-7 Allowable cost and payment.

In paragraph (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216-7 the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided that a corresponding increase is made in the period for retention of records required in paragraph (d) of the clause at FAR 52.215-1, Examination of Records by Comptroller General.

1852.216-13 Allowable cost and payment—facilities.

In paragraph (g)(2)(ii) of the Allowable Cost and Payment—Facilities clause at FAR 52.216-13 the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided that a corresponding increase is made in the period for retention of records required in paragraph (d) of the clause at FAR 52.215-1, Examination of Records by Comptroller General.

1815.216-7001 Economic price adjustment—basic steel, aluminum, brass, bronze, or copper mill products.

As prescribed in 1816.203(b), insert the following clause when applicable.

Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products (April 1984)

(a) The Contractor warrants that the unit price stated herein for . . . is not in excess of the Contractor's applicable established price in effect on the date set for opening of bids (or the contract date if this is a negotiated contract) for like quantities of the same item. The term "unit price" excludes any part of the price which reflects requirements for preservation, packaging, and packing beyond standard commercial practice. The term "established price" means one which is an established catalog or market price for a commercial item sold in substantial quantities to the general public and thus meets the criteria of paragraph 15.804-3(c) of the Federal Acquisition Regulation. Such price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each corresponding contract unit price shall be decreased by the same percentage that the said established price is decreased. Such decrease shall apply to items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly. The Contractor shall certify on each invoice that each unit price stated therein reflects all decreases required by this clause or shall certify on the final invoice that all price decreases required by this clause have been applied in the manner herein required.

(c) If the Contractor's applicable established price is increased after the date set for opening of bids (or the contract date, if this is a negotiated contract) the corresponding contract unit price shall be increased, upon the Contractor's request in writing to the Contracting Officer, by the same percentage that the established price is increased and the contract shall be modified accordingly; *provided* that—

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor's written request is received by the Contracting Officer within 10 days thereafter but, if not, the effective date of increased unit price shall be the date of receipt by the Contracting Officer of such request;

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price unless the Contractor's failure to deliver before such date results from causes beyond the control and without the fault or negligence of the Contractor within the meaning of the Default clause of this contract.

(4) No modification incorporating an increase in a contract unit price shall be executed under this clause until the increase in the applicable established price has been verified by the Contracting Officer.

(d) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and undelivered at the time of such cancellation. However, if the Contractor certifies to the Contracting Officer by notice received within 10 days after the Contractor receives the cancellation notice that certain items were completed or in the

process of manufacture at the time the Contractor received the cancellation notice, the Contractor may then deliver those items, and the Government shall pay for them at the increased contract unit price to the extent provided by paragraph (c) above. Any standard steel supply shall be deemed to be in the process of manufacture when the steel therefor is in any state of processing after the beginning of the furnace melt.

(e) Pending any cancellation of this contract as provided in paragraph (d) above and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract and shall be paid for such deliveries at the contract unit price increased to the extent provided by paragraph (c) above.

(End of clause)

1852.216-7002 Economic price adjustment—nonstandard steel items.

As prescribed in 1816.203(b), insert the following clause when applicable.

Economic Price Adjustment—Nonstandard Steel Items (April 1984)

(a) The term "established price," as used in this clause, is one which is an established catalog or market price of commercial items sold in substantial quantities to the general public and thus meets the criteria of paragraph 15.804-3(c) of the Federal Acquisition Regulation. Such a price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or scheduled price. (But see subparagraph (i)(8) below.)

(b) Each contract unit price shall be subject to revision under this clause to reflect changes in the cost of labor and steel. For the purpose of any such price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified in paragraph (d) below shall be . . . percent, and the proportion of the contract unit price attributable to the cost of steel shall be . . . percent. (See subparagraph (i)(1) below.)

(c) For the purposes of this paragraph, the term "labor index" shall mean the average straight-time hourly earnings of the Contractor's employees in the . . . shop of the contractor's . . . plant (see subparagraph (i)(2)) for any particular month. The word "month" as used herein means "calendar month;" *provided*, however, that if the Contractor's accounting period does not coincide with the calendar month, then such accounting period shall be used throughout the clause in lieu of "month". Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the particular shop identified above for any given month by the total number of straight time hours worked by such employees in that month. Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the "base labor index," which shall be the average of the labor indices for the three months consisting of the month of . . . , 19 . . . , (see subparagraph (i)(3)) the month immediately preceding and the month immediately following, and to the "current labor index," which shall be the average of the labor indices for the month in which delivery of suppliers is required to be made in accordance with the terms of this contract and the month preceding.

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the base "base steel index," which shall be the Contractor's established price (see subparagraph (i)(8)) including all applicable extras of $ . . . per . . . (see subparagraph (i)(4)) for . . . (see subparagraph (i)(5)) on . . . , 19 . . . , (see subparagraph (i)(6)) and the "current steel index," which shall be the Contractor's established price (see subparagraph (i)(8)) of said item including all applicable extras in effect . . . days (see subparagraph (i)(7)) prior to the first day of the month in which delivery of supplies is required to be made in accordance with the terms of the contract.

(e) Each contract unit price shall be revised for each month in which, by the terms of this contract, delivery of supplies is required to be made, and such revised contract unit price shall apply to the deliveries of those quantities of supplies required to be made in that month regardless of when actual delivery is made of said quantities of supplies. Each revised contract unit price for any month shall be computed by adding together the following three amounts: (1) The amount (representing the adjusted cost of labor) obtained by multiplying . . . percent of the contract unit price by a fraction, the numerator of which shall be the current labor index and the denominator of which shall be the base labor index; (2) the amount (representing the adjusted cost of steel) obtained by multiplying . . . percent of the contract unit price by a fraction, the numerator of which shall be the current steel index and the denominator of which shall be the base steel index; and (3) the amount equal to . . . percent of the original contract unit price (representing that portion of such unit price which relates neither to the cost of labor nor to the cost of steel and which is therefore not subject to revision (see subparagraph (i)(1)); provided, however, that any revised contract unit price made under this clause shall in no event exceed 110 percent of the original contract unit price. All computations shall be made to the nearest one-hundredth of one cent.

(f) Pending revisions of the contract unit prices, if any, to be made under this clause, the Contractor shall be paid the contract unit prices for deliveries made. Within thirty days after the final delivery of supplies or within such further period of time as may be authorized by the Contracting Officer, the Contractor shall furnish a statement setting forth and certifying the correctness of (1) the average straight-time hourly earnings of the Contractor's employees in the shop of the Contractor identified in paragraph (c) above which earnings are relevant to the computations of the "base labor index" and the "current labor index" and (2) the Contractor's established prices (see subparagraph (i)(8)) including all applicable extras for like quantities of the item identified in paragraph (d) above, which prices are relevant to the computation of the "base steel index" and the "current steel index." Upon request of the Contracting Officer, the Contractor shall make available its records used in the computation of the labor indices. After the receipt of such certificate by the Contracting Officer, the revised contract unit prices shall be computed in accordance with this clause and this contract shall be modified accordingly. However, no modification to this contract shall be made under this clause until the revised established price (see subparagraph (i)(8)) has been verified by the Contracting Officer.

(g) In the event of any total or partial termination of any item of this contract for the convenience of the Government, the month in which notice of such termination is received by the Contractor, if prior to the month in which the delivery is required by this contract, shall be considered the month in which delivery of such terminated or partially terminated item is required for the purpose of determining the current labor and steel indices under paragraphs (c) and (d) hereof: *provided*, however, that as to the quantity of such item which is not terminated for convenience, the month in which delivery is required by this contract shall continue to apply for determining said indices. In the case of termination of any steel item for default of the Contractor, any price revision shall be limited to the quantity of such item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of notice of termination for default.

(h) As used in this clause, the month in which delivery of supplies is required to be made under this contract means any month in which a specific quantity of units of the supplies called for by this contract is required to be delivered; *provided*, however, that if the failure of the Contractor to make delivery of such quantity shall have arisen out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause of this contract, the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of such failure, and the delivery schedule in this contract shall be amended accordingly.

(i) Offerors shall complete all blanks above in accordance with the following:

(1) Insert the same percentage figures for the corresponding blanks in paragraphs (b) and in (e)(1) and (2). In paragraph (e)(3); bidder insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

(2) Identify the shop and plant in which the standard steel mill item identified in paragraph (d) will be finally fabricated or processed into the contract item.

(3) Insert the month of bid opening, or the month in which the Contractor submitted his proposal if this is a negotiated contract.

(4) Insert the unit price and unit measure of the standard steel mill item used by the Contractor in the manufacture of the contract item.

(5) Identify the standard steel mill item used by the Contractor in the manufacture of the contract item.

(6) Insert the date set for bid opening, or the date of the Contractor's quotation if this is a negotiated contract.

(7) Insert the number of days which represents the Contractor's best estimate of the period of time required for processing the standard steel mill item in the shop identified in paragraph (c).

(8) If this is a negotiated procurement and when there is no "established price" or when it is not desirable to use such price, refer to another appropriate price basis in paragraph (d), such as an established interplant price.

(End of clause)

1852.216-7003 Evaluation of bids subject to economic price adjustment.

As prescribed at 1816.203-4(h), insert the following provision:

Evaluation of Bids Subject to Economic Price Adjustment (April 1984)

Notwithstanding the requirements of the clause entitled "*. . . .," bids shall be evaluated on the basis of quoted prices without an amount for economic price adjustment being added. Bids which provide for a ceiling lower than that stipulated, if a ceiling is stipulated in the clause, will also be evaluated on this basis, but any resultant award will be made at the lower ceiling. Bids which provide for adjustment that may exceed the maximum adjustment stipulated, if a maximum adjustment is stipulated in the clause, or which limit or delete the downward adjustment, if a downward adjustment is stipulated in the clause, shall be rejected as nonresponsive.

**Insert the title of the clause providing for economic price adjustment.*

(End of provision)

1852.216-7004 Estimated cost and cost sharing.

As prescribed at 1816.303(d)(4), insert the following clause in all contracts resulting from unsolicited proposals and under which the contractor will share costs.

Estimated Cost and Cost Sharing (April 1984)

(a) It is estimated that the total cost of performing the work under this contract will be *(insert total estimated cost)* $. . . .

(b) For the performance of the work under this contract, the Contractor shall be reimbursed for not more than . . . percent of the costs of performance determined to be allowable under the clause of this contract entitled Allowable Cost and Payment. The remaining . . . percent or more of the costs of performance so determined shall constitute the Contractor's share for which it will not be reimbursed by the Government.

(c) For purposes of the clause of this contract entitled Limitation of Cost, the total estimated cost to the Government is hereby established as *(insert estimated Government share)* $. . . .; this amount is the maximum cost for which the Government is obligated.

(d) The Contractor will maintain records of all contract costs claimed by the Contractor as constituting part of its share, and such records shall be subject to audit by the Government. Cost contributed by the Contractor shall not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(End of clause)

1852.216-7005 Estimated cost and fixed fee.

As prescribed at 1816.307-70(a) insert the following clause:

Estimated Cost and Fixed Fee (April 1984)

The estimated cost of this contract is . . . exclusive of the fixed fee of . . . The total of estimated cost and fixed fee is . . . . .

(End of clause)

1852.216-7006 Payment of fixed fee.

As prescribed at 1816.307-70(b), insert the following clause:

Payment of Fixed Fee (April 1984)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

(End of clause)

1852.216-7007 Award fee.

As prescribed at 1816.405, the contracting officer shall include the following clause in solicitations and contracts when a cost-plus-award-fee contract is contemplated:

Award Fee (April 1984)

(a) The Government shall pay the Contractor for performing this contract such base fee, if any, and such additional fee as may be awarded, as provided in the Schedule.

(b) Payment of the base fee and award fee shall be made as specified in the Schedule; *provided*, that after payment of 85 percent of the base fee and potential award fee, the Contracting Officer may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

(End of clause)

1852.222-70 Facilities nondiscrimination notice.

As prescribed at 1822.7002(a), insert the following clause in all solicitations involving leases and resulting leases:

Facilities Nondiscrimination Notice (April 1984)

If the total annual rental under this lease exceeds $10,000 per year, or if the total annual rental under this lease combined with the total annual rental under all other NASA leases of space in the building in which the space covered by this lease is located exceeds $10,000 per year, the lessor agrees to comply with the requirements of the Facilities Nondiscrimination clause.

1852.222-71 Facilities nondiscrimination.

As prescribed at 1822.7002(b), insert the following clause in leases:

Facilities Nondiscrimination (April 1984)

(a) As used in this clause, the term "facility" means stores, shops, restaurants, cafeterias, restrooms, and any other facility of a public nature in the building in which the space covered by this lease is located.

(b) The lessor agrees not to discriminate by segregation or otherwise against any person or persons because of race, color, religion, or national origin in furnishing or by refusing to furnish, to such person or persons the use of any facility, including any and all services, privileges, accommodations, and activities provided thereby. Nothing herein shall require the furnishing to the general public of the use of any facility customarily furnished by the lessor solely to tenants, their employees, customers, patients, clients, guests, and invitees.

(c) It is agreed that the lessor's noncompliance with the provisions of this clause shall constitute a material breach of this lease. In the event of such noncompliance, the Government may take appropriate action to enforce compliance, may terminate this lease, or may pursue such other remedies as may be provided by law. In the event of termination, the lessor shall be liable for all excess costs of the Government in acquiring substitute space, including but not limited to the cost of moving to such space. Substitute space shall be obtained in as close proximity to the lessor's building as is feasible and moving costs will be limited to the actual expenses thereof as incurred.

(d) It is agreed that from and after the date hereof the lessor will, at such time as any agreement is to be entered into or a concession is to be permitted to operate, include or require the inclusion of the foregoing provisions of this clause in every such agreement or concession pursuant to which any person other than the lessor operates or has the right to operate any facility. Nothing herein contained, however, shall be deemed to require the lessor to include or require the inclusion of the foregoing provisions of this clause in any existing agreement or concession arrangement or one in which the contracting party other than the lessor has the unilateral right to renew or extend the agreement or arrangement, until the expiration of the existing agreement or arrangement and the unilateral right to renew or extend. The lessor also agrees that it will take any and all lawful actions as expeditiously as possible, with respect to any such agreement as NASA may direct as a means of enforcing the intent of this clause, including, but not limited, to termination of the agreement or concession and institution of court action.

(End of clause)

1852.223-70 Safety and health.

As prescribed at 1823.7004, insert the following clause:

Safety and Health (April 1984)

(a) The Contractor shall take all reasonable safety and health measures in performing under this contract and shall, to the extent set forth in the Schedule of the contract, submit a safety plan and a health plan for the Contracting Officer's approval. The Contractor shall comply with all applicable Federal, State and local laws, applicable to safety and health which are in effect on the date of this contract and with the safety and health standards, specifications, reporting requirements, and provisions as set forth in the Schedule of the contract.

(b) The Contractor shall take or cause to be taken such other safety and health measures as the Contracting Officer may direct. To the extent that the Contractor may be entitled to an equitable adjustment for such measures under the terms and conditions of this contract, such equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; *provided*, that no adjustment shall be made under this clause for any change for which an equitable adjustment is expressly provided under any other provision of this contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable threshold limits set forth in the Schedule of the contract, or property loss of $25,000 or more arising out of work performed under this contract; *provided*, however, the Contractor will not be required to include in any report an expression of opinion as to the fault or negligence of any employee. Service Contractors (excluding construction contracts) will provide quarterly reports which specify lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the Schedule of the contract. The Contractor will investigate all such work-related incidents or accidents to the extent necessary to determine their causes and furnish the Contracting Officer with a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(d)(1) The Contracting Officer may notify the Contractor in writing of any noncompliance with the provisions of this clause and may also specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (1) above, the Contracting Officer may invoke the provisions of the Stop Work Order clause in this contract or any other remedy legally available to the Government in the event of such failure by the Contractor.

(e) The Contractor (or subcontractor or supplier) shall cause the substance of this clause including this paragraph (e) and any applicable Schedule provisions, with appropriate changes of designations of the parties, to be inserted in subcontracts of every tier which (1) amount to $1,000,000 or more unless the Contracting Officer makes a written determination that this is not required, (2) require construction, repair, or alteration in excess of $25,000, or (3) regardless of dollar amount, involve the use of hazardous materials or operations.

(f) The Contractor agrees that authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and health measures under this clause.

(g) As a part of the Contractor's safety plan (and health plan, where applicable) and to the extent required by the Schedule, the Contractor shall furnish a list of all hazardous operations to be performed, including operations indicated in paragraphs (a) and (b) of this clause, and shall in addition furnish a list of other major or key operations required or planned in the performance of the contract although not deemed hazardous by the Contractor. NASA and the Contractor will jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor will develop and submit for NASA concurrence *either or both* of the following as required by the Schedule of the contract or as may be required at the direction of the Contracting Officer:

(1) Written Hazardous Operating Procedures for all hazardous operations.

(2) A certification program for personnel involved in hazardous operations.

(End of clause)

1852.223-71 Frequency authorization.

As prescribed at 1823.7101, insert the following clause:

Frequency Authorization (April 1984)

(a) Authorization of radio frequencies required in support of this contract shall be obtained through the Contracting Officer by the Contractor or subcontractor in need thereof. Frequency management procedures furnished by the Contracting Officer shall be followed in obtaining radio frequency authorization.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contractual performance. NASA Form 566, "Application for Radio Frequency Assignment," shall be used for this purpose and shall be prepared in accordance with instructions contained on the form.

(c) This clause including this paragraph (c), shall be included in all subcontracts which call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

1852.225-70 Percent foreign content.

As prescribed at 1825.109-70, insert the following provision in all solicitations except those made outside the United States:

Percent Foreign Content (April 1984)

Approximately . . . . percent of the proposed contract price represents foreign content or effort.

(End of provision)

1852.225-71 Nondomestic construction materials.

As prescribed at 1825.205-70, insert the following clause in all construction contracts.

Nondomestic Construction Materials (April 1984)

The requirements of the clause entitled "Buy American Act—Construction Materials" do not apply to construction materials or their components as set forth below:

(End of clause)

1852.228-70 Aircraft ground and flight risk.

As prescribed in 1828.370-1(a), the contracting officer shall insert the following clause:

Aircraft Ground and Flight Risk (April 1984)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, loss, or destruction of aircraft "in the open," during "operation," and in "flight", as these terms are defined below, and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction, the risk of which is so assumed by the Government.

(b) For the purposes of this clause, the following definitions apply:

(1) Unless otherwise specifically provided in the Schedule, the term "aircraft" means—

(i) Aircraft (including (A) complete aircraft, and (B) aircraft in the course of being manufactured, disassembled, or reassembled; *provided*, that an engine or a portion of a wing or a wing is attached to a fuselage of such aircraft) to be furnished to the Government under this contract (whether before or after acceptance by the Government); and

(ii) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract; including all property installed therein, or in the process of installation, or temporarily removed from such aircraft; *provided*, however, that such aircraft and property are not covered by a separate bailment agreement.

(2) The term "in the open" means located wholly outside of buildings on the

Contractor's premises or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government shall be deemed to be in the open at all times while in the Contractor's possession, care, custody, or control.

(3) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer. With respect to land based aircraft, "flight" shall commence with the taxi roll from a flight line on the Contractor's premises, and continue until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises. With respect to seaplanes, "flight" shall commence with the launching from a ramp on the Contractor's premises and continue until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises. With respect to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continue until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged. With respect to vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device on the Contractor's premises and continue until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; *provided,* however, that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(4) The term "Contractor's premises" means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(5) The term "operation" means operations and tests, other than on any production line, of aircraft, when not in flight, whether or not the aircraft is in the open or in motion during the making of any such operations or tests, and includes operations and tests of equipment, accessories, and power plants only when installed in aircraft.

(6) The term "flight crew members" means the pilot, copilot, and unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to subparagraph (3) below. Where the Contracting Officer finds that any of such aircraft is in the open under unreasonable conditions, the Contracting Officer shall notify the Contractor in writing of the conditions found to be unreasonable and require the Contractor to correct such conditions within a reasonable time.

(2) Upon receipt of such notice, the Contractor shall act promptly to correct such conditions, regardless of whether it agrees that such conditions are in fact unreasonable. To the extent that the Contracting Officer may later determine that such conditions were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs incurred in correcting such conditions and the contract shall be modified in writing accordingly.

(3) If the Contracting Officer finds that the Contractor has failed to act promptly to correct such conditions or has failed to correct such conditions within a reasonable time, the Contracting Officer may terminate the Government's assumption of risk under this clause, as to any of the aircraft which is in the open under such conditions, such termination to be effective at 12:01 A.M. on the 15th day following the day of receipt by the Contractor of written notice thereof. If the Contracting Officer later determines that the Contractor acted promptly to correct such conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made in the contract price to compensate the Contractor for any additional costs incurred as a result of termination of the Government's assumption of risk under this clause and the contract shall be modified in writing accordingly.

(4) If the Government's assumption of risk under this clause is terminated in accordance with subparagraph (3) above, the risk of loss with respect to Government-furnished property shall be determined in accordance with the Government Property clause of this contract, if any, until the Government's assumption of risk is reinstated in accordance with subparagraph (5) below.

(5) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government thereof. The Government may or may not elect to again assume the risks and relieve the Contractor of liabilities as provided in this clause, and the Contracting Officer shall notify the Contractor of the Government's election. If, after correction of the unreasonable conditions the Government elects to again assume such risks and relieve the Contractor of such liabilities, the Contractor shall be entitled to an equitable adjustment in the contract price for costs of insurance, if any, extending from the end of the third working day after the Contractor notifies the Government of such correction until the Government notifies the Contractor of such election. If the Government elects not to again assume such risks and such conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for costs of insurance, if any, extending after such third working day.

(d) The Government's assumption of risk shall not extend to damage to or loss or destruction of such aircraft—

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open and during operation, in accordance with sound industrial practice (the term "Contractor's managerial personnel" means the Contractor's directors, officers, and any managers, superintendents, or other equivalent representatives, who have supervision or direction of all or substantially all of the Contractor's business or of the Contractor's operations at any one plant or separate location at which this contract is performed or a separate and complete major industrial operation in connection with the performance of this contract);

(2) Sustained during flight if the flight crew members conducting such flight have not been approved in writing by the Contracting Officer;

(3) While in the course of transportation by rail or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) To the extent that such damage, loss, or destruction is in fact covered by insurance;

(5) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless such damage is the result of other loss, damage, or destruction covered by this clause; *provided,* however, in the case of Government-furnished property, if such damage consists of reasonable wear and tear or deterioration or results from inherent vice in such property, this exclusion shall not apply;

(6) Sustained while the aircraft is being worked upon and directly resulting therefrom, including but not limited to any repairing, adjusting, servicing or maintenance operation, unless such damage, loss, or destruction is of a type which would be covered by insurance which would customarily have been maintained by the Contractor at the time of such damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e) With the exception of damage to or loss or destruction of aircraft in "flight," the Government's assumption of risk under this clause shall not extend to the first $1,000 of loss or damage resulting from each event separately occurring. The Contractor assumes the risk of and shall be responsible for the first $1,000 of loss of or damage to aircraft "in the open" or during "operation" resulting from each event separately occurring, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) below shall not include the dollar amount of the risk assumed by the Contractor under this paragraph. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) A subcontractor shall not be relieved from liability for damage to or loss or destruction of aircraft while in its possession or control, except to the extent that the

subcontract, with the prior written approval of the Contracting Officer, provides for relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of such aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability for any damage, loss, or destruction of aircraft and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for such damage to or loss or destruction of the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as may be otherwise authorized in this clause, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to or loss or destruction of aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under the provisions of this clause, whether or not such assumption may be terminated as to aircraft "in the open."

(h)(1) In the event of damage to, or loss or destruction of, aircraft "in the open," during operation, or in flight, the Contractor shall take all reasonable steps to protect such aircraft from further damage, separate damaged and undamaged aircraft, put all aircraft in the best possible order, and, further, except in cases covered by paragraph (e) above, the Contractor should furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) The insurance, if any, covering any part of the interest in such commingled property.

(2) Except in cases covered by paragraph (e) above, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i) If, prior to delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of such damage, loss, or destruction, the Government shall either require that such aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to such damage or shall terminate this contract with respect to such aircraft. In the event that the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and this contract shall be modified in writing accordingly. If, in the alternative, this contract is terminated under this paragraph with respect to such aircraft, and under this clause the Government has assumed the risk of such damage, loss, or destruction, the Contractor shall be paid the contract price for said aircraft (or, if applicable, any work to be performed on said aircraft) less such amounts as the Contracting Officer determines (1) that it would have cost the Contractor to complete the aircraft (or any work to be performed on said aircraft), together with anticipated profit, if any, on any such uncompleted work and (2) to be the value, if any, of the damaged aircraft or any remaining portion thereof retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts thereof, and, if any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due to the Contractor.

(j) In the event the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under the provisions of this clause and for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(End of clause)

Alternate I (APRIL 1984) In paragraph (b) of the basic clause, certain of the defined terms may be modified by insertion of appropriate additional definitions, (see subparagraphs (a) through (c) below). The purpose of the clause is to have the Government assume risks which generally entail unusually high insurance premiums and which are not covered by the contractor's "contents," "work-in-process," or other similar insurance. It is recognized that all of the definitions prescribed in the clause may not cover all situations which should be covered if the above purpose is to be accomplished.

(a) Since the standard definition of "aircraft" contemplates conventional types of winged aircraft, a modified definition is necessary if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other non-conventional types of aircraft. The modified definition should take into consideration that the aircraft has reached a point of manufacture comparable to that required in the standard definition.

(b) The definition of "in the open" may be modified to include "hush houses," test hangars, comparable structures, and other designated areas.

(c) "Contractor's premises" shall be expressly defined in the Schedule and shall be limited to those locations where aircraft may be located during and for the performance of the contract. "Contractor's premises" may include, but are not limited to, premises owned or leased by the contractor or premises for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

Alternate II (APRIL 1984). Paragraph (d)(3) of the baisc clause may be varied to provide for Government assumption of risk of transportation by conveyance on streets or highways were the Contracting Officer determines that such transportation is limited to the vicinity of the contractor's premises and is merely an incident to work performed under the contract.

1852.228-470 Reimbursement for war-hazard losses.

As prescribed at 1828.309, insert the following clause:

Reimbursement for War-Hazard Losses (April 1984)

(a) The Contractor's costs for assuming liability for employee protection against war-hazard risks pursuant to paragraph (b) of the clause of this contract entitled "Worker's Compensation and War-Hazard Insurance Overseas" shall be an allowable cost under this contract, subject to the following:

(1) The Contractor shall submit proof of loss files to support payment or denial of each claim.

(2) As soon as practicable, but no later than one year after the expiration or termination of this contract, unless the time shall be extended by the Contracting Officer, the Contractor shall convert each claim which has not been finally settled into a suitable arrangement under which the claim can be extinguished by the Contractor with a lump sum payment. Subject to approval by the Contracting Officer, the Contractor shall thereupon obtain necessary release documents and settle the claim by lump sum arrangement, taking into account any payments previously made.

(3) As to any potential claim which is known to, or reasonably should be within the knowledge of, the Contractor at the time of final settlement under this contract, the Contractor shall, at the time, present to the Government a full report and evaluation, indicating as to each potential claim that a reasonable investigation of the circumstances has been made, the results thereof, an evaluation of the merits, and an estimate of the amount involved should the potential claim mature into a valid obligation.

(4) The cost of insurance against a liability reimbursable under this clause shall not be an allowable cost or otherwise recoverable under this contract.

(b) The Government may require the Contractor to assign to the Government in the manner, at the times, and to the extent directed by the Contracting Officer all right, title, and interest of the Contractor to any refund, rebate, or recapture arising out of any claim settlement. The Government may handle such assigned entitlements in such manner as it deems appropriate and may recover any benefits related to claim settlements.

(c) The Contractor shall, as soon as practicable after an occurrence which appears to give rise to a claim under this portion of the contract, perform such investigations as may be appropriate and promptly notify the Contracting Officer in writing of any additional amount estimated to

be necessary to be obligated on account of such claim or potential claim. In addition, the Contractor shall give the Government or its representatives immediate written notice of any suit or action filed, the cost or expense of which may be reimbursable to the Contractor under this clause. The Contractor agrees to render full assistance to the Government in connection with any third party suit or claim relating to this clause or its subject matter which the Government elects to prosecute or defend in its own behalf.

(End of clause)

1852.228-71 Aircraft—flight risks.

(a) As prescribed in 1828.311-70, insert the following clause:

Aircraft—Flight Risks (April 1984)

(a) Notwithstanding any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause), the Contractor shall not (1) be relieved of liability for, damage to, or loss or destruction of aircraft sustained during flight or (2) be reimbursed for liabilities to third persons for loss of or damage to property or for death or bodily injury which are caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause—

(1) Unless otherwise specifically provided in the Schedule, the term "aircraft" means any aircraft, whether furnished by the Contractor under this contract (either before or after acceptance by the Government) or furnished by the Government to the Contractor under this contract, including all Government Property placed or installed therein or attached thereto; *provided*, however, that such aircraft and property are not covered by a separate bailment agreement.

(2) The term "flight" means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract or for the purpose of safeguarding the aircraft or previously approved in writing by the Contracting Officer. As to land-based aircraft, "flight" shall commence with the taxi roll from a flight line and continue until the aircraft has completed the taxi roll to a flight line. As to sea planes, "flight" shall commence with the launching from a ramp and continue until the aircraft has completed its landing run and is beached at a ramp. As to helicopters, "flight" shall commence upon the engagement of the rotors for the purpose of take-off and continue until the aircraft has returned to the ground and rotors are disengaged. For vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device and continue until the aircraft has been re-engaged to any launching platform or device.

(3) The term "flight crew members" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c) If any aircraft is damaged, lost, or destroyed during flight and if the amount of such damage, loss, or destruction exceeds $100,000 or 20 percent of the estimated cost, exclusive of any fee, of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction under the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause of this contract or under paragrah (a) above, then an equitable adjustment for any resulting repair, restoration, or replacement that is required under this contract shall be made (1) in the estimated cost, delivery schedule, or both and (2) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly; *provided*, in determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, its employees, or any subcontractor which materially contributed to the damage, loss, or destruction shall be taken into consideration.

(End of clause)

Alternate I (APRIL 1984). In paragraph (b) of the basic clause, the definition of "aircraft" may be appropriately modified if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

1852.231-70 Pricing of adjustments.

In accordance with 1831.102-70, include the following clause in fixed-price contracts that include a Changes clause or provisions for adjustment of the contract price.

Pricing of Adjustments (April 1984)

When costs are a factor in any determination of a contract price adjustment pursuant to the Changes clause or any other provision of this contract, such costs shall be in accordance with Part 31 of the Federal Acquisition Regulation as in effect on the date of this contract.

(End of clause)

1852.232-1 Payments.

When using the clause at FAR 52.232-1 delete the words "upon submission of proper invoices" from the first sentence and substitute the words "within 30 days after receipt of proper invoices, as determined under the 'Invoices' clause of this contract."

1852.232-2 Payments under Fixed-Price Research and Development Contracts.

When using the clause at FAR 52.232-2, delete the words "upon submission of proper invoices" from the first sentence and substitute the words "within 30 days after receipt of proper invoices."

1852.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.

When using the clause at FAR 52.232-4, delete the words "upon the submission of properly certified invoices or vouchers" from the first sentence and substitute the words "within 30 days after receipt of properly certified invoices, as determined under the 'Invoices' clause of this contract."

1852.232-7 Payments under Time-and-Materials and Labor-Hour Contracts

When using the clause at FAR 52.232-7, in the last sentence of subparagraph (a)(1) delete the word "Promptly" and substitute the words "Within 30 days." In the third sentence of paragraph (e) delete the word "promptly" and substitute the words "within 30 days."

1852.232-10 Payments under Fixed-Price Architect-Engineer Contracts

When using the clause of FAR 52.232-10, in the first sentence of paragraph (b) delete the words "payment upon properly executed vouchers shall be made to the Contractor, as soon as practicable", and substitute the words "within 30 days after receipt of properly certified vouchers, payment shall be made to the Contractor."

1852.232-70 [Reserved]

1852.232-71 Invoices.

As prescribed in 1832.111-70(a), insert the following clause in fixed-price contracts and solicitations therefor, except those for construction work, architect-engineer services, or utility services:

Invoices (April 1984)

(a)(1) An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice must include as applicable the following:

(i) Invoice date.

(ii) Name of Contractor.

(iii) Contract number (including order number, if any), contract line item number, contract description of supplies or services, quantity, contract unit of measure and unit price, and extended total.

(iv) Shipment number and date of shipment (bill-of-lading number and weight of shipment will be shown for shipments on Government bills of landing).

(v) Name and address to which payment is to be sent (which must be the same as that in the contract or on a proper notice of assignment).

(vi) Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice.

(vii) Any other information or documentation required by other provisions of the contract (such as evidence of shipment).

(2) Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified.

(b) For purposes of determining if interest begins to accrue under the Prompt Payment Act (Pub. L. 97-177)—

(1) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred;

(2) Payment shall be considered made on the date on which a check for such payment is dated;

(3) Progress payments if authorized under this contract, are solely for financing purposes and shall not accrue interest under the Prompt Payment Act;

(4) Payment terms (e.g., "net 20") offered by the Contractor will not be deemed a "required payment date;" and

(5) The following periods of time will not be included:

(i) After receipt of an improper invoice and prior to notice of any defect or impropriety, but not to exceed 15 days (or any lesser period established by this contract).

(ii) Between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

(End of clause)

1852.232-72 Payments (letter contracts).

As prescribed in 1832.111-70(b), insert the following clause in letter contracts and solicitations therefor.

Payments (Letter Contracts) (April 1984)

(a) If this Letter Contract is on a fixed-price basis, and is governed generally by the provisions of a fixed-price contract, the Government will pay to the Contractor, not to exceed the maximum amount specified in Article IIIa of the Schedule, within 30 days of receipt of proper invoices or vouchers, the prices, if any, specified in Article III of the Schedule for supplies delivered and accepted or services rendered and accepted, less deductions, if any, provided for in this Letter Contract. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government.

(b) If this Letter Contract is on a cost-reimbursement basis and is governed generally by the provisions of a cost-reimbursement type contract, the Government will make payments to the Contractor within 30 days after receipt of each proper invoice or voucher in accordance with the Payments of Allowable Costs Before Definitization clause of this Letter Contract.

(c) Nothing shall be paid under this Letter Contract to the Contractor for profit or fee, except as provided in the Termination clause of this Letter Contract.

(d) This clause shall not be applicable after this Letter Contract is converted into a fully definitized contract.

(End of clause)

1852.232-73 Payments (utility services).

As prescribed in 1832.111-70(c), insert the following clause in negotiated utility service contracts and solicitations therefor:

Payments (Utility Services) (April 1984)

(a) Payments for the service rendered under this contract shall be made monthly by the designated disbursing office or officer under the terms and conditions of this contract upon the submission of proper invoices.

(b) All bills shall be paid without penalty or interest and the Government shall be entitled to any discounts customarily applicable to payment of bills by all customers of the Contractor.

(c) Invoices for services rendered hereunder shall contain statements of the meter readings at the beginning of the billing period, meter constants, consumption during the billing period, and such other pertinent data as shall be required by the Government.

(End of clause)

1852.232-74 Payments (facilities).

As prescribed in 1832.111-70(d), insert the following clause in consolidated facilities contracts and solicitations therefor:

Payments (Facilities) (April 1984)

The Government will make payments to the Contractor within 30 days after receipt of each proper invoice or voucher and statement of cost, in accordance with paragraph (b) of the Allowable Cost and Payment—Facilities clause of this contract, except as otherwise may be provided in this contract, subject to the provisions of paragraph (f) of the aforementioned clause.

(End of clause)

1852.232-75 Security for advance payments.

As prescribed in 1832.412, the contracting officer, in consultation with General Counsel, may require special security provisions if appropriate in particular cases. For example, the following clause may be included in publications and contracts with nonprofit organizations or educational institutions that include the clause at FAR 52.232-12, Advance Payments:

Security for Advance Payments (April 1984)

During the period of time that advance payments may be made hereunder and so long as any such advance payments remain unliquidated, the Contractor shall not mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the Contractor now owned or hereafter acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor that are allocated to the performance of this contract and with respect to which the Government has a lien hereunder, without the prior written consent of the Contracting Officer.

(End of clause)

1852.232-76 Authority to obligate funds.

As prescribed in 1832.705-270(a), insert the following clause in letter contracts and solicitations therefor:

Authority To Obligate Funds (April 1984)

The maximum amount for which the Government shall be liable if this contract is terminated is specified in the Limitation of Liability clause, and any expenditure or obligation by the Contractor in excess of that amount, in furtherance of performance hereunder, shall be at the Contractor's own risk.

(End of clause)

1852.232-77 Limitation of funds (fixed-price-contract).

As prescribed in 1832.705-270(b), insert the following clause in fixed-price incrementally-funded contracts for research and development, and solicitations therefor. Contracting officers are authorized, in appropriate cases, to revise paragraphs (a), (b), and (g) of the clause to specify the work required under the contract in lieu of contract numbers. The 60-day period may be varied from 30 to 90 days, and the 75 percent from 75 to 85 percent:

Limitation of Funds (Fixed-Price Contract) (April 1984)

(a) Of the total price of items . . . through . . ., the sum of $. . . is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allocated to this contract in accordance with the following schedule until the total price of said item is allotted:

Schedule for Allotment of Funds

Date ——— Amounts ———.

The Contractor agrees to perform or have performed work on said items up to the point at which, in the event of termination of this contract pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable in respect of subcontracts and settlement costs) pursuant to paragraphs (f) and (g) thereof, would in the exercise of reasonable judgment by the Contractor approximate the total amount at the time allotted to the contract. The Contractor shall not be obligated to continue performance of the work beyond such point. The Government shall not be obligated in any event to pay or reimburse the Contractor in excess of the amount from time to time allotted to the contract, anything to the contrary in the Termination for Convenience of the Government clause of this contract notwithstanding.

(c) It is contemplated that funds presently allotted to this contract will cover the work to be performed until . . . . In the event funds allotted are considered by the Contractor to be inadequate to cover the work to be performed until the above date, or an agreed date in substitution thereof, the Contractor shall notify the Contracting Officer in writing when within the next 60 days the work will reach a point at which, in the event of termination of this contract pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable in respect of subcontracts and settlement costs) pursuant to paragraphs (f) and (g) thereof will approximate seventy-five percent (75%) of the

total amount then allotted to the contract. The notice shall state the estimated date when such point will be reached and the estimated amount of additional funds required to continue performance to the above or an agreed substituted date. The Contractor shall, 60 days prior to the date above written or agreed substituted date, advise the Contracting Officer in writing as to the estimated amount of additional funds which will be required for the timely performance of the contract for a further period as may be specified in the contract or otherwise agreed to by the parties. If after such latter notification, additional funds are not allotted by the date above written or by an agreed date in substitution thereof, the Contracting Officer will, upon written request of the Contractor, terminate this contract on such date or the date set forth in the request, whichever is later, pursuant to the provisions of the Termination for Convenience of the Government clause of this contract.

(d) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree on the applicable period of contract performance which shall be covered by such funds. The provisions of paragraphs (b) and (c) above shall apply to such additional allotted funds and substituted date pertaining thereto, and the contract shall be amended accordingly.

(e) If the Contractor incurs additional costs, or is delayed in the performance of the work under this contract, solely by reason of the failure of the Government to allot additional funds in amounts sufficient for the timely performance of this contract, and if additional funds are alloted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing and ceiling prices where applicable) of said items or in the time of delivery or both.

(f) The Government may at any time prior to termination, and, with the consent of the Contractor, after notice of termination, allot additional funds for this contract.

(g) The provisions of this clause with respect to termination shall in no way be deemed to limit, the rights of the Government under the Default clause of this contract. The provisions of this clause are limited to the work on and allotment of funds for the items set forth in paragraph (a) above. This clause shall become inoperative upon the allotment of funds for the total price of said work except for rights and obligations then existing under this clause.

(h) Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the Termination for Convenience of the Government clause of this contract.

(End of clause)

1852.233-1 Disputes.

Insert the Alternate I at FAR 52.233-1, as prescribed in 1833.014.

1852.235-70 Scientific and technical information service.

Insert the following clause as prescribed in 1835.070(a):

Scientific and Technical Information Service (April 1984)

(a) The Contractor, if not already registered with the NASA Scientific and Technical Information Facility, is encouraged to register by requesting registration forms from the address below. Registration forms will inform the Contractor of the products and services available in support of work under the contract—

NASA Scientific and Technical Information Facility
Attn: Registration
P.O. Box 8757
Baltimore/Washington, International Airport, MD 21240

(b) NASA reserves the right, in the event of the unavailability of any scientific and technical information requested, to notify the Contractor of such unavailability. Failure of NASA to furnish any information requested shall not entitle the Contractor to any adjustment in the price, cost (estimated or target), fee, time required for performance, or delivery schedule of the contract.

(End of clause)

1852.235-71 Key personnel and facilities.

Insert the following clause as prescribed in 1835.070(b):

Key Personnel and Facilities (April 1984)

The personnel and/or facilities listed below (or as specified in the Schedule of this contract) are considered essential to the work being performed hereunder. Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify the Contracting officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; *provided*, that the Contracting Officer may ratify in writing the change, such ratification shall constitute the consent of the Contracting Officer required by this clause. The personnel and/or facilities listed below (or as specified in the Schedule of this contract) may, with the consent of the Contracting parties, be amended from time to time during the course of the contract to either add or delete personnel and/or facilities, as appropriate.

(End of clause)

1852.236-70 Option for supervision and inspection services.

As prescribed in 1836.609-70, the following clause may be included in fixed-price architect-engineer contracts, and solicitations therefor, if supervision and inspection services by the architect-engineer during construction are contemplated. The details of such services must be set out in Appendix A of the contract.

Option for Supervision and Inspection Services (April 1984)

At any time prior to 6 months after satisfactory completion and acceptance of the work to be furnished hereunder, the Government at its option, may direct, by a written order, the Contractor to perform any part of all of the supervision and inspection services provided under Appendix A. Upon receipt of such direction, the Architect-Engineer shall proceed with such work and services.

(End of clause)

1852.243-70 Engineering change proposals.

As prescribed in 1843.205-70, insert the following clause. The term "price" in paragraph (b) may be changed consistent with the type of contract. When desirable, delete the second reference in paragraph (a) of the clause to MIL-STD-480 and enter local format, if any.

Engineering Change Proposals (April 1984)

(a) The Contracting Officer may, at any time, request in writing, that the Contractor prepare and submit an Engineering Change Proposal (ECP) as that term is defined in MIL-STD-480. Upon receipt of the request, the Contractor shall submit to the Contracting Officer, the information specified by paragraph 4 of MIL-STD-480 in the format required therein.

(b) Any Contractor ECP shall include a "not-to-exceed" price and delivery adjustment or a "not-less-than" price* and delivery adjustment acceptable to the Contractor if the Government subsequently orders such ECP. If ordered, the equitable increase shall not exceed, nor shall the equitable decrease be less than such "not-to-exceed" or "not-less-than" amounts. This paragraph does not preclude any revision(s) or correction(s) of an ECP in accordance with paragraphs 4.10 and 4.11 of MIL-STD-480. Concurrently with the submission of any ECP under this contract in which the proposed aggregate cost is $500,000 or more, the Contractor shall submit to the Contracting Officer a completed Standard Form 1411, Contract Pricing Proposal Cover Sheet, and at the time of agreement upon the price of the ECP, the Contractor shall submit a signed Certificate of Current Cost or Pricing Data.

(End of clause)

Alternate I (APRIL 1984). As prescribed in 1843.205-70(a), include the following paragraph to the basic clause after inserting in the space provided the appropriate percentage of the contract price or dollar amount.

(c) If the price adjustment proposed for any Contractor originated ECP (excluding any Government requested ECP or Value Engineering Change Proposal) is ..... (percent of contract price) (or $.....) or less, such change shall be made at no adjustment of the contract price.

(End of clause)

Alternate II (APRIL 1984). As prescribed in 1843.205-70(b), substitute the following sentence for the first sentence in paragraph (b) of the basic clause.

Change orders issued pursuant to the Change clause of this contract shall not be

considered an authorization to the Contractor to exceed the estimated cost in the schedule in the absence of a statement in the change order or other contract modification increasing the estimated cost.

1852.244-70 Geographic participation in the aerospace program.

Insert the following clause as prescribed in 1844.170.

Geographic Participation in the Aerospace Program (April 1984)

(a) It is the policy of the National Aeronautics and Space Administration to advance a broad participation by all geographic regions in filling the scientific, technical, research and development, and other needs of the aerospace program.

(b) The Contractor agrees to use his best efforts to solicit subcontract sources on the broadest feasible geographic basis, consistent with efficient contract performance, and without impairment of program effectiveness or increase in program cost.

(c) The Contractor further agrees to insert this clause in all subcontracts of $100,000 and over.

(End of clause)

1852.245-70 Acquisition of existing government equipment

As prescribed in 1845.106-70(a), insert the following clause in all solicitations and contracts which contain a Government property clause:

Acquisition of Existing Government Equipment (April 1984)

"Centrally reportable equipment," as used in this clause means that plant equipment, special test equipment (including components), special tooling and non-flight space property (including ground support equipment) which is (a) generally commercially available and used as a separate item or component of a system, (b) is valued at $1,000 or more, and (c) is identifiable by a manufacturer and model number.

Prior to the acquisition of any item of centrally reportable equipment under this contract (unless for incorporation into deliverable end items), the Contractor shall provide the Contracting Officer, at the earliest possible date, a detailed listing of requirements for screening of existing Government inventories. DD Form 1419, DOD Industrial Plant Equipment Requisition, will be prepared for each item of centrally reportable equipment to be acquired and forwarded through the Contracting Officer to the Equipment Visibility System Coordinator at the cognizant NASA installation at least (30) days in advance of his intention to acquire or fabricate such equipment. In the event a certificate of nonavailability is not received within such period, the contractor may proceed to acquire the equipment or components, subject to any other applicable provisions of this contract. Instructions for preparing the DD Form 1419 are contained in the NASA FAR Supplement 1845.7103.

(End of clause)

1852.245-71 Installation-provided government property.

As prescribed in 1845.106-70(b), insert the following clause in solicitations and contracts when Government property is to be provided to on-site contractors:

Installation-Provided Government Property (April 1984)

(a) In performance of work under this contract, certain Government property identified in this contract shall be made available to the Contractor on a no-charge-for-use basis by the installation Supply and Equipment Management Officer. Such property shall be utilized in the performance of this contract at the installation administering this contract or at such other installation(s) or location(s) specified elsewhere in this contract. Under this clause, the Government retains accountability as well as title to the property and the Contractor assumes user responsibilities prescribed in installation property management directives, which are listed elsewhere in this contract.

(b) The official accountable record keeping and financial control and reporting of the property subject to this clause shall be retained by the Government and accomplished by the installation Supply and Equipment Management and Financial Management Officers. However, the Government will provide the Contractor a record of all items of property including copies of all transaction documents used to describe changes to this record. The Contractor shall maintain this record and transaction documentation in such a condition that at any stage of completion of work under this contract, the status of the property including location, utilization, consumption rate, and identification may be readily ascertained. The Contractor shall also adhere to all other procedures (and be subject to sanctions related thereto) prescribed by the installation director which have been established for the management of installation property. The records and documentation shall be made available, upon request, to the installation Supply and Equipment Management Officer and other formally designated representative(s) of the Contracting Officer.

(c) In the event the Government fails to provide the Government property specified in this contract such as to adversely affect the Contractor's ability to perform hereunder, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the effect occasioned the Contractor and shall equitably adjust the contract in accordance with the procedure provided in the Changes clause of this contract. Equitable adjustments made pursuant to this paragraph, however, shall not include adjustments in fee unless the property to be provided was described in specific quantities of specific items.

(d) Government property made available under this clause shall in every respect be subject to the provisions of the Government Property clause of this contract except as provided in paragraphs (a), (b), and (c) above, and as may otherwise be provided in this contract with respect to (1) the Contractor's responsibilities for repair and maintenance of Government property, or (2) the Contractor's liability for any loss of or damage to such property which is attributable to the Contractor's failure to maintain and administer a program for maintenance and repair in accordance with sound industrial practice.

(End of clause)

1852.245-72 Liability for government property furnished for repair or other services.

As prescribed in 1845.106-70(c), insert the following clause in solicitations and contracts for repair, modification, rehabilitation, or other servicing for Government property when such property is furnished to contractor for that purpose:

Liability for Government Property Furnished for Repair or Other Services (April 1984)

(a) The provisions of this clause shall govern with respect to any Government property furnished to the Contractor for repair or other services, and which is to be returned to the Government. Such property is hereinafter referred to as "Government property furnished for servicing" and shall not be subject to the provisions of any clause of this contract entitled Government Furnished Property or Government Property.

(b) The official accountable record keeping, and financial control and reporting of the property subject to this clause shall be retained by the Government. The Contractor shall maintain adequate records and procedures to assure that the Government property furnished for repair or servicing may be readily accounted for and identified at all times while in its custody or possession or in the custody or possession of any subcontractor.

(c) The contractor shall be liable for any loss or destruction of or damage to the Government property furnished for repair or servicing (1) caused by the Contractor's failure to exercise such care and diligence as a reasonable prudent owner of similar property would exercise under similar circumstances, or (2) sustained while the property is being worked upon and directly resulting therefrom, including but not limited to, any repairing, adjusting, inspecting, servicing, or maintenance operation. The Contractor shall not be liable for loss or destruction of or damage to Government property furnished for repair or servicing resulting from any other cause except to the extent that such loss, destruction, or damage is covered by insurance (including self-insurance funds or reserves).

(d) In addition to any insurance (including self-insurance funds or reserves) carried by the Contractor and in effect on the date of this contract affording protection in whole or in part against loss or destruction of or damage to such Government property furnished for repair or servicing, the amount and coverage of which the Contractor agrees to maintain, the Contractor agrees to obtain

such additional insurance covering loss or destruction of or damage to Government property furnished to the Contractor for repair or servicing as may, from time to time, be required by the Contracting Officer. The requirements for such additional insurance shall be effected under the procedures established by the Changes clause of this contract.

(e) The Contractor shall hold the Government harmless and shall indemnify the Government against all claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Government property furnished for repair or servicing or arising from the presence of said property on the premises or property of the Contractor.

(End of clause)

1852.245-73 Financial reporting of government-owned/contractor-held property.

As prescribed in 1845.106-70(d), insert the following clause:

Financial Reporting of Government-Owned/Contractor-Held Property (April 1984)

(a) The Contractor shall prepare and submit annually a NASA Form 1018 Report of Government-Owned/Contractor-Held Property, in accordance with the instructions on the form and Subsection 1845.505-14 of the NASA FAR Supplement, except the reporting of space hardware shall be required only upon the written direction of the Contracting Officer identifying the specific project items to be reported.

(b) If administration of this contract has been delegated to the Department of Defense, the original and three copies of NASA Form 1018 shall be submitted through the DoD Property Administrator to the NASA office identified below. If administered by NASA, the forms shall be submitted directly to the designated NASA office:

(Insert the address and office code of the organization within cognizant NASA Installation responsible for control and distribution of the NASA Form 1018)

_____

_____

_____

(c) The annual reporting period shall be from July 1 of each year to June 30 of the following year. The report shall be submitted by July 31.

(d) The Contractor agrees to insert the reporting requirement in all first-tier subcontracts, except that such requirement shall provide for the submission of the subcontractor reports directly to the Contractor. The Contractor shall require the subcontractor reports to be submitted to him in sufficient time to meet the reporting date in paragraph (c) above.

(e) The Contractor's annual report shall consist of a consolidation of subcontractor's reports and the contractor's report.

(End of clause)

1852.247-70 Returnable gas cylinders.

As prescribed at 1847.305-70, insert the following clause. The 30 day time period in paragraph (a) may be modified to comply with the customary commercial practice for the particular type of container being rented. The clause may also be modified for use in contracts involving other reusable containers, where the contractor is to retain title:

Returnable Gas Cylinders (April 1984)

(a) Cylinders shall remain the property of the Contractor but will be loaned without charge to the Government for a period of 30 days after the date of delivery of the cylinders to the f.o.b. point specified in the contract. Beginning with the first day after the expiration of the 30 day loan period to and including the day the cylinders are delivered to the Contractor where the original delivery was f.o.b. origin, or to and including the date the cylinders are delivered or are made available for delivery to the Contractor's designated carrier in the case where the original delivery was f.o.b. destination, the Government shall pay the Contractor a rental of _____ dollars ($_____) per cylinder per day, regardless of type or capacity.

(b) This rental charge will be computed separately for cylinders of differing types, sizes and capacities, and for each point of delivery named in the contract. A credit of 30 cylinder days will accrue to the Government for each cylinder, regardless of type or capacity, delivered by the Contractor. A debit of 1 cylinder day will accrue to the Government for each cylinder for each day after delivery to the f.o.b. point specified in the contract. At the end of the contract, if the total number of debits exceeds the total number of credits, rental shall be charged for the difference. If the total number of credits equals or exceeds the total number of debits, no rental charges will be made for the cylinders. No rental shall accrue to the Contractor in excess of the replacement value per cylinder specified in paragraph (c) below.

(c) For each cylinder lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental paid therefor:

(1) Oxygen cylinders of 100–110 cubic foot capacity $_____;

(2) Oxygen cylinders of 200–220 cubic foot capacity $_____;

(3) Acetylene cylinders of 100–150 cubic foot capacity $_____; and

(4) Acetylene cylinders of 230–300 cubic foot capacity $_____.

(d) Cylinders lost, or damaged beyond repair, and paid for by the Government shall become the property of the Government, subject to the following: If any lost cylinder is located within _____ (insert period of time) after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the government an amount equal to the replacement value, less rental computed in accordance with paragraph (a) above, beginning at the expiration of the 30 day loan period specified in paragraph (a) above, and continuing to the date on which the cylinder was delivered to the Contractor.

(End of clause)

1852.249-70 Termination—Fixed-Price Letter Contract.

As prescribed in 1849.502, the following clause shall be included in letter contracts which are expected to be converted to fixed-price type definitive contracts.

Termination Fixed-Price Letter Contract (April 1984)

(a) In case a definitive contract is not executed by the date specified in Article VI of the Schedule, because of the inability of the parties to agree upon a definitive contract, this Letter Contract may be terminated in its entirety by either party by delivering to the other party a notice in writing specifying the effective date of termination, which date shall not be earlier than 30 days after receipt of such notice.

(b) The performance of work under this Letter Contract also may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be affected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under this Letter Contract is terminated, and the date upon which such termination becomes effective.

(c)(1) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall—

(i) Stop work under this Letter Contract on the date and to the extent specified in the Notice of Termination;

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

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

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

(v) Subject to the approval or ratification of the Contracting Officer, as required, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts;

(vi) Transfer title and, in the manner, to the extent, and at the times directed by the Contracting Officer, delivery to the

Government (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if this Letter Contract had been completed, would be required to be furnished to the Government;

(vii) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above; *provided*, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and *provided further* that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this Letter Contract or shall otherwise be credited to the price or cost of the work covered by this Letter Contract or paid in such other manner as the Contracting Officer may direct;

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

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

(2) At any time after expiration of the plant clearance period, as defined in the Federal Acquisition Regulation, Part 45, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter in to a storage agreement covering them. Not later than 15 days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same; *provided*, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within 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.

(d) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly, but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such 1 year period or authorized extension thereof. However, the Contracting Officer may if the facts justify such action, receive and act upon any such termination claim at any time after such 1 year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Subpart 1849.1 of the NASA FAR Supplement in effect on the date of the execution of this Letter Contract, determine, on the basis of available information, the amount, if any, due to the Contractor by reason of the termination, and shall thereupon pay to the Contractor the amount so determined.

(e) Subject to the provisions of paragraph (d) hereof, and subject to any Settlement Review Board approvals required by Subpart 1849.1 of the NASA FAR Supplement in effect as of the date of execution of this Letter Contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. In the event of any termination pursuant to paragraph (a) hereof, such amount or amounts shall not include any allowance for profit. In the event of any termination pursuant to paragraph (b) hereof, such amount or amounts may include a reasonable allowance for profit, but only on work actually done in connection with the terminated portion of this Letter Contract. Any such amount shall not exceed the maximum liability specified in the Schedule. Any such agreement shall be embodied in an amendment to this Letter Contract, and the Contractor shall be paid the agreed amount.

(f) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (e), as to the amount or amounts to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by NASA regulations in effect as of the date of execution of this Letter Contract, determine, on the basis of information available to him, and in accordance with the applicable cost principles of the Federal Acquisition Regulation as in the effect on the date of this Letter Contract, the amount, if any, due to the Contractor by reason of the termination and shall pay such amount to the Contractor. In the event of the termination of this Letter Contract pursuant to paragraph (a) hereof, no allowance for profit shall be included in the amount to be paid the Contractor.

(g) The Contractor shall have the right of appeal, under the Disputes clause of this Letter Contract from any determination made by the Contracting Officer under paragraph (d) or (f) above (including any disputes as to whether termination has in fact taken place pursuant to paragraph (a) hereof), except that if the Contractor has failed to submit a claim within the time provided in paragraph (d) above and has failed to request extension of such time, no such right of appeal shall exist. In any case where the Contracting Officer has made a determination of the amount due under paragraph (d) or (f) above, the Government shall pay to the Contractor the following:

(1) If there is no right or appeal hereunder or if no timely appeal has been taken the amount so determined by the Contracting Officer.

(2) If an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted—

(1) All unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Letter Contract;

(2) Any claim which the Government may have against the Contractor in connection with this Letter Contract; and

(3) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Letter Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. (b)(2) for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(j) Unless otherwise provided in this Letter Contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of 3 years after final settlement under this Letter Contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, without direct charge to the Government, all its books, records, documents, and other evidence bearing on the cost and expenses of the Contractor under this Letter Contract and relating to the work terminated hereunder or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

1852.249-71 Termination—cost-reimbursement type letter contract.

As prescribed in 1849.503(a), the following clause shall be included in letter contracts which are expected to be converted to cost-reimbursement type definitive contracts:

Termination—Cost-Reimbursement Letter Contract (April 1984)

(a) In case a definitive contract is not executed by the date specified in the Schedule, because of the inability of the parties to agree upon a definitive contract, this Letter Contract may be terminated in its entirety by either party by delivering to the other party a notice in writing specifying the effective date of termination, which date shall not be earlier than 30 days after receipt of such notice.

(b)(1) The performance of work under this Letter Contract also may be terminated by the Government in accordance with this clause in whole, or from time to time in part—

(i) Whenever the Contractor shall default in performance of this Letter Contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer period as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

(ii) Whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

(2) Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under this Letter Contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this Letter Contract for default under subdivision (1)(i) above, it is determined for any reason that the Contractor was not in default pursuant to subdivision (1)(i) above, or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this Letter Contract relating to excusable delays, the Notice of Termination shall be considered to have been issued under subdivision (1)(ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(c)(1) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer the Contractor shall:

(i) Stop work under this Letter Contract on the date and to the extent specified in the Notice of Termination;

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

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

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

(v) Subject to the approval or ratification of the Contracting Officer, as required, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Letter Contract;

(vi) Transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the time directed by the Contracting Officer, deliver to the Government: (A) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if this Letter Contract had been completed, would be required to be furnished to the Government, and (C) the jigs, dies, and fixtures, and other special tools, and tooling acquired or manufactured for the performance of this Letter Contract for the cost of which the Contractor has been or will be reimbursed under this Letter Contract;

(vii) Use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above, *provided*, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and *provided further*, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this Letter Contract or shall otherwise be credited to the price or cost of the work covered by this Letter Contract or paid in such other manner as the Contracting Officer may direct;

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

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

(2) The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining the amount of any items of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in Part 45 of the Federal Acquisition Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same; *provided*, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within 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.

(d) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly, but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such 1 year period or authorized extension thereof. However, the Contracting Officer may if the facts justify such action, receive and act upon any such termination claim at any time after such 1 year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Subpart 1849.1 of the NASA FAR Supplement in effect on the date of the execution of this contract, determine, on the basis of information available to the Contracting Officer, the amount, if any, due to the Contractor by reason of the termination, and shall thereupon pay to the Contractor the amount so determined.

(e) Subject to the provisions of paragraph (d) hereof, and subject to any Settlement Review Board approvals required by Subpart 1849.1 of the NASA FAR Supplement in effect as of the date of execution of this Letter Contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. In the event of any termination pursuant to paragraph (a) or (b)(1)(i) hereof, such amount or amounts shall not include any allowance for fee. In the event of any termination pursuant to paragraph (b)(1)(i) hereof, such amount or amounts may include a reasonable allowance for fee, but only on work actually done in connection with the terminated portion of this Letter Contract. Any such amount shall not exceed the maximum liability specified in the Schedule. Any such agreement shall be embodied in an amendment to this Letter Contract and the Contractor shall be paid the agreed amount.

(f) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (e) above, as to the amount or amounts to be paid to the Contractor in connection with the termination of work

pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Subpart 1849.1 of the NASA FAR Supplement in effect as of the date of execution of this Letter Contract, determine, on the basis of information available to him, and in accordance with the applicable cost principles of the Federal Acquisition Regulation as in effect on the date of this Letter Contract, determine, on the basis of information available to him, and in accordance with the applicable cost principles of the Federal Acquisition Regulation as in effect on the date of this Letter Contract, the amount, if any, due to the Contractor by reason of the termination and shall pay such amount to Contractor. In the event of the termination of this Letter Contract pursuant to paragraph (a) or (b)(1)(i) hereof, no allowance for fee shall be included in the amount to be paid the Contractor.

(g) The Contractor shall have the right of appeal, under the clause of this Letter Contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (d) or (f) above (including any disputes as to whether termination has in fact taken place pursuant to paragraph (a) or (b)(1)(i) hereof), except that if the Contractor has failed to submit a claim within the time provided in paragraph (d) above and has failed to request extention of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (d) or (f) above, the Government shall pay to the Contractor the following:

(1) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer.

(2) If an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this Letter Contract;

(2) Any claim which the Government may have against the Contractor in connection with this Letter Contract; and

(3) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Letter Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments in in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2), for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(End of clause)

1852.249–72 Termination (utilities).

As prescribed in 1849.505 insert the following clause in all contracts for utilities services; however, see FAR 49.505(e) and FAR 52.249–15 for communication services contracts. The period of 30 days may be varied not to exceed 90 days.

Termination (Utilities) (April 1984)

This contract may be terminated at the option of the Government by giving of not less than 30 days advance written notice of the effective date of termination.

(End of clause)

1852.250–1 Indemnification under Pub. L. 85–804.

In accordance with 1850.102, contracting officers shall not include in NASA contracts the clause at FAR 52.250–1.

1852.252–70 Compliance with NASA FAR Supplement.

As prescribed in 1852.107–70, insert the following clause in all contracts, including letter contracts:

Compliance With NASA FAR Supplement (April 1984)

Any statements in this contract requiring compliance with specific provisions of the Federal Acquisition Regulation (e.g., Subpart 45.5) shall be construed to also require compliance with any corresponding implementing or supplementing provisions in the NASA FAR Supplement in effect on the date of this contract.

(End of clause)

PART 1853—FORMS

Subpart 1853.1—General

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1853.303–523 NASA Form 523, NASA-Defense Purchase Request.
1853.303–533M NASA Form 533M, Monthly Contractor Financial Management Report.
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1853.303–667 NASA Form 667, Report on NASA Subcontracts.
1853.303–778 NASA Form 778, Contractor's Release.
1853.303–779 NASA Form 779, Assignee's Release.
1853.303–780 NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts.
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1853.303–1356 NASA Form 1356, C.A.S.E. Report on College and University Projects.
1853.303–1412 NASA Form 1412, Termination Authority.
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1853.303–1430 NASA Form 1430, Letter of Contract Administration Delegation, General.
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1853.303–DD–614 Department of Defense Form DD–614, Materials Requirements (Steel and Nickel Alloys).
1853.303–DD–614–1 Department of Defense Form DD–614–1, Materials Requirements (Copper and Aluminum).
1853.303–DD–1342 Department of Defense Form 1342, DOD Property Record.
1853.303–DD–1419 Department of Defense Form 1419, DOD Industrial Plant Equipment Requisition.
1853.303–DD–1593 Department of Defense Form 1593, Contract Administration Completion Record.
1853.303–DOE EV 375 Department of Energy Form EV 375, Isotope Order Blank.
1853.303–NRC–313I Nuclear Regulatory Commission Form 313I, Application for Byproduct License, Industrial.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1853.1—General

1853.100 Scope of subpart.

This subpart contains requirements and information generally applicable to the forms prescribed in this regulation.

1853.101 Requirements for use of forms.

The requirements for use of the forms prescribed or referenced in this part are contained in Parts 1801 through 1852, where the subject matter applicable to each form is addressed. The specific location of each requirement is identified in Subpart 1853.2.

1853.102 Current editions.

The form prescriptions in Subpart 1853.2 and the illustrations in Subpart 1853.3 contain current editions, unless otherwise noted. Contracting officers shall use the current editions, unless otherwise authorized under this regulation.

1853.103 Exceptions.

Alteration of any NASA or NASA-adopted form prescribed by this regulation is prohibited, unless prior approval has been obtained from the NASA Forms Officer (through the Installation Forms Manager) who will coordinate the request with the Office of Procurement, Code H. Use for the same purpose of any form other than one prescribed by this regulation requires prior approval of Code H. Requests for exceptions to standard or optional forms, as prescribed in FAR 53.103, shall be forwarded through the Installation Forms Manager and the NASA Forms Officer to the Procurement Policy Division, Code HP–1, which will take, as appropriate, the actions set forth in FAR 53.103.

1853.104 Overprinting.

NASA and other forms may be overprinted with names, addresses, and other uniform entries that are consistent with the purpose of the form and that do not alter the form in any other way. Exception approval for overprinting is not needed.

1853.105 Computer preparation.

NASA and (NASA-adopted forms prescribed by this regulation) may be adopted for computer preparation by following the exception procedures in 1853.103. (See FAR 53.105 regarding standard or optional forms.) Such forms should correspond exactly with all other specifications pertaining to that standard form, including overall size, wording, and arrangement.

1853.106 Special construction and printing.

Contracting offices may request exceptions to NASA and NASA-adopted and standard and optional forms for special construction and printing by following the procedures of 1853.103.

1853.107 Obtaining forms.

NASA and other agency forms shall be obtained through NASA's regular forms distribution channels.

1853.108 Recommendations concerning forms.

Coordination with the FAR Secretariat, as specified in FAR 53.108, is the responsibility of the Procurement Policy Division, Code HP–1.

Subpart 1853.2—Prescription of Forms

1853.200 Scope of subpart.

This subpart prescribes NASA forms and other forms adopted by NASA for use in acquisition. The subpart is arranged by subject matter, in the same order as, and keyed to, the parts of this regulation in which the form usage requirements are addressed. (See FAR 53.200 for an example.)

1853.201 NASA regulation.

1853.204 Administrative matters.

1853.204–70 General NF's 507, 533M, 533P, 533Q, 667, 1098, 1356, DD 1593, DD 1594, DD 1597.

(a) *NASA Form 507, Individual Procurement Action Report.* NF 507, prescribed at 1804.671–4, shall be used to provide acquisition records and statistics.

(b) *NASA Form 533M, Monthly Contractor Financial Management Report.* NF 533M, prescribed at 1804.675, shall be used when financial management reporting is required.

(c) *NASA Form 533P, Monthly Contractor Financial Management Performance Report.* NF 533P, prescribed at 1804.675, shall be used when monthy performance analysis reports are required.

(d) *NASA Form 533Q, Quarterly Financial Management Report.* NF 533Q, prescribed at 1804.675, shall be used when quarterly cost projection reports are required.

(e) *NASA Form 667, Report on NASA Subcontracts.* NF 667, prescribed at 1804.673, shall be used by contractors to submit information to NASA on each subcontract or modification thereof in excess of $10,000.

(f) *NASA Form 1098, Checklist for Negotiated and Advertised Contract File Content (Award File).* NF 1098, prescribed at 1804.7205, shall be used as a guide in compiling contract files and shall accompany contracts and supplemental agreements submitted to Headquarters for approval.

(g) *NASA Form 1356, C.A.S.E. Report on College and University Projects.* NF 1356, prescribed at 1804.7202, shall be used to report information applicable to colleges and universities.

(h) *NASA Form 1611, Contract Completion Statement.* NF 1611, prescribed at 1804.804–2, shall be used for closeout of contract files when another office administers the contract.

(i) *NASA Form 1612, Contract Closeout Checklist.* NF 1612, prescribed at 1804.804–5, shall be used for contract closeout when the NASA contracting office retains contract administration.

(j) *DOD Form DD 1593, Contract Administration Completion Record.* Form DD 1593, prescribed at 1804.804–5 shall be used for closeout when the NASA contracting office retains contract administration.

1853.207 Acquisition planning (NF's 1451, 1452).

(a) *NASA Form 1451, Request for Procurement Plan Approval.* NF 1451, prescribed at 1807.170–1(a), shall be used in preparing procurement plans requiring approval by Headquarters.

(b) *NASA Form 1452, Procurement Plan Signature Page (Installation).* NF 1452, prescribed at 1807.170–1(a), shall be used in obtaining installation-level signatures request by 1807–103–2.

1853.208 Required sources of supplies and services.

1853.208–70 Other Government sources (SF 1080, NF 558, DOE EV 375, NRC 3131).

(a) *Standard Form 1080, Voucher For Transfers Between Appropriations And/or Funds (Disbursement).* SF 1080, prescribed at 1808.002–74(e), shall be used to reimburse the Air Force for Shipments of propellants.

(b) *NASA Form 558, Materials Requirements Report.* NF 558, prescribed at 1808.072(f)(1), shall be used to report periodic estimated requirements for missile propellants and related items to the Department of the Air Force.

(c) *Department of Energy Form EV 375, Isotope Order Blank.* DOE Form EV 375, prescribed at 1808.070(a), shall be used for the procurement of radioisotopes.

(d) *Nuclear Regulatory Commission Form 313I, Application for Propellant Material License, Industrial.* NRC Form 313I, prescribed at 1808.070(b), shall be used to apply for a NRC license for the procurement of radioisotopes.

1853.212 Contract delivery or performance (DD 614, DD 614–1, DOC ITA–999).

(a) *DOD Form 614, Materials Requirements (Steel and Nickel Alloys).* DD Form 614, prescribed at 1812.371–2(a), shall be used in preparing quarterly requirements for controlled materials.

(b) *DOD Form 614–1, Materials Requirements (Copper and Aluminum).* DD Form 614–1, prescribed at 1812.371–2(a), shall be used in preparing quarterly requirements for controlled materials.

(c) *Department of Commerce Form ITA–999, Request for Special Priorities Assistance.* DOC ITA–999, prescribed at 1812.372–4, shall be used for all special priorities assistance requests.

1853.215 Contracting by negotiation.

1853.215–2 Price negotiation (NF 634).

NASA Form 634, Structured Approach-Profit/Fee Objective. NF 634, prescribed at 1815.905, shall be used for determining the profit or fee objective by the structured approach.

1853.215–70 Justification for authority to negotiate (NF 543).

NASA Form 543, Justification for Negotiation. NF 543, prescribed at 1815.372, shall be prepared by the contracting officer when a justification for authority to negotiate is required.

1853.216 Types of contracts.

1853.216–70 Assignees under cost-reimbursement contracts (NF's 778, 779, 780, 781).

(a) *NASA Form 778, Contractor's Release.* NF 778, prescribed at 1816.370(a), shall be used for obtaining a release from the contractor.

(b) *NASA Form 779, Assignee's Release.* NF 779, prescribed at 1816.370(a), shall be used for obtaining a release from each assignee.

(c) *NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.* NF 780, prescribed at 1816.370(a), shall be used in obtaining any refunds, rebates, credits or other amounts from the contractor.

(d) *NASA Form 781, Assignee's Assignment of Returns, Rebates, Credits, and Other Amounts.* NF 781, prescribed at 1816.370(a), shall be used in obtaining any refunds, rebates, credits or other amounts due from each assignee.

1853.217 Special contracting methods (NF 523).

NASA Form 523, NASA-Defense Purchase Request. NF 523, prescribed at 1817.70, shall be used for requesting procurement of supplies or services from all activities of the Military Departments.

1853.223 Environment, conservation, and occupational safety (NF 566).

1853.223–566 NASA Form 566 Application for Radio Frequency Assignment.

NF 566, prescribed at 1823.7102(a), shall be used to request all frequency assignments.

1853.232 Contract financing (SF 272, 272A).

(a) *1853.232–272, Standard Form 272, Federal Cash Transaction Reports.* SF 272, prescribed at 1832.406–70, will be submitted on contracts with non-profit organizations which receive advance funding by the letter of credit method.

(b) *1853.232–272A, Standard Form 272A, Federal Cash Transaction Report.* SF 272A, prescribed at 1832.406–70, will be submitted by non-profit organizations which receive funding by the letter of credit method.

1853.242 Contract administration.

1853.242–70 Delegation (NF's 1430, 1430A, 1431, 1432, 1433).

(a) *NASA Form 1430, Letter of Contract Administration Delegation, General.* NF 1430, prescribed at 1842.202–70(a)(4), shall be used to delegate and redelegate contract administration functions and to amend existing contract administration delegations.

(b) *NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions.* NF 1430A, prescribed at 1842.20–70(a)(4), shall be used to supplement NF 1430 when special instructions are necessary.

(c) *NASA Form 1431, Letter of Acceptance of Contract Administration Delegation.* NF 1431, prescribed at 1842.202–70(a)(8), shall be used in conjunction with NF 1430 to evidence receipt and acceptance of delegation by other agencies.

(d) *NASA Form 1432, Letter of Contract Administration Delegation, Termination.* NASA Form 1432, prescribed at 1842.202(a)(2)(i), shall be used to delegate and redelegate termination functions and to amend existing termination delegations.

(e) *NASA Form 1433, Letter of Audit Delegation.* NF 1433, prescribed at 1842.202–71(c), shall be used to delegate and redelegate audit functions and to amend existing audit delegations.

1853.242-71 Administrative service request (NF 1434).

NASA Form 1434, Letter of Request for Pricing Audit Technical Evaluation Services. NF 1434, prescribed at 1842.202-70(f), shall be used to request contract administration and audit services incident to pre-award of a contract, but exclusive of pre-award surveys.

1852.242-72 Notifications (NF 456)

NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved. NF 456, prescribed at 1842.803, will be used by the auditor and contracting officer to notify the contractor of any suspended and/or disallowed contract costs.

1853.245 Property (NF 1081, DD 1342, DD 1419).

The following forms are prescribed, as specified below, for use in reporting redistribution, and disposal of contractor inventory (defined in FAR 45.601) and in accounting for this property.

(a) *NASA Form 1018, Report of Government-Owned/Contractor-Held Property.* NF 1018, prescribed at 1845.505-14(d), shall be used by contractors for reporting Government-owned property.

(b) *DOD Form 1342, DOD Property Record.* Form DD 1342, prescribed at 1845.505-670., shall be used by contractors for reporting NASA-furnished or contractor-acquired centrally reportable equipment.

(c) *DOD Form 1419, DOD Industrial Plant Equipment Requisition.* Form DD 1419, prescribed by the clause at 1852.245-70, shall be used by contractors to list requirements for centrally reportable items for screening of existing Government inventories.

1853.246 Quality assurance (DD 250, DD 250c).

(a) *DOD Form 250, Material Inspection and Receiving Report.* Form DD 250, prescribed at 1846.670-7100, shall be used to document procurement quality assurance, acceptance of supplies and services, and shipments.

(b) *DOD Form 250c, Material Inspection and Receiving Report-Continuation Sheet.* Form DD 250c, prescribed at 1846.670-7100, shall be used to document procurement quality assurance, acceptance of supplies and services, and shipments.

1853.249 Termination of contracts (NF's 1412, 1413).

The following forms are prescribed for use in connection with the termination of contracts, as specified in Subpart 1849.6:

(a) *NASA Form 1412, Termination Authority.* NF 1412, prescribed at 1849.101-71, shall be used for initiating action to terminate a contract for either default or convenience of the Government.

(b) *NASA Form 1413, Termination Docket Checklist.* NF 1413, prescribed at 1849.101-71, shall be used to ensure adequacy of termination records.

Subpart 1853.3—Illustrations of Forms

1853.300 Scope of subpart.

This subpart contains illustrations of those NASA Forms and other forms which are used by NASA in acquisitions, but which are not prescribed by FAR. Suffixed parenthetical letters are used here for pagination purposes, when the form itself consists of more than one page.

1853.301 Standard forms.

This section illustrates standard forms that are specified by this NASA FAR supplement for use in acquisitions.

1853.303 Agency forms.

This section illustrates agency forms that are specified by this NASA FAR supplement for use in acquisitions. The forms are arranged numerically by agency, following an initial listing of NASA forms.

Note.—NASA forms will not appear in the Code of Federal Regulations.

BILLING CODE 7510-01-M

1984 Edition 18-53.301-272

FORMS

FEDERAL CASH TRANSACTIONS REPORT

(See instructions on the back. If report is for more than one grant or assistance agreement, attach completed Standard Form 272-A.)

Approved by Office of Management and Budget, No. 80-R0182

1. Federal sponsoring agency and organizational element to which this report is submitted

2. RECIPIENT ORGANIZATION

Name :

Number and Street :

City, State and ZIP Code :

3. FEDERAL EMPLOYER IDENTIFICATION NO.

4. Federal grant or other identification number

5. Recipient's account number or identifying number

6. Letter of credit number

7. Last payment voucher number

Give total number for this period

8. Payment Vouchers credited to your account

9. Treasury checks received (*whether or not deposited*)

10. PERIOD COVERED BY THIS REPORT

FROM (*month, day, year*)

TO (*month, day year*)

11. STATUS OF FEDERAL CASH (*See specific instructions on the back*)		
	a. Cash on hand beginning of reporting period	$
	b. Letter of credit withdrawals	
	c. Treasury check payments	
	d. Total receipts (*Sum of lines b and c*)	
	e. Total cash available (*Sum of lines a and d*)	
	f. Gross disbursements	
	g. Federal share of program income	
	h. Net disbursements (*Line f minus line g*)	
	i. Adjustments of prior periods	
	j. Cash on hand end of period	$

12. THE AMOUNT SHOWN ON LINE 11J, ABOVE, REPRESENTS CASH REQUIREMENTS FOR THE ENSUING _____ Days	13. OTHER INFORMATION	
	a. Interest income	$
	b. Advances to subgrantees or subcontractors	$

14. REMARKS (*Attach additional sheets of plain paper, if more space is required*)

15. CERTIFICATION

I certify to the best of my knowledge and belief that this report is true in all respects and that all disbursements have been made for the purpose and conditions of the grant or agreement

AUTHORIZED CERTIFYING OFFICIAL

SIGNATURE

DATE REPORT SUBMITTED

TYPED OR PRINTED NAME AND TITLE

TELEPHONE (*Area Code, Number, Extension*)

THIS SPACE FOR AGENCY USE

272-102

☆ GPO: 1979 0-281-187 P.O. 5073

STANDARD FORM 272 (7-76)
Prescribed by Office of Management and Budget
Cir. No. A-110

NASA/FAR SUPPLEMENT

18–53.301–272–(A) 1984 Edition

FORMS

INSTRUCTIONS

Please type or print legibly. Items 1, 2, 8, 9, 10, 11d, 11e, 11h, and 15 are self explanatory, specific instructions for other items are as follows:

Item	*Entry*
3	Enter employer identification number assigned by the U.S. Internal Revenue Service or the FICE (institution) code. If this report covers more than one grant or other agreement, leave items 4 and 5 blank and provide the information on Standard Form 272–A, Report of Federal Cash Transactions—Continued; otherwise:
4	Enter Federal grant number, agreement number, or other identifying numbers if requested by sponsoring agency.
5	This space reserved for an account number or other identifying number that may be assigned by the recipient.
6	Enter the letter of credit number that applies to this report. If all advances were made by Treasury check, enter "NA" for not applicable and leave items 7 and 8 blank.
7	Enter the voucher number of the last letter-of-credit payment voucher (Form TUS 5401) that was credited to your account.
11a	Enter the total amount of Federal cash on hand at the beginning of the reporting period including all of the Federal funds on deposit, imprest funds, and undeposited Treasury checks.
11b	Enter total amount of Federal funds received through payment vouchers (Form TUS 5401) that were credited to your account during the reporting period.
11c	Enter the total amount of all Federal funds received during the reporting period through Treasury checks, whether or not deposited.
11f	Enter the total Federal cash disbursements, made during the reporting period, including cash received as program income. Disbursements as used here also include the amount of advances and payments less refunds to subgrantees or contractors, the gross amount of direct salaries and wages, including the employee's share of benefits if treated as a direct cost, interdepartmental charges for supplies and services, and the amount to which the recipient is entitled for indirect costs.
11g	Enter the Federal share of program income that was required to be used on the project or program by the terms of the grant or agreement.
11i	Enter the amount of all adjustments pertaining to prior periods affecting the ending balance that have not been included in any lines above. Identify each grant or agreement for which adjustment was made, and enter an explanation for each adjustment under "Remarks." Use plain sheets of paper if additional space is required.
11j	Enter the total amount of Federal cash on hand at the end of the reporting period. This amount should include all funds on deposit, imprest funds, and undeposited funds (line e, less line h, plus or minus line i).
12	Enter the estimated number of days until the cash on hand, shown on line 11j, will be expended. If more than three days cash reqirements are on hand, provide an explanation under "Remarks" as to why the drawdown was made prematurely, or other reasons for the excess cash. The requirement for the explanation does not apply to prescheduled or automatic advances.
13a	Enter the amount of interest earned on advances of Federal funds but not remitted to the Federal agency. If this includes any amount earned and not remitted to the Federal sponsoring agency for over 60 days, explain under "Remarks." Do not report interest earned on advances to States.
13b	Enter amount of advance to secondary recipients included in item 11h.
14	In addition to providing explanations as required above, give additional explanation deemed necessary by the recipient and for information required by the Federal sponsoring agency in compliance with governing legislation. Use plain sheets of paper if additional space is required.

☆ GPO: 1979 0-281-187 P.O. 5073

STANDARD FORM 272 (BACK) (7–76)

1984 Edition 18–53.301–272A

FORMS

FEDERAL CASH TRANSACTIONS REPORT
CONTINUATION

(This form is completed and attached to Standard Form 272 only when reporting more than one grant or assistance agreement.)

Approved by Office of Management and Budget No. 80–R0182

1. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

2. RECIPIENT ORGANIZATION *(Give name only as shown in item 1, SF 272)*

3. PERIOD COVERED BY THIS REPORT *(As shown on SF 272)*

FROM *(month, day, year)* TO *(Month, day, year)*

4. List information below for each grant or other agreement covered by this report. Use additional forms if more space is required.

FEDERAL GRANT OR OTHER IDENTIFICATION NUMBER *(Show a subdivision by other identifying numbers if required by the Federal Sponsoring Agency)* (a)	RECIPIENT ACCOUNT NUMBER OR OTHER IDENTIFYING NUMBER (b)	FEDERAL SHARE OF NET DISBURSEMENTS	
		NET DISBURSEMENTS *(Gross disbursements less program income received)* FOR REPORTING PERIOD (c)	CUMULATIVE NET DISBURSEMENTS (d)
		$	$
5. TOTALS *(Should correspond with amounts shown on SF 272 as follows: column (c) the same as line 11h; column (d) the sum of lines 11h and 11i of this SF 272 and cumulative disbursements shown on last report. Attach explanation of any differences.)*		$	$

272–201

* GPO : 1978 O - 560-464(262-1)

STANDARD FORM 272–A (9–76)
Prescribed by Office of Management and Budget
CIR. NO. A–110

NASA/FAR SUPPLEMENT

18–53.301–1080 1984 Edition

FORMS

Standard Form No. 1080
7 GAO 4010
1080–104

VOUCHER FOR TRANSFERS BETWEEN APPROPRIATIONS AND/OR FUNDS (DISBURSEMENT)

D.O. Vou. No. .....
Bu. Vou. No. .....
Bill No. .....

PAID BY

U.S. ....., Dr.,
(Department, establishment, bureau, or office billed)

To U.S. .....
(Department, establishment, bureau, or office billing)

ORDER NO.	DATE OF DELIVERY	ARTICLES OR SERVICES	QUANTITY	UNIT PRICE		AMOUNT
				Cost	Per	Dollars and Cents
					TOTAL,	

Remittance in payment hereof should be sent to—

ACCOUNTING CLASSIFICATION—*Billing Office* (Appropriation Symbol must be shown; other classification optional)

CERTIFICATE OF OFFICE BILLED

I certify that the above articles were received and accepted or the services performed as stated and should be charged to the appropriation(s) and/or fund(s) as indicated below; or that the advance payment requested is approved and should be paid as indicated.

..... (Authorized administrative or certifying officer)

..... (Date)

..... (Title)

ACCOUNTING CLASSIFICATION—*Office Billed* (Appropriation Symbol must be shown; other classification optional)

Paid by check No. .....

U.S. GOVERNMENT PRINTING OFFICE: 1959—O-517843

FORMS

NASA Form 456 is now being revised.

New edition (Oct. 1983) will be available by and must be used subsequent to March 31, 1984.

18–53.303–456–(A) 1984 Edition

FORMS

NASA Form 456 is now being revised.

New edition (Oct. 1983) will be available by and must be used subsequent to March 31, 1984.

FORMS

NASA Individual Procurement Action Report

1 TYPE OF RECORD (See Note 1 for codes)	7 CIC NUMBER		
2 CONTRACT/GRANT/P.O. NUMBER	8 CONTRACTOR NAME (Not to exceed 29 positions, including spaces)		
3 MODIFICATION NUMBER	9 CONTRACTOR DIVISION (20 positions)		
4 ACCOUNTING INSTALLATION NO.	10 CONTRACTOR ADDRESS (City - 24 positions) STATE (2 positions)		
5 PROCURING INSTALLATION NUMBER	11 PLACE OF PERFORMANCE (City - 24 positions)	12 STATE (2 positions) ZIP CODE	
6 OTHER AGENCY CONTRACT NUMBER	13 CONTRACT/MOD DATE (YYMMDD)	14 COMPLETION DATE (YYMMDD)	15 PROCUREMENT PLACEMENT CODE*

16 KIND OF ACTION
_____ 01 New Letter Contract; 02 Def. Contr. Supp. Ltr. Contract; 03 Definitive Contract; 04 Order Under Contract (BOA's, Indef. Del., Fed. Sched., etc.); 05 Intragovernmental; 06 Grant; 21 Cooperative Agreement

MODIFICATIONS
07 New Work Mod; 08 Supplemental Agreement; 09 Change Order; 10 S/A Definitizing Change Order; 11 Administrative; 12 Termination for Default; 13 Termination for Convenience

17 TYPE OF CONTRACT
_____
Business: 01 Section 8a - Disadvantaged; 03 Disadvantaged Direct; 04 Other Business
Nonprofit Institutions: 05 Educational; 06 Hospital; 07 Research Foundation/Laboratories; 08 Other Nonprofit
State/Local Government: 09 Educational; 10 Hospital; 11 Research Organization; 12 Other State/Local Government

18 TYPE OF CONTRACT
_____ 01 Fixed Price, Firm; 02 Fixed Price, Redetermination; 03 Fixed Price, Escalation/Price Adjustment; 04 Fixed Price, Incentive; 05 Cost No Fee; 06 Cost Sharing; 07 Cost Plus Fixed Fee; 08 Cost Plus Incentive Fee; 09 Time & Materials; 10 Labor - Hour; 11 Retroactive Price Redetermination; 12 Cost Plus Award Fee

19 LABOR SURPLUS AREA
_____ N Awards Not in a Labor Surplus Area; 1 Labor Surplus Area - No Preference; 2 Labor Surplus Area - Tie Bid Preference; 3 Total Labor Surplus/Small Business Set-Asides Preference; 4 Total Labor Surplus Set-Aside Preference

20 SUBJECT TO STATUTORY REQUIREMENTS
_____ N Not Subject to Statutory Requirements; 1 Walsh-Healy Act, Manufacture; 2 Walsh-Healy Act, Regular Dealer; 3 Service Contract Act; 4 Davis-Bacon Act

21 EXTENT OF COMPETITION
_____
Advertised: 1 Two-Step; 2 Other Advertised
Competitive Negotiated: 3 Source Evaluation Board; 4 No Source Evaluation Board
Noncompetitive Negotiated: 5 Follow-on After Competition; 6 Other Noncompetitive Negotiated; 7 Unsolicited Proposal

22 REASON FOR NOT SELECTING SMALL BUSINESS
_____
Small Business Not Solicited: 01 No Known Small Business Source; 02 Unsolicited Proposal; 03 Other Noncompetitive Awards; 04 Other
Small Business Solicited: 05 Bid Not Received; 06 Bid Not Low; 07 Bid/Proposal Not Responsive; 08 Proposal Not Accepted; 09 Company Not Responsible; 10 Other

23 _____ TYPE OF SERVICE OR PRODUCT (See Data Tables)
(Use AR codes for R&D effort)
(Use codes beginning with "F thru Z" for other services)
(Use codes beginning "1005 thru 9999" for supplies & equip.)

24 _____ PROPOSED PROCUREMENT SYNOPSIZED (1 = Yes, 2 = No, 3 = No, due to emergency)

ITEMS 25–35: Y = YES, N = NO

25 _____ CONTRACT ADMINISTRATION DELEGATED

26 _____ CONSULTANT TYPE CONTRACT

27 _____ SUPPORT SERVICES TYPE CONTRACT

28 _____ COST ACCOUNTING STANDARDS CLAUSE

29 _____ NEW TECHNOLOGY CLAUSE

30 _____ SUBCONTRACTING PROGRAM PLAN (Use "W" for Waiver)

31 _____ REPORT ON GEOGRAPHICAL DISTRIBUTION OF NASA SUBCONTRACTS

32 _____ AFFIRMATIVE ACTION PLAN (Use "E" for Exempt)

33 _____ PREVIOUSLY HELD CONTRACT SUBJECT TO AFFIRMATIVE ACTION PROGRAM (Use "E" for Exempt)

34 _____ CONTRACT PHYSICALLY COMPLETE

35 _____ MODIF. OBLIGATIONS (To nearest dollar)

36 _____ WOMAN-OWNED BUSINESS
Y YES; N NO; 1 NOT CERTIFIED

37 _____ MRR: COST AND PERFORMANCE REPORTING
N None required; 2 NF 533M only; 3 NF 533M & 533Q; 4 NF 533M & 533P; 5 NF 533P & 533Q; N NF 533M, 533P & 533Q

38 _____ MRR: PROPERTY AND SPACE HARDWARE REPORTING
N None required; 2 NF 1018 without Space Hardware; 3 NF 1018 with Space Hardware

39 TRADE DATA
_____ No. of Bidders Offering Foreign Item (0-9)
_____ Buy American Act Percent Difference (2 positions)
_____ Country of Manufacture (2 positions)

40 TOTAL PRICE OR ESTIMATED COST (To nearest dollar)

41 TOTAL PROFIT OR FEE (To nearest dollar)

42 DESCRIPTION OF CONTRACT/MODIFICATION

PREPARED BY | DATE

*See Matrix

NASA FORM 507 JUL 83 PREVIOUS EDITION MAY BE USED RCS 10FACS00590

18-53.303-523 1984 Edition

FORMS

NASA National Aeronautics and Space Administration

NASA-Defense Purchase Request PAGE OF PAGES

1. DATE	2. REQUEST NO.	3. AMENDMENT NO.

NOTE. See attached pages for delivery schedules, preservation and packaging, shipping, disposition of property, and special instructions.

4. TO:	5. FROM *(Agency, name, telephone number of originator)*
	National Aeronautics and Space Administration

6. ITEM DESCRIPTION

ITEM NO. a.	DESCRIPTION OF SUPPLIES OR SERVICES *(Federal Stock Number, Nomenclature, Specification and/or Drawing No., etc.)* b.	QUANTITY c.	UNIT d.	ESTIMATED UNIT PRICE e.	ESTIMATED TOTAL PRICE f.

7. GRAND TOTAL ▶

8. THIS REQUEST ☐ IS ☐ IS NOT SUBJECT TO SECTION 305 OF THE NATIONAL AERONAUTICS AND SPACE ACT OF 1958. *(See special instructions on reverse side.)*

9. MAIL SF 1080 BILLINGS TO:

10. NASA APPROPRIATION SYMBOL

11. AUTHORIZING OFFICER *(Typed name and title)*	12. SIGNATURE

NASA FORM 523 OCT 79 PREVIOUS EDITIONS MAY BE USED.

FORMS

INSTRUCTIONS

The NASA-Defense Purchase Request is to be used by NASA to request the procurement of supplies or services from the Department of Defense. These instructions pertain to preparation and use of the form by NASA activities. Attachments should be prepared in sufficient quantity so that each copy of a request is complete with a copy of every attachment listed therein.

Block 4: The original and 5 copies of the purchase request, each complete with all attachments, will be forwarded to the DOD activity shown in this block.

Block 6b: Describe the required services or supplies accurately and in sufficient detail to enable the purchasing activity to understand the requirement. When applicable, the particular NASA program and/or project to which the request or amendment pertains will be indicated. Attachments may be used as required. For items of hardware stocked by DOD, the item identification of the Army, Navy or Air Force and the National Stock Number will be entered if known. When applicable, the specification number, manufacturer's part number and other descriptive data, such as the desired grade, style, type, color, size, rating, etc.

SHIPPING INSTRUCTIONS: When names and addresses of consignees of all supplies to be delivered are not contained herein, or otherwise furnished, request for the issuance of shipping instructions shall be made to the appropriate NASA originating office not less than 30 days prior to date on which any of the articles is to be ready for shipment. Three copies of shipping documents shall be forwarded to the NASA originating office and each consignee.

DISPOSITION OF PROPERTY: Include instructions for the disposition of any non-expendable or other residual property purchased with NASA funds.

PRIORITY RATING: Include applicable priority rating and claimant program identification *(Example Priority Rating DO-A2)*. In procurement for DX programs, identification will also include the unclassified program name.

Block 8: If this request or any part of the supplies or services covered by this request is subject to Section 305 of the National Aeronautics and Space Act of 1958 *(42 U.S.C. 2457)*, a copy of the long form or short form New Technology clause, together with the appropriate instructions for the inclusion of the clause in contracts shall be furnished the purchasing activity in accordance with NASA Procurement Regulations *(9.107-9)*.

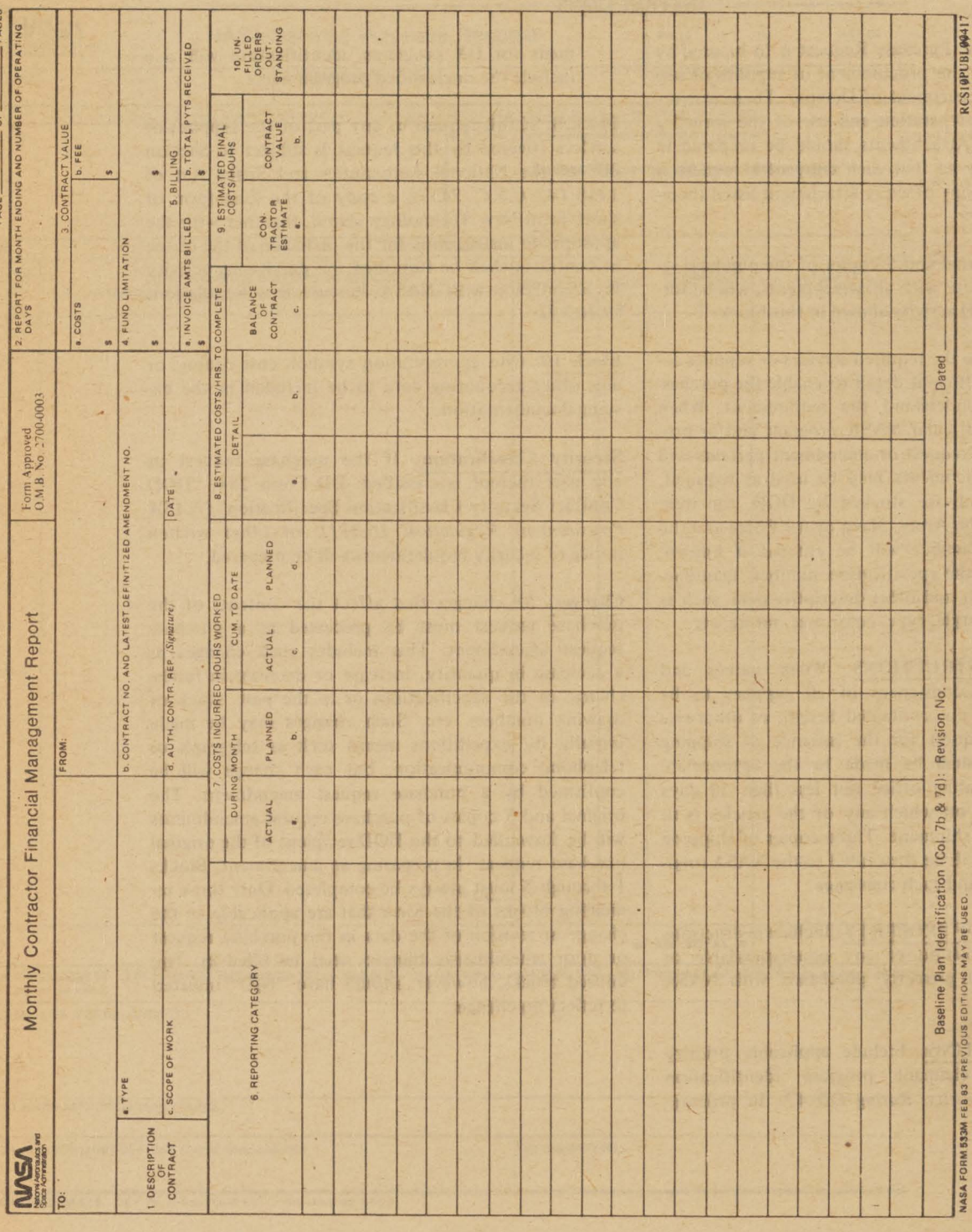
Block 10: Cite appropriation symbol, cost coding, or any other accounting data to be included in the ensuing documentation.

Security Classification: If the purchase request or any part thereof is classified, DD Form 254, "DOD Contract Security Classification Specification" *(NASA Procurement Regulation 16.811)*, or other written notice of security requirements will be prepared.

Changes: All changes that affect the contents of the purchase request must be processed as a purchase request amendment. This includes such changes as a decrease in quantity, increase or decrease in funds, change in the specifications or in the part, stock or drawing numbers, etc. Such changes may be made initially by expeditions means such as telegraph or telephone communication, but each change will be confirmed by a purchase request amendment. The original and 5 copies of purchase request amendments will be forwarded to the DOD recipient of the original purchase request. In preparing an amendment, Blocks 1 through 5 must always be completed. Only those remaining blocks of the form that are applicable to the change or revision of the data in the purchase request or prior amendments thereto need be filled in. The unused blocks, however, should have "N/C" inserted to reflect no change.

18–53.303–533M **1984 Edition**

FORMS



PAGE _____ OF _____ PAGES

NASA — National Aeronautics and Space Administration

Monthly Contractor Financial Management Report

Form Approved O.M.B. No. 2700-0003

TO:

FROM:

2. REPORT FOR MONTH ENDING AND NUMBER OF OPERATING DAYS

1. DESCRIPTION OF CONTRACT

a. TYPE

b. CONTRACT NO. AND LATEST DEFINITIZED AMENDMENT NO.

c. SCOPE OF WORK

d. AUTH. CONTR. REP. (Signature) DATE

3. CONTRACT VALUE

a. COSTS $

b. FEE $

4. FUND LIMITATION $

5. BILLING $

a. INVOICE AMTS BILLED $

b. TOTAL PYTS RECEIVED $

6. REPORTING CATEGORY	7. COSTS INCURRED, HOURS WORKED				8. ESTIMATED COSTS/HRS. TO COMPLETE		9. ESTIMATED FINAL COSTS/HOURS		10. UNFILLED ORDERS OUTSTANDING
	DURING MONTH		CUM. TO DATE		DETAIL	BALANCE OF CONTRACT c.	CONTRACTOR ESTIMATE a.	CONTRACT VALUE b.	
	ACTUAL a.	PLANNED b.	ACTUAL c.	PLANNED d.	a.	b.			

Baseline Plan Identification (Col. 7b & 7d): Revision No. _____, Dated _____

NASA FORM 533M FEB 83 PREVIOUS EDITIONS MAY BE USED.

RCS1@PUBL@0417

1984 Edition 18-53.303-533M-(A)

FORMS

INSTRUCTIONS

General Information: All paragraph references below refer to NASA Handbook NHB 9501.2A which includes additional instructions for completing the NASA 533 series of reports. Copies of the handbook are available thru the NASA Contracting Officer or from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

Forms: Forms will be obtained by the contractor thru the contracting officer. When directed or approved by the contracting officer, other means than the NASA Form 533 may be used for transmitting the data required by these instructions; e.g., punched cards, tapes, or electronic transmission such as transceivers or TWX machines.

Security Classification: If the information in the report is classified, appropriate security classification shall be given the report (see par. 107).

Submission: The NASA Form 533M report is due in the office of the addressee on a negotiated date not later than the 10th operating day following the close of the contractor's accounting month being reported (operating day: any calendar day worked within the contractor's fiscal accounting period). For Initial Reports and other related items of significance see par. 300.5, 301 and the contract. The addresses and number of copies to be submitted will be as specified by the contract or by an administrative instruction.

Amounts: Report dollar amounts in even thousands and hours in tenths of thousands (e.g., $32,600 as $33 or 462 hours as .5).

Instructions for Form Headings: The form headings shall be completed as follows:

1. To – Enter the full name and address of the NASA field installation and contracting officer or other designated recipient.

2. From – Enter the full name and address of the contractor, and if applicable, the contractor's division performing the contract.

Preparation Instructions:

1. Description of Contract:

a. Type – Cost Plus Fixed Fee, Cost Plus Incentive Fee, etc.

b. Number – Enter complete letter or contract symbol, number and number of latest definitized amendment.

c. Scope of Work – Enter a brief description of the contract effort. Identify the service, project, system or subsystem and where hardware is concerned, the quantity being procured or proposed for the contract.

d. Signature and Date – The authorized Contractor Representative shall sign and date his approval. When such Representative is other than the project manager, the project manager shall add his signature to signify his review of the content. Date shall signify date of approval and signature of report.

2. Report for Month Ending (Report Date) – Enter the ending date of the contractor's accounting month and the number of operating days for that accounting month.

3. Contract Value – Enter the total definitized cost (a) and fee (b) of all work to be performed under the contract as of the report date. Include dollar amounts through the latest definitized amendment as noted in 1b above. For all incentive contracts, enter the negotiated target cost and target fee.

4. Fund Limitation – Enter the total funding obligated and the latest corresponding contract amendment number as of the report date.

5. a. Invoice Amounts Billed – Enter the total amount of invoices billed by the contractor against this contract and the latest invoice number as of the report date.

b. Total Payments Received – Enter the total amount of payments received by the contractor for this contract as of the report date.

6. Reporting Category – Enter the captions of the reporting categories specified in the contract. (See par. 301.3)

7. Cost Incurred/Hours Worked: All cost and hour data shall be reported by the categories negotiated in the contract (par. 301.4).

a. Actual During Month – Enter the total actual cost incurred/hours worked for the accounting month being reported.

b. & d. Planned Costs (optional) – Enter the planned (budgeted) cost for the month being reported in column 7b and cumulative to date in column 7d. The planned costs are obtained from the time phased baseline plan which includes the original contract value plus authorized changes. The baseline plan to date consists of the sum of the budgets for all authorized work that is scheduled for completion through the report date. The plan shall include a pro rata share of the budgets for work-in-process. Identify the baseline plan used by date and revision number at the bottom of the report.

c. Cumulative Actual Cost/Hours to Date – Enter the cumulative actual cost incurred/hours worked as of the report date.

8. Estimated Cost/Hours to Complete – Enter the current estimates for performing currently authorized work which is included in the most recently executed contract amendment, plus additional authorized work (directions to proceed) for which execution of amendments are pending. The estimates will be used for planning purposes only and will not be binding on either the contractor or NASA.

a. & b. These columns may be used at the option of the installation to obtain any desired combination of subsequent month(s), fiscal year(s) and/or balance of fiscal year data. The required data element(s) shall be specified in the contract. (See par. 301.5)

c. Enter the cost/hour data for the balance of the contract not including columns 8a and 8b. Where amounts reported in this column exceed one fiscal year, a breakdown by fiscal year may be required.

9. Estimated Final Costs/Hours

a. Contractor Estimate – Enter the total estimated cost/hours for completion of the contracted effort (this should equal the sum of comumns 7c, 8a, 8b and 8c).

b. Contract Value – Enter the distribution of the Contract Value to the reporting categories. The total of this column shall agree with Item 3, above. Significant differences between columns 9a and 9b shall be explained in the "Contractor's Remarks." Where there are no changes from the prior reports submitted, the data may be omitted if the contractor and the contracting officer jointly agree.

10. Unfilled Orders Outstanding – Enter the total of unfilled orders outstanding as of the report date. (See par. 301.6)

11. Contractor's Remarks:

a. Analytical remarks on significant items materially affecting historical or projected cost or preformance shall accompany each monthly report (e.g., see item 9b above and par. 304).

b. Include a reconciliation, from the original contract value (Original Negotiated Baseline) to the present Contract Value as reported in Item 3. A sample format is set forth in the instructions on the back of NASA Form 533Q and par. 304.

c. Changes authorized but not finalized may be required by the field installation to be further subdivided as follows:

(1) changes negotiated but not definitized

(2) changes pending negotiation

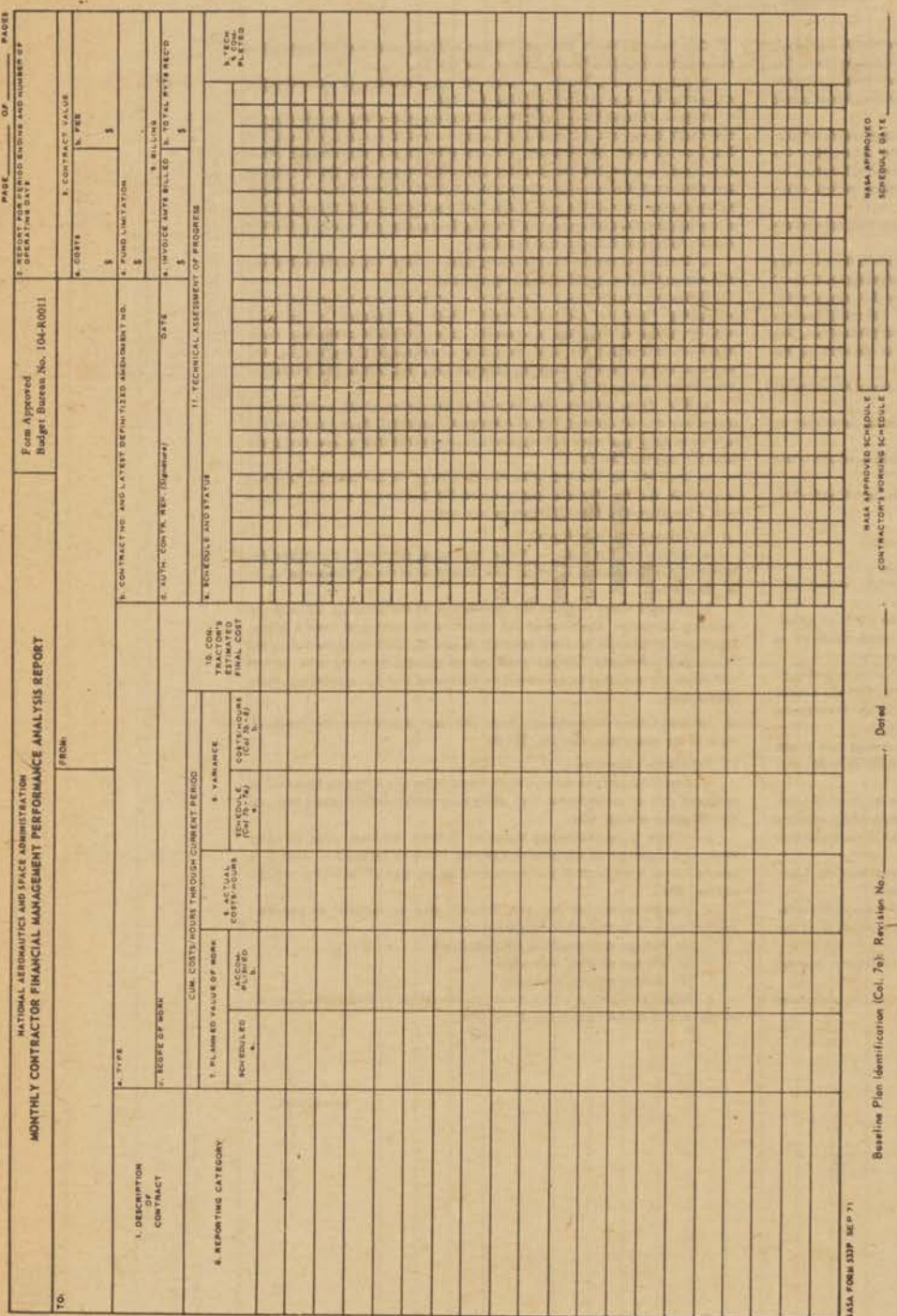
(3) changes pending quotation

d. Report new change orders per sample format set forth in the instructions on the back of NASA Form 533Q or par. 304.

GPO 847-825

18–53.303–533P **1984 Edition**

FORMS



CFR TITLE 48 CHAPTER 18

1984 Edition 18-53.303-533P-(A)

FORMS

INSTRUCTIONS

General Information: All paragraph references below refer to NASA Handbook NHB 9501.2A which includes additional instructions for completing the NASA 533 series of reports. Copies of the handbook are available thru the NASA Contracting Officer or from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

Forms: Forms will be obtained by the contractor thru the contracting officer. When directed or approved by the contracting officer, other means than NASA 533 format may be used for transmitting the data required by these instructions, e.g., punched cards, tapes or electronic transmission such as transceivers or TWX machines.

Security Classification: If the information in the report is classified, appropriate security classification will be given the report (see par. 107).

Submission: The NASA Form 533P report is due in the office of the addressee on a negotiated date not later than the 10th operating day following the close of the contractor's accounting month being reported (Operating Day - any calendar day worked within the contractor's fiscal accounting period). The addresses and number of copies to be submitted will be as specified by the contract or by an administrative instruction.

Amounts: Report dollar amounts in even thousands and hours in tenths of thousands (e.g., $32,600 as $33 or 462 hours as .5).

Instructions for Form Headings: The form headings shall be completed as follows:

1. To - Enter the full name and address of the NASA field installation and contracting officer or other designated recipient.

2. From - Enter the full name and address of the contractor, and if applicable, the contractor's division performing the contract.

Preparation Instructions:

1. Description of Contract:

a. Type - Cost Plus Fixed Fee, Cost Plus Incentive Fee, etc.

b. Number - Enter complete letter or contract symbol, number, and number of latest definitized amendment.

c. Scope of Work - Enter a brief description of the contract effort. Identify the service, project, system or subsystem and where hardware is concerned, the quantity being procured or proposed for the contract.

d. Signature and Date - The authorized Contractor Representative shall sign and date his approval. When such Representative is other than the project manager, the project manager shall add his signature to signify his review of the content. Date shall signify date of approval and signature of report.

2. Report for Month Ending (Report Date) - Enter the ending date of the contractor's accounting month and the number of operating days for that accounting month.

3. Contract Value - Enter the total definitized cost (a) and fee (b) of all work to be performed under the contract as of the report date. Include dollar amounts through the lastest definitized amendment as noted in 1b above. For all incentive contracts, enter the negotiated target cost and target fee.

4. Fund Limitation - Enter the total funding obligated and the latest corresponding contract amendment number as of the report date.

5. a. Invoice Amounts Billed - Enter the total amount of invoices billed by the contractor against this contract and the latest invoice number as of the report date.

b. Total Payments Received - Enter the total amount of payments received by the contractor for this contract as of the report date.

6. Reporting Category - Enter the captions of the reporting categories specified in the contract (see par. 303-3).

7. Planned Value of Work - The contractor shall establish a time phased baseline cost plan for each reporting category by assigning budgets at the lower levels of the WBS.

a. Planned Value of Work Scheduled (PVWS) shall be the sum of the cumulative budgets assigned for all effort scheduled to be completed thru the period being reported. Include a pro rata share of the budgets for scheduled work in process. Identify the baseline plan used by date and revision number at bottom of form.

b. Planned Value of Work Accomplished (PVWA) - shall be the sum of the cumulative budgets assigned for all effort actually completed thru the period being reported plus a pro rata share of the budgets assigned to completed portions of work in process.

8. Actual Cost (AC) - Report cumulative actual cost for each reporting category as of the report date. The actual cost reported on this report shall agree with the actual cost reported on the NASA Form 533M when both reports are required.

9. Variance - Variances exceeding the criteria (dollar/hour or percentage limits) set forth in the contract shall be explained in the narrative report.

a. Schedule Variance - Enter for each reporting category the result of PVWA minus PVWS. A positive variance indicates a favorable position - ahead of schedule; a negative variance indicates an unfavorable position - behind schedule.

b. Cost Variance - Enter for each reporting category the result of PVWA minus AC. A positive variance indicates a favorable position - an underrun of cost; a negative variance indicates an unfavorable position - an overrun of cost.

10. Contractor Estimated Final Cost - Enter the current estimates for performing currently authorized work which is included in the most recently executed contract amendment, plus additional authorized work (directions to proceed) for which execution of amendments are pending.

11. Technical Assessment of Progress - This portion of the report shall reflect the Contractor's (Technical Manager's) evaluation of the schedule and technical status for each reporting category as of the report date.

a. Schedule and Status - Figure A illustrates the symbology to be used to reflect schedules and status.

(1) Top Line - Enter the appropriate calendar year.

(2) Second Line - Enter the first letter of each month.

(3) Shaded Blocks - Enter the current NASA Approved Schedule for each reporting category and enter the date approved by the NASA Project Manager at the bottom of the form. Use inverted open triangles to indicate beginning and ending milestones.

(4) Unshaded Blocks - Enter the Contractor's current working schedule.

(i) Use an open schedule bar to indicate time span for which effort is planned. Use an open inverted triangle to represent beginning and ending milestones.

(ii) The Contractor's current working schedule may be the same as or different from the NASA Approved Schedule. If the work status as of report date indicates a necessity to revise the current working schedule, show such revision in the next monthly report.

(iii) Black in triangles when each milestone is reached.

(iv) To report Schedular Status, determine the length of time planned for the technical achievement to date. Black in the schedule bar to that point in time. Consider any modifications made in the current working schedule. Note: The percent ratio of the blacked in portion of the schedule bar to its total schedule is not necessarily the same as (1) the technical assessment - percent complete, or (2) the percent man hours or dollars used to date (e.g., as determined by the ratio of actuals to the total estimate).

(v) Use arrows to indicate a break in schedule span.

(vi) Place a number (1, 2, 3, 4, etc.) next to the triangle to indicate number of times rescheduled.

(vii) Time Now Indicator - Use a broken vertical line to indicate report date.

b. Technical Assessment (% Complete) - Evaluate the progress toward meeting the technical requirement of each reporting category. The Contractor's project manager or system engineer makes this assessment. He should consider all aspects of progress - technical specification, quality, production of hardware, software achievement, etc. Subjective factors, such as complexity of tasks, state of the art and level of confidence that the objective can be achieved should be considered.

12. Contractor's Remarks - Analytical remarks on significant items materially affecting cost or performance are required. See paragraph 304 for more detailed instructions.

SYMBOLOGY TABLE

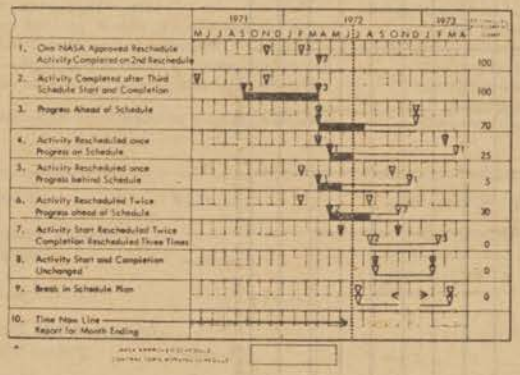
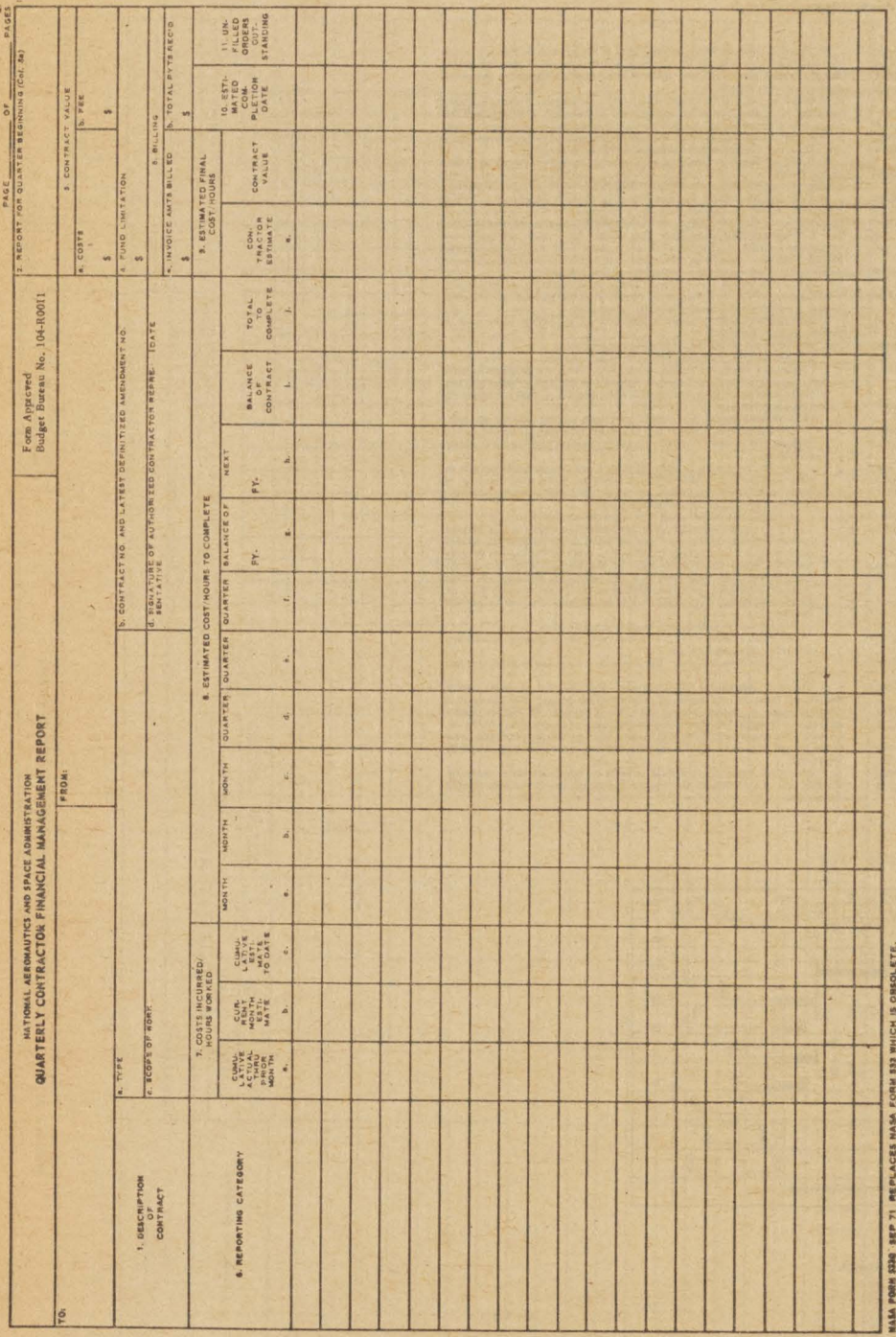


Figure A

NASA/FAR SUPPLEMENT

18–53.303–533Q 1984 Edition

FORMS



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
QUARTERLY CONTRACTOR FINANCIAL MANAGEMENT REPORT

Form Approved
Budget Bureau No. 104-R0011

PAGE _____ OF _____ PAGES

TO:

FROM:

2. REPORT FOR QUARTER BEGINNING (Col. 6a)

1. DESCRIPTION OF CONTRACT

a. TYPE

c. SCOPE OF WORK

3. CONTRACT VALUE

a. COSTS $

b. FEE $

4. FUND LIMITATION $

5. CONTRACT NO. AND LATEST DEFINITIZED AMENDMENT NO.

d. SIGNATURE OF AUTHORIZED CONTRACTOR REPRESENTATIVE

DATE

6. REPORTING CATEGORY

7. COSTS INCURRED/ HOURS WORKED

CUMULATIVE ACTUAL THRU PRIOR MONTH a.

CUR. MONTH ACTUAL/ ESTIMATE b.

CUMULATIVE ACTUAL/ ESTIMATE TO DATE c.

8. ESTIMATED COST/HOURS TO COMPLETE

MONTH a.

MONTH b.

MONTH c.

QUARTER d.

QUARTER e.

QUARTER f.

BALANCE OF FY- g.

NEXT FY- h.

BALANCE OF CONTRACT i.

TOTAL TO COMPLETE j.

9. ESTIMATED FINAL COST/HOURS

CONTRACTOR ESTIMATE a.

CONTRACT VALUE

8. BILLING

a. INVOICE AMTS BILLED $

b. TOTAL PAYMENTS RECD $

10. ESTIMATED COMPLETION DATE

11. UNFILLED ORDERS (IF) STANDING

NASA FORM 533Q SEP 71 REPLACES NASA FORM 533 WHICH IS OBSOLETE.

CFR TITLE 48 CHAPTER 18

FORMS

INSTRUCTIONS

General Information: All paragraph references below refer to NASA Handbook NHB 9501.2A which includes additional instructions for completing the NASA 533 series of reports. Copies of the handbook are available thru the NASA Contracting Officer or from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

Forms: Forms will be obtained by the contractor thru the contracting officer. When directed or approved by the contracting officer, other means than NASA 533 format may be used for transmitting the data required by these instructions; e.g., punched cards, tapes, or electronic transmission such as transceivers or TWX machines.

Security Classification: If the information in the report is classified, appropriate security classification shall be given the report (see par. 107).

Submission: The NASA Form 533Q report when required is due in the office of the addressee on a quarterly frequency (i.e., calendar quarter or other designated 3 month interval) not later than the 15th day of the month preceeding the quarter being projected in columns 8a, b and c. For Initial Reports and other related items of significance see par. 300-5, 302 and the contract. The addressees and number of copies to be submitted will be as specified in the contract or by an administrative instruction.

Amounts: Report dollar amounts in even thousands and hours in tenths of thousands (e.g., $32,600 as $33 or 462 hours as .5).

Instructions for Form Headings: The form headings shall be completed as follows:

1. To – Enter the full name and address of the NASA field installation and contracting officer or other designated recipient.
2. From – Enter the full name and address of the contractor, and if applicable, the contractor's division performing the contract.

Preparation Instructions:

1. Description of Contract:
   a. Type – Cost Plus Fixed Fee, Cost Plus Incentive Fee, etc.
   b. Number – Enter complete letter or contract symbol, number and number of latest definitized amendment.
   c. Scope of Work – Enter a brief description of the contract effort. Identify the service, project, system or subsystem and where hardware is concerned, the quantity being procured or proposed for the contract.
   d. Signature and Date – The authorized Contractor Representative shall sign and date his approval. When such Representative is other than the project manager, the project manager shall add his signature to signify his review of the content. Date shall signify date of approval and signature of report.
2. Report for Quarter Beginning (Report Date) – Enter the beginning date of the quarter being projected in columns 8a, b and c and the number of operating days in the quarter.
3. Contract Value – Enter the total definitized cost (a) and fee (b) of all work to be performed under the contract as of the report date. Include dollar amounts through the latest definitized amendment as noted in 1b above. For all incentive contracts, enter the negotiated target cost and target fee.
4. Fund Limitation – Enter the total funding obligated and the latest corresponding contract amendment number as of the report date.
5. a. Invoice Amounts Billed – Enter the total amount of invoices billed by the contractor against this contract and the latest invoice number as of the report date.
   b. Total Payments Received – Enter the total amount of payments received by the contractor for this contract as of the report date.
6. Reporting Category – Enter the captions of the reporting categories specified in the contract. (See par. 302-3)
7. Cost Incurred/Hours Worked
   a. Enter the cumulative actual cost incurred/hours worked thru the first two months of the quarter preceeding the quarter projected in columns 8a, 8b and 8c.
   b. Enter an estimate for the month in which the report is due (see "Submission" above).
   c. Enter the sum of columns 7a and 7b.
8. Estimated Cost/Hours to Complete (columns 8a thru 8i) – Enter the appropriate month, quarter and fiscal year designations in the column headings. Enter the current estimates for performing currently authorized work which is included in the most recently executed contract amendment plus additional authorized work (directions to proceed) for which execution of amendments are pending. These estimates will be used for planning purposes only and will not be binding on either the contractor or NASA. The sum of columns 8a thru 8i will be entered in 8j. If the totals reported in column 8i, Balance of Contract, exceed more than one fiscal year, each fiscal year shall be identified and reported separately.
9. Estimated Final Cost/Hours
   a. Contractor Estimate – Enter the total estimated cost/hours for completion of the contracted effort for each reporting category. (This should equal the sum of columns 7c, and 8j.)
   b. Contract Value – Enter the distribution of the Contract Value to the reporting categories. The total of this column shall agree with Item 3, above. Significant differences between columns 9a and 9b shall be explained in the "Contractor's Remarks." When there are no changes from the prior reports submitted, the data may be omitted if the contractor and the NASA Contracting Officer jointly agree.
10. Estimated Completion Date – Enter the estimated completion date for each subdivision of work if a correlated cost-schedule activity report is not required. The entry shall not serve as notice to NASA of late delivery or as acquiescence in such late delivery by NASA.
11. Unfilled Orders Outstanding – Enter the total of unfilled order outstanding as of the report date. (See par. 301-6)
12. Contractor's Remarks – The narrative report submitted with the quarterly cost projection report shall normally be limited to those items materially affecting projected cost and performance which have not been addressed in the preceeding monthly narrative reports. (See par. 304)
   a. Explain any significant items affecting cost; e.g., technical and schedule problems, changes in plans, incurred over/under runs, etc.
   b. Include a reconciliation from the original contract value (Original Negotiated Baseline) to the present Contract Value as reported in Item 3. A sample format is set forth in Figure A below.
   c. Changes authorized but not finalized may be required by the field installation to be further subdivided as follows:
      (1) changes negotiated but not definitized
      (2) changes pending negotiation
      (3) changes pending quotation
   d. Report new change orders per sample format set forth in Figure B below.

ORIGINAL CONTRACT VALUE	$_____	
SUPPLEMENTAL AGREEMENTS (Identify; i.e., inclusive modification numbers)	_____	
PRESENT CONTRACT VALUE (Col. 9b)		$_____
CHANGES AUTHORIZED BUT NOT FINALIZED (Identify items as to change order number)	$_____	
ANTICIPATED OVER (under) RUN	_____	_____
CONTRACTOR ESTIMATE (Col. 9a)		$_____
CHANGES UNDER CONSIDERATION BUT NOT AUTHORIZED (Identify items)		$_____

Figure A

NEW CHANGE ORDERS IDENTIFIED TO SUBDIVISION OF WORK				
CHANGE ORDER NO.				
SUBDIVISION OF WORK	AMOUNT			
TOTAL				

Figure B

NASA/FAR SUPPLEMENT

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FORMS

NASA Justification for Authority to Negotiate			1. CONTROL NO.	
2. INSTALLATION ORIGINATOR			3. DATE PREPARED	
			4. AUTHORITY 10 U.S.C. 2304(a)(	
5. PROCUREMENT CONTEMPLATED BY THE ATTACHED D & F *(Describe)*				
6. ESTIMATED COST	7. TYPE OF CONTRACT PROPOSED			
8. NASA AGENCY-WIDE PROGRAM PROJECT TITLE *(Include name of approval official and date)*				
9. COMPETITIVE *(If competitive show number of sources to be solicited)*	10. NONCOMPETITIVE *(If noncompetitive show name of firm with whom negotiations are to be conducted)*			
11. PROCUREMENT PLAN *(Indicate approval authority and date. If Procurement Plan is not required, cite appropriate circumstance as set forth in NASA FAR Supp. 18-7.103)*				
12. JUSTIFICATION FOR NONCOMPETITIVE NEGOTIATIONS *(See NASA FAR Supp. 18-15.105-70). Indicate approval authority and date. If not required, indicate appropriate exception set forth in NASA FAR Supp. 18-15.105-70(b))*				
13. OTHER PERTINENT INFORMATION *(i.e., urgency of procurement, unsolicited proposal number, interagency participation and funding arrangements, or such other facts that are relevant to the requirement)*				
14. JUSTIFICATION PREPARED BY ▶	a. TYPED NAME		b. TELEPHONE NO.	
	c. SIGNATURE		d. CODE	e. DATE
15. COUNSEL REVIEWING D & F ▶	a. TYPED NAME		b. TELEPHONE NO.	
	c. SIGNATURE		d. CODE	e. DATE
16. CONTRACTING OFFICER ▶	a. TYPED NAME		b. TELEPHONE NO.	
	c. SIGNATURE		d. CODE	e. DATE

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NASA (National Aeronautics and Space Administration)

Materials Requirements Report

DATE PREPARED

TO: *(Name of office to which report is being submitted)*

FROM: *(NASA Field Installation or Headquarters Program office submitting report)*

PREPARED BY

MATERIAL BEING REPORTED

UNIT OF MEASURE

OFFICE CODE

TELEPHONE

CONTRACT NO., PROGRAM, PROJECT, AND TASK / OR END USE-CONTRACTOR AND LOCATION OF USE	SOURCE[2]	CALENDAR YEAR 19___[3]		CALENDAR YEAR 19___		CALENDAR YEAR 19___		CALENDAR YEAR 19___		CALENDAR YEAR 19___		CALENDAR YEAR 19___	
		___QTR	___QTR	___QTR	___QTR	___QTR	___QTR	___QTR	___QTR	___QTR	___QTR	___QTR	___QTR

[1] Identify each entry by (a) Contract No., (b) Program, (c) Project, (d) by specific Task within the project or by End Use when not associated with a named project, (e) by contractor, and (f) by the location of use of the material *(shipping destination)*. *Specific attention is directed to reporting requirements for* Helium. In addition to the above information, Helium requirements will be further classified as follows: (a) Missile Systems and Astronautics, (b) Aerology *(includes weather research)*, (c) Aeronautical Research *(includes wind tunnels)*, (d) Welding and (e) Other *(identify specifically)*.

[2] CODES
C - Commercial
A - Army
N - Navy
AF - Air Force
DP - Defense Petroleum Supply Center
BM - Bureau of Mines
U - Undetermined
X - Other *(Specify)*

[3] Report first six months by months, balance by quarters.

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GPO 875 648

RCS 19000000429

18–53.303–566 1984 Edition

FORMS

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New edition (Oct. 1983) will be available by and must be used subsequent to March 31, 1984.

1984 Edition 18–53.303–566–(A)

FORMS

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New edition (Oct. 1983) will be available by and must be used subsequent to March 31, 1984.

18-53.303-634 1984 Edition

FORMS

NASA

Structured Approach Profit/Fee Objective

CONTRACTOR	RFP/CONTRACT NO.
BUSINESS UNIT	CONTRACT TYPE
ADDRESS	

CONTRACTOR EFFORT

1. COST CATEGORY	GOVERNMENT'S COST OBJECTIVE (a)	WEIGHT RANGE (b)	ASSIGNED WEIGHT (c)	WEIGHTED PROFIT/FEE ((a) x (c)) (d)
MATERIAL ACQUISITION		1% TO 4%		
DIRECT LABOR		4% TO 12%		
OVERHEAD		3% TO 8%		
OTHER COSTS		1% TO 3%		
GENERAL MANAGEMENT (G & A)		4% TO 8%		
1.A TOTAL				

2. OTHER FACTORS

FACTOR	MEASUREMENT BASE (a)	WEIGHT RANGE (b)	ASSIGNED WEIGHT (c)	WEIGHTED PROFIT/FEE 1.A (a) x (c) (d)
COST RISK	TOTAL COST OBJECTIVE 1.A (a)	0% TO 7%		
INVESTMENT		-2% TO +2%		
PERFORMANCE		-1% TO +1%		
SOCIO ECONOMIC PROGRAMS		-.5% TO +.5%		
SPECIAL SITUATIONS				
2.A TOTAL OTHER FACTORS				

3.	SUBTOTAL PROFIT/FEE LINES (1.A) + (2.A)		
4.	*LESS FACILITIES CAPITAL COST OF MONEY*		–
5.	TOTAL PROFIT/FEE OBJECTIVE LINE (3) – (4)		

NASA FORM 634 FEB 80

1984 Edition 18–53.303–667

FORMS

SECTION I.	1. PRIME CONTRACT NO.	Form Approved OMB No. 2700-0004	*For NASA Use Only*
	2. PRIME CONTRACTOR		A.
	3. ADDRESS		B.
II. FIRST-TIER SUBCONTRACT	4. SUBCONTRACTOR		C.
	5. ADDRESS		D.
	6. SMALL BUSINESS ☐ YES ☐ NO / 7. DISADVANTAGED BUSINESS ☐ YES ☐ NO / 8. SUBCONTRACT NO.	9. SUBCONTRACT AMOUNT *(Dollars)* a. PRIOR b. THIS ACTION c. NEW TOTAL	E.
	10. PRINCIPAL PLACE OF PERFORMANCE *(Address, City and State)*		F.
	11. DESCRIPTION OF WORK	12. TYPE OF EFFORT ☐ a. R&D ☐ b. NON-R&D	G.
III. SECOND-TIER SUBCONTRACT	13. SUBCONTRACTOR		H.
	14. ADDRESS		I.
	15. SMALL BUSINESS ☐ YES ☐ NO / 16. DISADVANTAGED BUSINESS ☐ YES ☐ NO / 17. SUBCONTRACT NO.	18. SUBCONTRACT AMOUNT *(Dollars)* a. PRIOR b. THIS ACTION c. NEW TOTAL	J.
	19. PRINCIPAL PLACE OF PERFORMANCE *(Address, City and State)*		K.
	20. DESCRIPTION OF WORK	21. TYPE OF EFFORT ☐ a. R&D ☐ b. NON-R&D	L.
22. COMPANY SUBMITTING REPORT		23. SUBMITTED BY *(Typed name)*	24. DATE

NASA FORM 667 SEP 82 PREVIOUS EDITION MAY BE USED. Report on NASA Subcontracts RCS 10PUBL00433

INSTRUCTIONS—GENERAL AND SPECIFIC

A. This report form is for use by NASA prime contractors and first-tier subcontractors participating in the NASA subcontracting reporting program. (*See Paragraph 21.500 of the NASA Procurement Regulation.*) Parts I and II of the form are for use by the prime contractors; Parts I, II and III are for use by the first-tier subcontractors.

B. NASA prime contractors will complete and submit Parts I and II of the form for each subcontract (*as defined in Paragraph E, below*), placed by them which is estimated will exceed $10,000 and for each action (*modification*) in excess of $10,000 on such subcontract. Modifications to be reported include actions which result in the decommitment of funds as well as commitments.

C. First-tier subcontractors having any subcontracts which are estimated will exceed $50,000 will complete and submit the form in entirety for each subcontract (*as defined in Paragraph E, below*) placed by them which is estimated will exceed $10,000 and for each action (*modification*) in excess of $10,000 on such subcontract. Modifications to be reported include actions which result in the decommitment of funds as well as commitments.

D. For use in reporting on NASA subcontracts, "research and development" means basic and applied research, and design and development of prototypes and processes to (1) pursue a planned search for new knowledge, with or without reference to a specific application, (2) apply existing knowledge in the creation of new products or processes, and (3) apply existing knowledge in the improvement or modification of present products or processes. It excludes subcontracts for the purchase of standard commercial items and services.

E. The term "subcontract" as used herein means procurement in the excess of $10,000 by the prime contractor or first-tier subcontractor of articles, materials, or services entering into the performance of a specific NASA prime contract. It does not include purchases, regardless of amount, of stock items, materials, or services which cannot be identified with a specific NASA prime contract.

F. NASA prime contractors will provide the number of the NASA prime contract to their first-tier subcontractors for entry on the reports.

G. The report is to be submitted as soon as possible after placement of the subcontract to the National Aeronautics and Space Administration, Office of Procurement, Code HM-1, Washington, DC 20546.

H. Prime contractors will obtain a supply of the forms from their NASA Contracting Officer. Subcontractors will obtain the forms from the prime contractor.

Item 1. Enter the NASA prime contract number.

Item 2. Enter name, and division if applicable, of the prime contractor.

Item 3. Enter address (*City and State only*) of the prime contractor.

Item 4. Enter name, and division if applicable, of the subcontractor.

Item 5. Enter address of the subcontractor.

Item 6. Check applicable box. (*For definition of a small business concern, see Paragraph 1.701 of the NASA Procurement Regulation.*)

Item 7. Check applicable box. (*For definition of a disadvantaged business concern, see par. 1-701.2 of the NASA Procurement Regulation.*)

Item 8. Enter subcontract or purchase order number specified by the contractor initiating the action.

Item 9. Enter in terms of commitments, to the nearest dollar, the amount of the subcontract, or amount of modification of the subcontract. Modifications resulting in decommitments are to be enclosed in parentheses. On line 9a, enter the cumulative amount of the subcontract prior to the action being reported. If the reported action is a new subcontract, enter the word "New." On line 9b, enter the amount of the action being reported. On line 9c, enter the new cumulative amount (*total of lines 9a and 9b*).

Item 10. Enter the location (*Address, City and State*) of the principal plant or place of business where the items will be produced or supplied from stock or where the work will be performed. For construction subcontracts, enter the site of construction.

Item 11. Enter a brief description of the item to be furnished or the work to be performed under the subcontract. (*For example: Electrical Indicating Meters for Shuttle Orbiters.*)

Item 12. Check applicable box to indicate whether effort involves research and development. (*See Instruction D.*)

Items 13 through 21. See items 4 through 12.

Item 22. Enter the name of the company submitting the report. This should be the name of the prime contractor for reports on first-tier subcontracts; it should be the name of the first-tier subcontractor for reports on second-tier subcontracts.

Item 23. Typed name and signature of company individual submitting the report.

Item 24. Enter the date of signature.

NASA/FAR SUPPLEMENT

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FORMS

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION CONTRACTOR'S RELEASE	CONTRACT NO.

Pursuant to the terms of Contract No. _____ and in consideration of the sum of _____
(Total of amounts paid and payable)

Dollars ($ _____), which has been or is to be paid under the said contract to _____
(Contractor's name and address)

_____
(hereinafter called the Contractor) or his assignees, if any, the Contractor upon payment of the said sum by the United States of America *(hereinafter called the Government)*, does hereby remise, release, and discharge the Government, its officers, agents, and employees of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract, except:

A. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows *(if none, so state)*: _____

_____

B. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of the said contract, which are not known to the Contractor on the date of the execution of this release and of which the Contractor gives notice in writing to the Contracting Officer within the time period specified in said contract.

C. Claims for reimbursement of costs including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the said contract relating to patents.

D. When the contract includes an article entitled "*Optional Data Requirements*," claims pursuant to such article when, within the one-year period after final payment under the contract, the Contracting Officer requests in writing that the Contractor furnish such data.

The Contractor agrees, in connection with patent matters and with claims which are not released as set forth above, that he will comply with all of the provisions of the said contract, including without limitation, those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

The Contractor further agrees that payments on account of claims not released as set forth above shall be subject to adjustment in accordance with paragraph (i) of the clause of the contract entitled "Allowable Cost, Incentive Fee and Payment," if such clause is a provision of the contract.

IN WITNESS WHEREOF, this release has been executed this _____ day of _____, 19____.

_____
(Contractor)

WITNESSES

_____ BY _____

_____ TITLE _____

(NOTE: In the case of a corporation witnesses are not required, but the certificate below must be completed.)

CERTIFICATE

I, _____, certify that I am the _____
(Official Title)

of the corporation named as Contractor in the foregoing release; that _____ who signed said release on behalf of the Contractor was then _____ of said corporation;
(Official Title)

that said release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

_____

(CORPORATE SEAL)

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1984 Edition 18–53.303–779

FORMS

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION ASSIGNEE'S RELEASE	CONTRACT NO.

Pursuant to the terms of Contract No. _____ and in consideration of the sum _____
(Total of amounts paid and payable)
Dollars ($_____) which has been or is to be paid under the said contract by the United States of America *(hereinafter called the Government)* to the Contractor or his assignees, the _____
(Assignee's name and address)

(i) a corporation organized and existing under the laws of the State of _____,
(ii) a partnership consisting of _____,
(iii) an individual trading as _____,

(hereinafter called the Assignee), upon receipt of that part of the said sum due under his assignment does hereby remise, release, and discharge the Government, its officers, agents, and employees of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract and assignment, except:

A. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows: _____
(If none, so state)

B. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the contractor to third parties arising out of the performance of the said contract, which are not known to the Contractor or Assignee on the date of the execution of this release and of which the Contractor or Assignee gives notice in writing to the Contracting Officer within the time period specified in the said contract.

C. Claims for reimbursement of costs including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the said contract relating to patents.

D. When the contract includes an article entitled "Data Requirements," claims pursuant to such article when, within the one-year period after final payment under the contract, the Contracting Officer requests in writing that the Contractor furnish such data.

The Assignee agrees, in connection with claims which are not released as set forth above, that final payment under the said contract does not modify the requirements and limitations imposed on the Contractor or Assignee by the contract or the assignment, including without limitation those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

The Assignee further agrees that payments on amount of claims not released as set forth above shall be subject to adjustment in accordance with paragraph (i) of the clause of the contract entitled "Allowable Cost, Incentive Fee and Payment," if such clause is a provision of the contract.

IN WITNESS WHEREOF, this release has been executed this _____ day of _____, 19__

_____
(Assignee)

WITNESSES

_____ BY _____

_____ TITLE _____

(NOTE: In the case of a corporation witnesses are not required, but the certificate below must be completed.)

CERTIFICATE

I, _____, certify that I am the _____
(Official Title)
of the corporation named as Assignee in the foregoing release; that _____ who signed said release on behalf of the Assignee was then _____
(Official Title)
of said corporation; that said release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

_____

(CORPORATE SEAL)

NASA FORM 779 APR 68 DESTROY EXISTING STOCK. GPO 942-029

NASA/FAR SUPPLEMENT

18-53.303-780 1984 Edition

FORMS

NASA National Aeronautics and Space Administration — Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts	CONTRACT NO.

Pursuant to the terms of Contract No. _____ and in consideration of the reimbursement of costs and payment of fee, as provided in the said contract and any assignment thereunder, the _____ *(Contractor's name and address)* _____ *(hereinafter called the Contractor)* does hereby:

1. Assign, transfer, set over and release to the UNITED STATES OF AMERICA *(hereinafter called the Government)* all right, title, and interest to all refunds, rebates, credits, and other amounts *(including any interest thereon)*, arising out of the performance of the said contract, together with all the rights of action accrued or which may hereafter accrue thereunder.

2. Agree to take whatever action may be necessary to effect prompt collection of all refunds, rebates, credits and other amounts *(including any interest thereon)* due or which may become due, and to promptly forward to the NASA Contracting Officer certified checks *(made payable to the National Aeronautics and Space Administration)* for any proceeds so collected. The reasonable costs of any such action to effect collection shall constitute allowable cost when approved by the Contracting Officer as stated in the said contract and may be applied to reduce any amounts otherwise payable to the Government under the terms hereof.

3. Agree to cooperate fully with the Government as to any claim or suit in connection with refunds, rebates, credits, or other amounts due *(including any interest thereon)*; to execute any protest, pleading, application, power of attorney, or other papers in connection therewith; and to permit the Government to represent the Contractor at any hearing, trial, or other proceeding, arising out of such claim or suit.

IN WITNESS WHEREOF, this assignment has been executed this _____ day of _____, 19____

_____
(Contractor)

WITNESSES

_____ BY _____

_____ TITLE _____

NOTE: In the case of a corporation, witnesses are not required, but the certificate below must be completed.

CERTIFICATE

I, _____, certify that I am the _____ *(Official Title)* of the corporation named as Contractor in the foregoing assignment; _____ who signed said assignment on behalf of the Contractor was then _____ *(Official Title)* of said corporation; that said assignment was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(CORPORATE SEAL) _____

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FORMS

ASSIGNEE'S ASSIGNMENT OF REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS	CONTRACT NO.

Pursuant to the terms of Contract No. _____ and in consideration of the reimbursement of costs and payment of fee, as provided in the said contract and assignment thereunder, the _____
(Assignee's name and address)

(i) a corporation organized and existing under the laws of the state of _____

(ii) a partnership consisting of _____

(iii) an individual trading as _____

(hereinafter called the Assignee), does hereby assign, transfer, set over, and release to the UNITED STATES OF AMERICA, all right, title, and interest to all refunds, rebates, credits, and other amounts *(including any interest thereon)* arising out of the performance of the said contract, together with all rights of action accrued or which may hereafter accrue thereunder.

IN WITNESS WHEREOF, this assignment has been executed this _____ day of _____, 19___.

_____
(Assignee)

WITNESSES

_____ BY _____

_____ TITLE _____

(NOTE: In the case of a corporation, witnesses are not required, but the following certificate must be completed.)

CERTIFICATE

I, _____, certify that I am the _____
(Official Title)
of the corporation named as Assignee in the foregoing assignment; that _____
who signed said assignment on behalf of the Assignee was then _____
(Official Title)
of said corporation; that said assignment was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

_____

(CORPORATE SEAL)

NASA FORM 781 JAN 63 GPO 942545

NASA/FAR SUPPLEMENT

18–53.303–1018 1984 Edition

FORMS

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New edition (Oct. 1983) will be available by and must be used subsequent to March 31, 1984.

1984 Edition 18–53.303–1018–(A)

FORMS

18. SCHEDULE I – ANALYSIS OF GOVERNMENT-FURNISHED ADDITIONS *(Col. b, Page 1)* AND CONTRACTOR DISPOSALS *(Col. e, Page 1)*

	CENTER OR AGENCY *(Abbreviate)*	LAND *(Item 6)*	BUILDINGS *(Item 7)*	OTHER STRUCTURES AND FACILITIES *(Item 8)*	LEASEHOLD IMPROVEMENTS *(Item 9)*	PLANT EQUIPMENT *(Item 10)*	SPECIAL TOOLING *(Item 11)*	SPECIAL TEST EQUIPMENT *(Item 12)*
GOVERNMENT-FURNISHED *(See col. b, page 1)*								
	TOTAL							
CONTRACTOR DISPOSALS *(See col. e, page 1)*								
	TOTAL							

2

18-53.303-1018-(B) 1984 Edition

FORMS

19. SCHEDULE II – SPACE HARDWARE REPORTABLE ITEMS			
	DESCRIPTION*	QUANTITY a.	COST (Net) b.
COMPLETED SPACE HARDWARE, SYSTEMS AND SUBSYSTEMS			
COMPLETED COMPONENTS AND SPARE PARTS			
WORK IN PROCESS			
	TOTAL (Transfer to item 15, column f, Page 1) ▶		

*From Annual List of Reportable Items. Continue itemization and remarks on separate sheets.

3.

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FORMS

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FORMS

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18-53.303-1356 1984 Edition

FORMS

NASA National Aeronautics and Space Administration

C.A.S.E. Report on College and University Projects

PART I—TECHNICAL DATA *(To be completed by procurement request initiators)*

Procurement request initiators are required to complete part I and to include this form with their procurement requests (PR's) for certain obligations to educational institutions. Forms need not be submitted with all PR's; for details, see the brief instructions on the back of this page.

PLEASE TYPE OR PRINT LEGIBLY. ATTACH COMPLETED FORM TO PROCUREMENT REQUEST.

1. UNIVERSITY NAME, CITY AND STATE	3. PRINCIPAL INVESTIGATOR *(Two initials and surname)*
	4. SECOND PRINCIPAL INVESTIGATOR *(If any, two initials and surname)*
2. PROPOSAL IDENTIFICATION *(If any)*	5. THIRD PRINCIPAL INVESTIGATOR *(If any, two initials and surname)*

6. PRIMARY NASA TECHNICAL OFFICER *(Two initials and surname)*	7. INSTALLATION NAME	8. MAIL CODE *(HQ only)*
9. ALT. NASA TECHNICAL OFFICER *(If any, two initials and surname)*	10. INSTALLATION NAME	11. MAIL CODE *(HQ only)*

12. WILL THIS PROJECT BE CONDUCTED IN OR BY A MEDICAL SCHOOL? ☐ YES ☐ NO

13. MAIN OBJECTIVE OF WORK *(Circle one code)*

R&D ▶	11 BASIC RESEARCH	12 APPLIED RESEARCH	13 DEVELOPMENT	
OTHER ▶	06 OTHER ACTIVITIES RELATED TO SCIENCE AND ENGINEERING	03 R&D PLANT AND EQUIPMENT	02 TRAINING GRANT *(NGT prefix only)*	

14. FIELD OF SCIENCE OR ENGINEERING *(Circle the one code number which represents the most appropriate field. See instructions on reverse)*

PHYSICAL SCIENCES
11 ASTRONOMY
12 CHEMISTRY
13 PHYSICS
19 PHYSICAL SCIENCES, NEC*

MATH/COMPUTERS
21 MATHEMATICS
22 COMPUTER SCIENCES
29 MATH/COMPUTERS, NEC*

ENGINEERING
41 AERONAUTICAL
42 ASTRONAUTICAL
43 CHEMICAL
44 CIVIL
45 ELECTRICAL
46 MECHANICAL
47 METALLURGY AND MATERIALS
49 ENGINEERING, NEC*

LIFE SCIENCES
51 BIOLOGICAL SCIENCES
54 ENVIRONMENTAL BIOLOGY
55 AGRIC. SCIENCES
56 MEDICAL SCIENCES
59 LIFE SCIENCES, NEC*

SOCIAL SCIENCES
71 ANTHROPOLOGY
72 ECONOMICS
73 HISTORY
74 LINGUISTICS
75 POLITICAL SCIENCE
76 SOCIOLOGY
79 SOCIAL SCIENCE, NEC*

ENVIRONMENTAL SCIENCE
31 ATMOSPHERIC SCIENCES
32 GEOLOGICAL SCIENCES
33 OCEANOGRAPHY
39 ENVIRONMENTAL SCIENCES, NEC*

PSYCHOLOGY
61 BIOLOGICAL
62 SOCIAL ASPECTS
69 PSYCHOLOGY, NEC*

OTHER SCIENCES**
99 ALL DISCIPLINE(S)

**Not Elsewhere Classified (For interdisciplinary projects and others not listed by discipline name).*
***For interdisciplinary projects which cannot be classified within any of the preceding main fields.*

PART II—PROCUREMENT DATA *(To be completed by procurement office. See instructions on last page)*

15. AGREEMENT NO. *(Including prefixed letters)*	16. MODIFICATION NO.	17. AMOUNT OBLIGATED	18. COST SHARING PERCENTAGE
1 2 3 4 5 6 7 8 9 10 11			

19. TYPE OF ACTION BEING REPORTED *(Circle one code number)*

1 NEW AWARD *(New agreement number assigned)*
2 ADDITIONAL FUNDS, SAME DURATION *(Excludes incremental funding)*
3 ADDITIONAL FUNDS AND TIME *(Excludes incremental funding)*
4 NO COST TIME EXTENSION
5 CHANGE IN PRINCIPAL INVESTIGATOR OR TECHNICAL OFFICER
6 INCREMENTAL FUNDING *(Applies only to contracts conforming to PR 7.204-53)*

20. TITLE OR BRIEF DESCRIPTION OF TECHNICAL PURPOSE OF AGREEMENT *(Required only for new awards)*

21. PROPOSAL TYPE *(Circle one)* *(See Instruction 7.16)*		22. START *(This action)*			23. END *(Completion)*			24. GOV'T SIGNATURE		
UNSOLICITED	SOLICITED	MO. a.	DAY b.	YR. c.	MO. a.	DAY b.	YR. c.	MO. a.	DAY b.	YR. c.
UC—Spec. Announcement UN—No Announcement UX—Other	SA—Ann. of Opportunity SR—RFP/RFQ SU—Advertised SX—Other									

25. SPECIAL DATA	26. VALIDATION BY RESPONSIBLE INDIVIDUAL				27. AD HOC DATA					
	NAME AND INSTALLATION	MO. a.	DAY b.	YR. c.	a.	b.	c.	d.	e.	f.
					g.	h.				

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(LIFT HERE: PART I INSTRUCTIONS ON BACK OF THIS PAGE) 1. ORIGINAL

1984 Edition 18-53.303-1356-(A)

FORMS

INSTRUCTIONS FOR COMPLETION OF PART I BY PROCUREMENT REQUEST INITIATORS

This form must accompany all PR's for obligations to domestic or foreign colleges and universities, including their operationally affiliated nonprofit organizations or foundations *(NMI 5101.12E)*. The form is not required with procurements for training of NASA employees; for non-research procurements under $5,000 made by Purchase Order; or for obligations made during close-out well after the effort is completed.

The initiator completes blocks 1-14 for new awards, and blocks 1-11 for continuations *(and blocks 13-14 if there is a change)*. Part II is completed by the procurement office.

Block 1 - Use complete college or university name to avoid confusion among institutions with similar names.

Block 2 - Use NASA-assigned proposal number, AO, or RFP/RFQ number.

Block 3 - The principal investigator is a person proposed by the university who bears the prime responsibility for the overall technical direction of the work.

Block 12 - University named in block 1 must have a medical school if "Yes" is checked. For investigators with multiple departmental appointments, check "Yes" if primary affiliation is with a medical school component.

Block 13 - Almost all of NASA's work in educational institutions is "R" or "D." Only a few types of projects, primarily information dissemination and conferences, fall into "Other Activities Related to Science and Engineering. "R&D definitions":

Research is systematic intensive study directed toward the fuller scientific knowledge or understanding of the subject studied. Information on the distinction between basic and applied research, including examples, appears in the NASA section of the National Science Board's 10th Annual Report. *(An excerpt is available from the Headquarters Procurement Management Division.)* To summarize the definitions in the NASA context:

Basic Research is work directed toward an increase in fundamental knowledge, both general and specific, of properties and processes in fields relevant to aeronautical and space activities.

Applied Research is the application of the knowledge gained through basic research to specific problems associated with the conduct of aeronautical and space activities.

Development is systematic use of the knowledge and understanding gained from research, directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. It excludes quality control, routine product testing and production.

Block 14 - Location of selected disciplines in fields of science and engineering:

11 ASTRONOMY — Astrophysics.

13 PHYSICS — Acoustics; atomic and molecular; condensed matter; elementary particles; optics; plasma.

31 ATMOSPHERIC SCIENCES — Solar; weather modification; extraterrestrial atmospheres.

32 GEOLOGICAL SCIENCES — Geophysics; geodesy and gravity; geomagnetism; hydrology; geochemistry; paleomagetism; physical geography and cartography; seismology; soil sciences.

33 OCEANOGRAPHY — Chemical; geological; physical; marine geophysics.

44 CIVIL ENGINEERING — Environmental; hydrologic; sanitary; structural; transportation.

47 METALLURGY/MATERIALS ENGINEERING — Ceramic; mining; textile; welding.

49 OTHER ENGINEERING — Agricultural; industrial; management; nuclear; ocean; systems.

51 BIOLOGICAL SCIENCES *(Excludes environmental biology)* — Anatomy; biochemistry; biology; biometry and biostatistics; biophysics; botany; cell biology; entomology and parasitology; genetics; microbiology; neuroscience *(biological)*; nutrition; physiology; zoology.

54 ENVIRONMENTAL BIOLOGY — Ecosystem sciences; evolutionary biology; limnology; physiological ecology; population biology; population and biotic community ecology; systematics.

55 AGRICULTURAL SCIENCES — Agronomy; animal sciences; food science and technology; fish and wildlife; forestry; horticulture; plant sciences; soils and soil sciences; other agriculture.

56 MEDICAL SCIENCES — Internal medicine; neurology; opthalmology; otolaryngology; preventative medicine; pharmacology; psychiatry; radiology; surgery; dentistry; pharmacy; veterinary medicine, and other medical not otherwise classified.

61 PSYCHOLOGY-BIOLOGICAL — Animal behavior.

74 LINGUISTICS — Computational.

75 POLITICAL SCIENCE — Regional studies; international relations; public administration; management.

76 SOCIOLOGY — Complex organizations.

18-53.303-1356-(B) 1984 Edition

FORMS

DETAILED INSTRUCTIONS FOR PROCUREMENT OFFICES*

(Initiating Office Instructions Are on Back of First Page)

CONTENTS

1.00 Need for NASA Form 1356.

2.00 Organizations for which the Form is Required

3.00 Types of Actions Requiring Form Preparation

4.00 Procurement Office Actions on Forms Provided by Procurement Request Initiators

5.00 Procurement Office Actions on Part II

6.00 Contents of Forms Initiated by Procurement Offices

7.00 How Individual Blocks on Form are Completed

8.00 Corrections to Submitted Forms

9.00 What to Do with the Form

1.00 NEED FOR NASA FORM 1356. NASA Form 1356 is the primary source of information for use in a Government-wide reporting system. It is also the basis for numerous internal NASA reports, for example, NASA's University Program, a published listing of active grants, cooperative agreements and contracts. Submission is prescribed by NPR21.700 and NBH 5800.1A.

2.00 ORGANIZATIONS FOR WHICH THE FORM IS REQUIRED. The NASA Form 1356 requirement applies to all procurements from domestic and foreign institutions of higher education *(colleges and universities)*, including their operationally affiliated non-profit organizations or foundations.

3.00 TYPES OF ACTIONS REQUIRING FORM PREPARATION. A NASA Form 1356 is required for each individual obligation to an educational institution, with the exception of procurements for the training of NASA employees; for non-research procurements under $5,000 made by Purchase Order; for adjustments in the estimated cost of a contract; or for negative obligations *(de-obligations)*. Reports are not necessary for obligations made during closeout for overruns, overhead changes and similar minor adjustments, unless the ending date is changed *(See 6.11)*. The requirement applies regardless of the funding instrument used *(grant, contract, cooperative agreement, purchase order, or award made under the authority of Sec. 203(c)(5) of the Space Act)*, the solicited or unsolicited nature of the proposal, the nature of supported work, the fund source within NASA, the procuring installation, or whether the funding is full, step or incremental. Forms are prepared at the basic contract or modification level; there will be only one form per modification. For each case involving a funding action, a NASA Form 1356 must be included in the procurement package by the initiator. If the NASA Form 1356 is missing or incomplete, the procurement office must rectify matters prior to execution of the final procurement documents *(NMI 5101.12E)*. In addition, the procurement office must intiate a NASA Form 1356 in several situations not involving obligation of funds *(See 6.00)*.

4.00 PROCUREMENT OFFICE ACTIONS ON FORMS PROVIDED BY PROCUREMENT REQUEST INITIATORS.

4.10 Ensure blocks 1-3, 6-8, 12-14 have been completed for new awards; 1-3, 6-8 and 12 are required for other actions. Blocks 4, 5, and 9-11 must be completed whenever there are multiple investigators or technical officers.

4.20 Only one NASA Form 1356 is to be completed for each action; i.e., basic award or modification. Consolidate the data if multiple procurement requests covering a single procurement result in receipt of more than one NASA Form 1356; consult the procurement request initators, if necessary, to obtain agreement on incompatible Part I entries.

4.30 Verify the information in blocks 1-11, paying particular attention to the following blocks:

4.31 Block 1 - University Name. Make sure the name is valid and uniquely identifies the proper institution. This is particularly important for new awards. The name of the parent university is listed rather than research foundation, institute or laboratory names. System names as "State University of New York (SUNY)," "University of Alabama," "University of Missouri." "University of California," are meaningless. The specific campus performing the work must be readily identifiable. For example, the SUNY Research Foundation in Albany negotiates awards on behalf of over 70 campuses in the state; awards made through the Foundation must be attributed to the performing campus.

4.32 Block 2 - Proposal Identification. Insert NASA-assigned proposal number, Announcement of Opportunity number, RFP/RFQ number, "unavailable" or "N.A." *(not applicable)*, as appropriate.

4.33 Block 3 - Principal Investigator. Make sure principal investigators are as designated on the face of the award instrument. For agreements which do not specify a principal investigator, per se, university person bearing primary responsibility for overall technical direction of the project should be named. Provide a brief explanation in blocks 3-5 if there is no principal investigator for the project.

5.00 PROCUREMENT OFFICE ACTIONS ON PART II.

5.10 For NEW AWARDS *(Type of Action 1)*.

5.11 Take actions described in 4.00.

5.12 Complete blocks 15, 17-24 and 26.

5.20 For ADDITIONAL FUNDS, SAME DURATION *(Type of Action 2)*.

5.21 Take actions described in 4.00.

5.22 Complete blocks 15-19, 23, 24 and 26.

5.30 For ADDITIONAL FUNDS AND TIME *(Type of Action 3)*.

5.31 Take actions described in 4.00.

5.32 Complete blocks 15-19, 21-24 and 26.

5.40 For INCREMENTAL FUNDING *(Type of Action 6)*. *(Follow this instruction if procurement request for augmenting an incrementally funded contract is received from a source external to the procurement office. If internally generated, see 6.30.)*

5.41 Take actions described in 4.00.

5.42 Complete blocks 15-19, 23, 24 and 26.

6.00 CONTENTS OF FORMS INITIATED BY PROCUREMENT OFFICES.

6.10 For NO-COST TIME EXTENSIONS *(Type of Action 4)*.

6.11 Complete blocks 1, 6-8, 15, 16 *(If applicable)*, 19, 22, 23 and 26. Treat an ending date change during close-out as a no-cost time extension *(See 3.00)*.

6.20 For CHANGE IN PRINCIPAL INVESTIGATOR OR TECHNICAL OFFICER *(Type of Action 5)*.

6.21 Complete blocks 1, 15 and 26.

6.22 Complete at least one of the following sets of blocks: 3-5; 6-8; 9-11.

6.23 ALTERNATIVE PROCEDURE. A copy of the letter of notification

*These instructions also apply to offices making awards under Space Act Section 203(c)(5) or (6) authority.

(Continued on other side)

(August 1982)

FORMS

Procurement Office Actions on Part II, continued)

to the institution regarding a change in principal investigator or technical officer may be submitted in lieu of a NASA Form 1356.

6.30 For INCREMENTAL FUNDING OF CONTRACTS *(Type of Action 6)*.

6.31 Where an individual procurement request from an external source is not required *(PR initiated by procurement office, funds obligated against existing PR or "master" commiting document, etc.)*, procurement office must intiate NASA Form 1356 *(See also 5.40)*.

6.32 Complete blocks 1, 15-19, 23, 24 and 26.

6.33 Complete blocks 3 and 6-8 only if there has been a change since the last incremental action.

7.00 HOW INDIVIDUAL BLOCKS ON FORM ARE COMPLETED. Provide for each block only information specified on the form and in these instructions. Do not modify printed material or add explanatory notes. In the event of situations not covered by the instructions, consult the Headquarters Procurement Management Division.

7.10 Block 15 - Agreement No. Identification number must include complete prefix and suffix. Do not include modification or task order numbers, if any.

7.11 Block 16 - Modification No. Leave blank for new awards and for changes to which a modification number is not assigned.

7.12 Block 17 - Amount obligated. Report to nearest dollar only amount actually obligated by the action at hand. Do not show estimated total cost of incrementally funded contracts.

7.13 Block 18 - Cost Sharing Percentage. Use percentage figure appearing in the agreement cost sharing clause. Insert 0 if there is no cost sharing.

7.14 Block 19 - Type of Action Being Reported. In addition to the instructions in block 19, itself, note that assignment of a new modification number does not constitute a new award and that grants or cooperative agreements are, by definition, never incrementally funded.

7.15 Block 20 - Title or Brief Description of Technical Purpose of Agreement. This should be a brief, yet clear statement, suitable for public release. Avoid use of non-technical procurement-type terms or obscure abbreviations. Use of grant/cooperative agreement title or other wording on the award instrument is preferred.

7.16 Block 21 - Proposal Type. Special Announcements are Dear Colleague Letters, Space Science Notices, Applications Notices and similar widely distributed announcements of NASA's interest in receiving unsolicited proposals in certain areas. Proposals resulting from general brochures or discussion with NASA individuals would fall into the "No Announcement" category. Proposals that do not fit into the above categories would be classified as "Other."

7.17 Block 22 - Start Date This Action. For new awards, use date for which agreement authorizes initiation of effort. Where both additional funds and time *(Type of Action 3)* or no-cost extensions *(Type of Action 4)* are involved, use day next following agreement ending date as it existed before the award was made. Note that for step-funded awards *(with or without the NGL prefix)* the start date can be two to three years in the future. Leave the start date blank for Type of Action 2 *(Additional Funds, Same Duration)* and incremental funding *(Type 6)*.

7.18 Block 23 - End (Completion) Date. Use ending date as shown on agreement. Include this date even if it hasnot changed since last action. For periods of performance based on variables such as successful flight experiments, give best current estimate of ending date.

7.19 Block 24 - "Gov't Signature." Use date signed by Grants or Contracting Officer.

7.20 Block 25 - Special Data. Reserved for future use.

7.21 Block 26 - Validation by Responsible Individual. Forms must be reviewed for compliance with instructions. Reviewing individual certifies that both parts I and II have been properly prepared.

7.22 Block 27 - Ad Hoc Data. Reserved for future use.

8.00 CORRECTIONS TO SUBMITTED FORMS.

8.10 Inadequately prepared forms may be returned by Headquarters to the sender's organization for correction. A covering memo will provide handling instructions.

8.20 The initiating organization may correct a previously submitted form. Such corrections must be made on a carbon or facsimile copy of the erroneous form. Insert the correct information in red so as not to obscure the original error and forward to the Headquarters Procurement Management Division.

8.21 Correction should always be made for wrong agreement number *(Block 22)* for a new award. These and other corrections should be made no later than two months after the close of the Fiscal Year in which the error was made.

9.00 WHAT TO DO WITH FORM

9.10 NASA Form 1356 should be completed as soon as practicable after the obligation or other action giving rise to the form is accomplished. Send it directly to Headquarters Procurement Management Division, Code HM-1.

9.20 Forms should be sent as soon as possible after completion. Preparation of special cover memos should be avoided to conserve resources.

9.30 Headquarters can accept only the original blue form as a final submission. Machine copies are not acceptable *(Except for corrections. See 8.20)*.

9.40 Carbons should be detached before transmitting form to Headquarters. Distribution of carbons is governed by individual installation guidelines; however, a copy should be retained in the official award file for future reference.

9.50 Forms submitted more than two months after the close of the Fiscal Year in which the action occurred may not be useable. Consult Headquarters prior to submitting any such "misplaced" forms.

18–53.303–1412 1984 Edition

FORMS

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
TERMINATION AUTHORITY

INSTRUCTIONS

1. This form will be used to initiate termination of a NASA contract.
2. Include all pertinent remarks or instructions for completing this termination. Attach additional pages if necessary *(one copy of attachment for each copy of this form)*.
3. Insofar as practicable, this form shall be HAND CARRIED to avoid expense to the Government occasioned by delay in accomplishing termination.
4. A complete termination is a termination of all undelivered items on a contract after the termination becomes effective. A partial termination is a termination wherein items remain on the contract to be delivered after the termination becomes effective.
5. Initiating authority will complete items 1 through 9 of this form and item 10 if a partial termination.
6. Use part III, "Remarks," if necessary.
7. Number of copies required: 6.

I. TERMINATION REQUEST

1. TO *(Procurement office, including organization code)*	2. FROM *(Activity originating Procurement Request, including initiator, organization code, and telephone extension)*
3. NAME OF CONTRACTOR	4. STREET ADDRESS OF CONTRACTOR *(Including ZIP Code)*
5. CONTRACT OR PURCHASE ORDER NO. / 6. PROPERTY CL	7. TERMINATION EFFECTIVE: ☐ IMMEDIATELY ☐ DATE ☐ OTHER *(Explain in part III)*

8. TYPE OF TERMINATION RECOMMENDED

a. CONVENIENCE OF THE GOVERNMENT			b. DEFAULT OF THE CONTRACTOR
☐ COMPLETE ☐ PARTIAL	CONTRACT PRESENTLY DELINQUENT ☐ YES ☐ NO	ACTIONABLE BASIS FOR DEFAULT ☐ YES ☐ NO	☐ COMPLETE ☐ PARTIAL *(Specify items)*

9. JUSTIFICATION FOR TERMINATION

10. ITEMS TO BE TERMINATED *(SECURITY REQUIREMENT: If contract is classified, prepare in accordance with NASA Security Regulations)*

CONTRACT ITEM NO.	NOMENCLATURE	UNIT OF MEASURE	QUANTITY TO BE TERMINATED	TOTAL *(Dollars)*
TOTAL CPIT *(Estimate when necessary)* ▶				

11. COORDINATION AND APPROVAL

COORDINATION			APPROVAL		
DATE	INITIALS	ORG CODE	TYPED NAME AND SIGNATURE	ORG CODE	DATE

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FORMS

II. TERMINATION AUTHORIZATION			
12. TO *(Authorized Termination Contracting Officer)*		13. FROM *(Procurement Office: initiator, organization code, and telephone extension)*	
14. INFORMATION CONTAINED IN PART I HEREOF HAS BEEN EXAMINED AND IS: ☐ CORRECT ☐ INCORRECT *(Note corrections, if any, in part III, "Remarks")*			
15. TYPE OF TERMINATION RECOMMENDED			
a. CONVENIENCE OF THE GOVERNMENT			b. DEFAULT OF THE CONTRACTOR
☐ COMPLETE ☐ PARTIAL	CONTRACT PRESENTLY DELINQUENT ☐ YES ☐ NO	REVIEWED FOR ACTIONABLE BASIS FOR DEFAULT ☐ YES ☐ NO	☐ COMPLETE ☐ PARTIAL *(Specify items)*
16. JUSTIFICATION FOR TERMINATION *(Attach additional page if necessary)*			
17. TERMINATION EFFECTIVE			18. AGENCY OF ADMINISTRATION
☐ IMMEDIATELY ☐ DATE _____ ☐ OTHER *(Explain in part III)*			
19. CONTRACT PRICE ITEMS TERMINATED	20. AMOUNT OF CONTRACT *(Include all supplements)*	21. TYPE OF CONTRACT	
22. TERMINATION CLAUSE NO.	23. AUTHORIZED CERTIFYING OFFICER		
24. NAME AND ADDRESS OF ☐ SURETY ☐ ASSIGNEE			
25. COORDINATION AND APPROVAL			
COORDINATION			APPROVAL
DATE	INITIALS	ORG CODE	TYPED NAME, GRADE AND SIGNATURE / ORG CODE / DATE
III. REMARKS *(Use additional pages if necessary)*			
IV. TERMINATION ASSIGNMENT			
26. TO *(Activity to which assigned for settlement)* INFO COPY TO:		27. FROM *(Assigning Activity; organization code and telephone extension)*	
28. DOCKET NO. _____ IS ASSIGNED TO YOUR ACTIVITY FOR SETTLEMENT. DATE _____			
29. ATTACHMENTS	30. TYPED NAME AND TITLE OF AUTHORIZED INDIVIDUAL		31. SIGNATURE

GPO 681-265

NASA/FAR SUPPLEMENT

18-53.303-1413 1984 Edition

FORMS

NASA Form 1413 is now being revised.

New edition (Oct. 1983) will be available by and must be used subsequent to March 31, 1984.

1984 Edition 18–53.303–1430

FORMS

NASA Letter of Contract Administration Delegation, General	1. NASA CONTROL NO.	2. RECEIVING OFFICE CONTROL NO.
3. TO:	4. FROM:	
5. PRIME CONTRACTOR OR SUBCONTRACTOR AND PLACE OF PERFORMANCE *(See instructions on reverse)*	6. CONTRACT NO. AND DATE	7. FACE VALUE
	8. CONTRACT TYPE	9. COMPLETION DATE
10. CONTRACT END ITEM OR SERVICE *(Describe briefly)*		

11. You are hereby authorized to act as my representative in the administration of this contract. The functions delegated to you for administration are those listed on the reverse of this form *(Less those that are specifically withheld on NASA Form 1430A attached hereto, if any)* and additional functions described on NASA Form(s) 1430A attached hereto, if any.

12. You are further authorized, within the limits of the contract, to redelegate the functions delegated to you by par. 11 above, unless redelegation authority is specifically withheld on NASA Form 1430A attached hereto. Redelegation of functions to be performed on NASA installations, or NASA-controlled launch sites, will bedirected to the NASA Procurement Officer of the installation concerned. Should you desire that the redelegated functions be performed by other than the NASA Procurement Office receiving the delegation, your letter of redelegation shall so state.

13. The Production Surveillance category requested is _____. *(Use only for delegations to DOD.)*

14. You are requested to provide the NASA Contracting Officer with copies of all communications relating to the administration of this contract that you consider signifioent.

15. Please acknowledge acceptance of this delegation by returning two signed copies of NASA Form 1431 *(attached)* to the NASA Contracting Officer within 5 days of receipt.

16. TYPED NAME OF CONTRACTING OFFICER	17. SIGNATURE OF CONTRACTING OFFICER	18. DATE SIGNED

19. NASA PERSONNEL TO CONTACT WHEN NECESSARY

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NASA/FAR SUPPLEMENT

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FORMS

The functions listed below are delegated pursuant to paragraph 11 of this form. The functions shall be performed only when necessary to the administration of this contract and when not specifically withheld by the NASA Contracting Officer on NASA Form 1430A.

(i) Review contractor's compensation structure;

(ii) Review contractor's insurance plans;

(iii) Review and approve or disapprove contractor's requests for payments under the progress payments clause;

(iv) Negotiate provisional overhead rates, or determine billing rates, when the contract contains a negotiated overhead rates clause. Negotiate final overhead rates when the contract contains a negotiated overhead rates clause and when the contractor *is not* under the negotiation overhead rates procedure pursuant to Tri Service Negotiation;

(v) Negotiate advance understandings on particular cost items for the signature of the NASA Contracting Officer, except when responsibility is placed elsewhere;

(vi) Review and evaluate contractor's proposals for contract changes and furnish comments and recommendations to the NASA Contracting Officer. Negotiate with the contractor when requested by the NASA Contracting Officer;

(vii) Manage special bank accounts;

(viii) Assure timely notification by the contractor of any anticipated overrun or underrun of the estimated cost under cost-type contracts; evaluate and advise NASA Contracting Officer;

(ix) Review, approve or disapprove, and maintain surveillance of the contractor's procurement system when consent to the placement of subcontracts has been delegated;

(x) Monitor contractor's financial condition and advise the NASA Contracting Officer when contract performance is jeopardized thereby;

(xi) Issue tax exemption certificates when applicable, and assure that the contractor advises NASA of changes in contract price, if any;

(xii) Assist in post-award orientation conferences;

(xiii) Prepare findings of fact under the Disputes Clause and forward with recommendations to the NASA Contracting Officer;

(xiv) Assure processing of duty free entry certificates for execution by the NASA Contracting Officer;

(xv) Assure contractor's compliance with small business, labor surplus area, and minority business enterprises, mandatory subcontracting programs; conducting on an as-required basis, small business and labor surplus area set-aside surveillance; and providing advice to small business, labor surplus area concerns, and minority business enterprises;

(xvi) Issue cure and show cause letters after approval of the NASA Contracting Officer;

(xvii) Monitor the contractor's system for control of overtime;

(xviii) Assure that overtime compensation is in accordance with the terms of the contract, or in the absence of contractual coverage, that any excepted overtime charged is reasonable and properly allocable;

(xix) Perform Property Administration;

(xx) Perform plant clearance officer functions, assuring screening of contractor inventory by NASA prior to additional screening, redistribution and disposal;

(xxi) Evaluate contractor's requests for facilities and changes to existing facilities, and provide the NASA Contracting Officer with appropriate recommendations;

(xxii) Assure required screening of centrally reportable equipment items before acquisition by contractor;

(xxiii) Evaluate contractor's requests for approval to use facilities in accordance with the Use and Charges Clause and provide the NASA Contracting Officer with appropriate recommendations;

(xxiv) Assure collection of any rental due for use of facilities;

(xxv) Assure reporting of NASA centrally reportable equipment no longer needed by the contractor in support of NASA programs;

(xxvi) Perform production support and surveillance (including production engineering) and status reporting of potential and actual slippages in contract schedules;

(xxvii) Monitor compliance with labor and industrial relations matters under the contract, apprising the NASA Contracting Officer of actual or potential labor disputes, and removing material from strikebound contractor's plants upon instructions from the NASA Contracting Officer;

(xxviii) Assure contractor compliance with applicable safety requirements of the contract, including the handling of hazardous and dangerous materials and processes;

(xxix) Make appropriate comments to the NASA Contracting Officer on any inadequacies noted in specifications;

(xxx) Assure timely submission of required reports;

(xxxi) Determine adequacy of prime contractor's Disclosure Statements;

(xxxii) Determine whether prime contractor's Disclosure Statements are in compliance with Cost Accounting Standards.

(xxxiii) Determine contractor compliance with Cost Accounting Standards and Disclosure Statements, if applicable; and

(xxxiv) Negotiate price adjustments pursuant to the Cost Accounting Standards clause and advise the NASA Contracting Officer of results;

(xxxv) Analyze quarterly limitation on payments statements and recover overpayments from the contractor; and

(xxxvi) Negotiate changes to interim billing prices when authorized by the NASA Contracting Officer.

INSTRUCTIONS FOR BLOCK 5 – This block should contain the place of contract performance, if known, and not the place of contract *signature*, unless they are the same. For example, when a contract is signed by company "x" at corporate headquarters in New York, but the place of performance is Tucson, Arizona, block 5 should read "Company 'x,' Tucson, Arizona."

1984 Edition 18–53.303–1430A

FORMS

NASA National Aeronautics and Space Administration — Letter of Contract Administration Delegation, Special Instructions	1. CONTRACT NO.	2. DELEGATION NO.

This form is to be used to provide special instructions to NASA Forms 1430 and 1432.

3. FUNCTIONAL AREA *(Enter applicable functional area in this space, such as Contract Administration, Production Administration, Quality Assurance, etc. Use separate forms for each functional area delegated.)*

4. SPECIAL INSTRUCTIONS

5. NASA CONTACT DESIGNATED FOR THIS FUNCTION

a. NAME	b. PHONE

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NASA/FAR SUPPLEMENT

18-53.303-1431

1984 Edition

FORMS

NASA Letter of Acceptance of Contract Administration Delegation	1. NASA CONTROL NO	2. RECEIVING OFFICE CONTROL NO.
3. TO	4. FROM	
5. THE DELEGATION OF FUNCTIONS TO BE PERFORMED ON THE CONTRACT NUMBER SHOWN AT RIGHT IS HEREBY ACCEPTED SUBJECT TO REMARKS BELOW ▶		CONTRACT NO.

6. PERSONS ASSIGNED BY THIS ORGANIZATION TO MONITOR THE DELEGATED FUNCTIONS *(The NASA Contracting Officer will be advised in the event there is a change in any of the assignments listed below)*

FUNCTIONAL AREA	NAME (1)	TELEPHONE NO (2)
a. CONTRACT ADMINISTRATION		
b. QUALITY ASSURANCE		
c. PRODUCTION ADMINISTRATION		
d. PROPERTY ADMINISTRATION		
e. PLANT CLEARANCE		
f. TRANSPORTATION		
g. ENGINEERING SUPPORT *(Other than Production and Quality Engineering)*		

7. REMARKS

8. TYPED NAME OF AUTHORIZED OFFICIAL	9. SIGNATURE OF AUTHORIZED OFFICIAL	10. DATE

NASA FORM 1431 OCT 83 PREVIOUS EDITIONS ARE OBSOLETE.

FORMS

NASA Form 1432 is now being revised.

New edition (Oct. 1983) will be available by and must be used subsequent to March 31, 1984.

18–53.303–1433 1984 Edition

FORMS

NASA Letter of Audit Delegation	1. NASA CONTROL NO.	2. AUDITOR CONTROL NO. (For Auditor's use only)
3. TO:	4. FROM:	
5. NAME AND ADDRESS OF PRIME CONTRACTOR OR SUB-CONTRACTOR	6. CONTRACT NO. AND DATE	7. FACE VALUE
	8. CONTRACT TYPE	9. COMPLETION DATE
10. CONTRACT END ITEM OR SERVICE *(Describe briefly)*		

11. You are hereby delegated the authority to perform the required audit services for this contract in accordance with your agency's audit policies and procedures, the cost principles cited in the contract and special instructions, if any, set forth below. In case of conflict, the cost principles cited in the contract and special instructions shall govern.

12. It is requested that properly executed signature cards and vouchers be forwarded to:

13. Please indicate your acceptance of this delegation by completing items 19 through 22, below, and return two copies within 5 work days of receipt.

14. The NASA contact designated for this function is:

_____ (Name) _____ (Mail Code) _____ (Phone No.)

15. Special instructions and remarks: *(Do not use NASA Form 1430A to issue special instructions to audit delegations.)*

16. TYPED NAME OF CONTRACTING OFFICER	17. SIGNATURE OF CONTRACTING OFFICER	18. DATE SIGNED

THE ABOVE DELEGATION IS HEREBY ACCEPTED	
19. TYPED NAME OF AUDITOR	20. TELEPHONE NO.
21. SIGNATURE OF AUDITOR	22. DATE SIGNED

NASA FORM 1433 OCT 83 PREVIOUS EDITION IS OBSOLETE.

1984 Edition 18–53.303–1434

FORMS

NASA Form 1434 is now being revised.

New edition (Oct. 1983) will be available by and must be used subsequent to March 31, 1984.

18–53.303–1451 1984 Edition

FORMS

NASA National Aeronautics and Space Administration

Request for Procurement Plan Approval

1. Plan Title *(See Tab A for description)*

2. Name of Installation	3. Plan Prepared By	4. Date

5. Responsible Technical Office	6. Project Approval Document *(Citation and date)*	7. Total Estimated Cost of This Procurement

8. Separate Approvals Required *(Check appropriate boxes)*

- ☐ a. Negotiation D&F—10 U.S.C. 2304(a)(11) thru (a) (16)
- ☐ b. Justification for Noncompetitive
- ☐ c. SEB Appointment Letter
- ☐ d. Letter Contract
- ☐ e. Prenegotiation Position
- ☐ f. Deviation to Procurement Regulations
- ☐ g. Notice of Intent to Award
- ☐ h. ADP Acquisition Plan
- ☐ i. Incentive Plan

9. Proposed Funding by Fiscal Year and Project

10. Competitive	c. Noncompetitive Source
☐ a. Yes ☐ b. No *(If "No," complete item 10c)*	

11. Type of Contract

12. FACILITIES AND GOVERNMENT FURNISHED PROPERTY

FACILITIES	YES (1)	NO (2)	AMOUNT (3)	OTHER GFP *(Identify below)*	AMOUNT (4)
a. Real Property *(Existing)*				e.	
b. Real Property *(New or Mod.)*				f.	
c. Plant Equipment *(Existing)*				g.	
d. Plant-Equipment *(New)*				h.	

13. PROCUREMENT ACTION SCHEDULE *(Enter date for first step and calendar days thereafter)*

DESCRIPTION	DATE (1)	DAYS (2)	DESCRIPTION	DAYS (3)
a. Procurement Plan to HDQS.			g. Incentive Plan Submitted	
b. Procurement Plan Approved			h. HDQS. Prenegotiation Presentation *(If required)*	
c. Issue to RFP			i. Negotiations Complete	
d. Proposal(s) Submitted			j. Contract(s) Submitted to HDQS.	
e. Proposal Evaluation(s) Complete			k. HDQS. Approval of Contract(s)	
f. SEB Presentation to Source Selection Official *(If applicable)*			l. TOTAL DAYS ▶	

NASA FORM 1451 AUG 82 PREVIOUS EDITIONS MAY BE USED.

1984 Edition 18–53.303–1452

FORMS

NASA National Aeronautics and Space Administration

Procurement Plan
Signature Page
(Installation)

PLAN TITLE

INSTALLATION		
1. CONCURRENCE		
TITLE	SIGNATURE	DATE
TITLE	SIGNATURE	DATE
TITLE	SIGNATURE	DATE
TITLE	SIGNATURE	DATE
TITLE	SIGNATURE	DATE
TITLE	SIGNATURE	DATE
2. RECOMMENDED FOR APPROVAL/APPROVED		
TITLE	SIGNATURE	DATE

NASA FORM 1452 SEP 82 PREVIOUS EDITIONS ARE OBSOLETE.

NASA/FAR SUPPLEMENT

18-53.303-1611 1984 Edition

FORMS

NASA Contract Completion Statement

1. FROM: (Office administering contract)	2a. CONTRACT NUMBER 2b. LAST MODIFICATION NUMBER 2c. CALL/ORDER NUMBER
3. TO: (Name and Address of Purchasing Office and Office Symbol of the PCO, if known)	4. CONTRACTOR NAME AND ADDRESS 5. EXCESS FUNDS ☐ YES ☐ NO $ _____

6a. IF FINAL PAYMENT HAS BEEN MADE, COMPLETE ITEMS 6b., AND 6c.	6b. VOUCHER NUMBER	6c. DATE
7a. IF FINAL APPROVED INVOICE FORWARDED TO FINANCIAL MANAGEMENT OFFICE OF ANOTHER ACTIVITY AND STATUS OF PAYMENT IS UNKNOWN, COMPLETE ITEMS 7b AND 7c.	7b. INVOICE NUMBER	7c. DATE FORWARDED

8. REMARKS

9a. ALL CONTRACT ADMINISTRATION ACTIONS REQUIRED HAVE BEEN FULLY AND SATISFACTORILY ACCOMPLISHED. THIS INCLUDES FINAL SETTLEMENT IN THE CASE OF A PRICE REVISION CONTRACT.

9b. TYPED NAME OF RESPONSIBLE OFFICIAL	9c. SIGNATURE	9d. DATE

FOR PROCUREMENT OFFICE USE ONLY

10a. ALL PROCUREMENT OFFICE ACTIONS REQUIRED HAVE BEEN FULLY AND SATISFACTORILY ACCOMPLISHED. CONTRACT FILE OF THIS OFFICE IS HEREBY CLOSED AS OF:

☐ DATE SHOWN IN ITEM 9d. ABOVE.

☐ DATE SHOWN IN ITEM 10a. BELOW. *(Check this box only if final completion of any significant procurement office action extends more than three months beyond close-out date shown in item 9d. above. In such cases, submit a copy of the completed form upon final accomplishment of all procurement office actions to the office administering contract. (Upon receipt, the office administering contract shall extend its contract file close-out date accordingly.))*

10b. REMARKS

10c. TYPED NAME OF RESPONSIBLE OFFICIAL	10d. SIGNATURE	10e. DATE

NASA FORM 1611 OCT 83

FORMS

NASA National Aeronautics and Space Administration

Contract Closeout Checklist

NAME OF CONTRACTOR	CONTRACT NO.	CONTRACT AMENDMENT (As amended by modifications numbered through)	
DATE OF PHYSICAL COMPLETION	MILESTONES/CALENDAR DAYS AFTER PHYSICAL COMPLETION	FORECAST FOR COMPLETION (Date)	ACTION COMPLETED (Date) ("NA" if not applicable)
ACTION ITEMS	CATEGORY B / CATEGORY C		
DISPOSITION OF CLASSIFIED MATERIAL COMPLETED			
NEW TECHNOLOGY REPORT SUBMITTED (Inventions Disclosures)			
PROPERTY RIGHTS AND INVENTIONS REPORT			
PLANT CLEARANCE REPORT RECEIVED			
PROPERTY CLEARANCE RECEIVED			
SETTLEMENT OF ALL INTERIM OR DISALLOWED COSTS (NASA Form 456)			
PRICE REVISION COMPLETED			
SETTLEMENT OF SUBCONTRACTS BY THE PRIME CONTRACTOR			
PRIOR YEAR OVERHEAD RATES COMPLETED			
CONTRACTOR'S CLOSING STATEMENT RECEIVED			
TERMINATION DOCKET COMPLETED			
CONTRACT AUDIT COMPLETED			
CONTRACTOR'S CLOSING STATEMENT COMPLETED			
FINAL VOUCHER SUBMITTED			
FINAL PAID VOUCHER RECEIVED			
ISSUANCE OF REPORT OF CONTRACT COMPLETION			
FINAL REMOVAL OF EXCESS FUNDS RECOMMENDED			
ISSUANCE OF CONTRACT COMPLETION STATEMENT	180 / 600		
OTHER REQUIREMENTS COMPLETED (Specify)			

REMARKS (Continue on reverse if necessary)

TYPED NAME AND TITLE OF RESPONSIBLE OFFICIAL	SIGNATURE (To be signed only upon completion of all actions)	DATE

NASA FORM 1612 OCT 83

NASA/FAR SUPPLEMENT

18–53.303–DOC–ITA–999 1984 Edition

FORMS

FORM ITA-999 (FORMERLY DIS-999) (REV. 4-79)

U.S. DEPARTMENT OF COMMERCE
INDUSTRY AND TRADE ADMINISTRATION

FORM APPROVED: OMB NO. 41-R1607

FOR ITA USE ONLY

Case No.

Received

Routed to

Division

REQUEST FOR SPECIAL PRIORITIES ASSISTANCE
(TO BE FILED WITH SPONSORING GOVERNMENT AGENCY)
READ INSTRUCTIONS ON REVERSE SIDE
(Typewrite or print in ink)

No priorities assistance may be granted unless a completed application form has been received (50 U.S.C. App. Sec. 2155). Information furnished herewith is deemed confidential pursuant to 50 U.S.C. App. Sec. 2155(c).

1. TO: *(Fill in name and address of appropriate Sponsoring Govt. Agency)*

2. a. Applicant's name and complete address *(Street, City, State & Zip code)*

b. Telephone No. *(Include Area Code)* _____

c. Contact's Name _____

3. Name and address of applicant's customer

4. Purchase order or contract number of applicant's customer

Date _____

5. Rating on customer's purchase order

6. Date Applicant accepted customer's purchase order

7. If known, identify the Government program, end item, and contract number for which Applicant's product or service is required by customer

8. Description of product or class of products to be delivered, or service rendered by Applicant through use of item(s) shown in (10).

9. How will item(s) shown in (10) be used? *(Check)*

☐ As Production Material ☐ For Construction Project

☐ As Capital Equipment ☐ As Maintenance, Repair and Operating Supplies

10. MATERIAL OR ITEM(S) FOR WHICH APPLICANT REQUESTS ASSISTANCE TO OBTAIN OR EXPEDITE DELIVERY.

Indicate quantity *(Lbs., ft., pcs.)* (a)	Description *(As appearing in Applicant's purchase order with additional information, such as: model, part, die number, etc.)* (b)	Approximate dollar value of quantity shown (c)

11. a. Applicant's purchase order number to Supplier and date *(Attach copy and all amendments and change orders.)*

b. Rating on Applicant's purchase order. If none, so state. If controlled material order, show allotment symbol and delivery quarter.

c. Date Applicant's purchase order accepted by Supplier *(Attach copy of acceptance)*

1984 Edition

18–53.303–DOC–ITA–999–(A)

FORMS

12. a. Supplier's name and complete address *(Street, City, State and Zip code)*

b. Contact's name _____

c. Telephone number _____ (Include Area Code)

d. Supplier's shop order number

e. If Supplier is an agent or distributor, give producer's name and address. *(Provide name and telephone number, including Area Code, of person to contact and supplier's purchase order number, if known.)*

13. Original Shipment Schedule of material or item(s) shown in 10 - Supplier to Applicant

a. Applicant's Original Shipment Requirement	Month Year							
	No. of units							Total units
b. Supplier's Original Shipment Promise	Month Year							
	No. of units							Total units

Current Shipment Schedule of materials or item(s) shown in 10 - Supplier to Applicant

c. Shipment(s) Now Required by Applicant	Month Year							
	No. of units							Total units
d. Supplier's Present Shipment Promise	Month Year							
	No. of units							Total units

USE CONTINUATION BLOCK OR SEPARATE SHEET, IF NECESSARY, FOR ANSWERS TO 14, 15 AND 16 BELOW

14. Reasons given by Supplier for inability to meet Applicant's required shipment date(s), including interfering rated orders or programs, if known.

15. List at least two other Suppliers contacted. *(If none contacted, explain why)*

Date (a)	Name and complete address (b)	Best quoted shipment date(s) and other pertinent data (c)

16. Explain fully the overall situation regarding delivery commitment for item in (10) and effect of delay (i.e., production stoppage, delayed ship sailing, etc. in receipt of a item in (11). Give specific reasons to justify the rendering of assistance by the Government. Describe attempts to resolve delivery problems.

17.

a. Is quantity shown in 10(a) entire amount on purchase order listed in 11(a)? ☐ Yes ☐ No

b. Is the same material also on order from another supplier? *(If "Yes," explain)* ☐ Yes ☐ No

_____

c. Does the Applicant have an inventory of the material shown in 10? ☐ Yes ☐ No

d. If answer to (c) above is yes, state number of days of production the inventory will support. _____

e. State minimum leadtime *(Number of days the material in 10 must be received before Applicant can ship to Customer).* _____

CERTIFICATION - The undersigned Applicant and the official executing this certification on its behalf, hereby certify that the information contained in items (2) to (17) inclusive of this form, as supplemented by any information attached hereto and similarly signed, is correct and complete to the best of their knowledge and belief.

_____ _____

Name of applicant | Signature and typed name of authorized official

_____ _____

Date | Title

The U.S. Code, Title 18 (Crimes and Criminal Procedure), Section 1001, makes it a criminal offense to make a wilfully false statement or representation to any department or agency of the United States as to any matter within its jurisdiction. The individual company information reported on this form is for use in defense mobilization activities. The unauthorized publication or disclosure of individual company information by Government personnel is prohibited by law, and such personnel having access thereto are subject to fine and imprisonment for unauthorized disclosure.

USCOMM-DC 16537-P71

NASA/FAR SUPPLEMENT

18–53.303–DOC–ITA–999–(B) 1984 Edition

FORMS

FOR USE OF GOVERNMENT DEPARTMENT OR AGENCY ENDORSING THIS REQUEST (FIELD)		
18. a. Actions taken to attempt resolution of applicant's problem	By whom	Date
b. Estimate of realistic shipment date		
c. Coordination or other action taken	By whom	Date

FOR USE OF GOVERNMENT DEPARTMENT OR AGENCY SPONSORING THIS REQUEST (HEADQUARTERS ONLY)		
19. a. Name of Sponsor	b. Sponsor's Address	
c. Sponsor's Case Reference No.	d. Name of person handling case in Sponsor's office	Telephone No.
e. Sponsor's program or service to be benefited by Applicant's product or service (Item (7) on first page)	f. Recommendation	
g. Statement of urgency of particular program or service and Applicant's part in it. Also, extent to which failure to obtain requested assistance will adversely affect the program or service.		
h.		

(Signature of sponsor's authorized official) Title

(Type name of authorized official) Date

INSTRUCTIONS FOR FILING FORM ITA-999

Requests for Special Priorities Assistance may be filed:

A. When the regular procedures of the Defense Materials System and Defense Priorities System will not obtain delivery of materials[1] in time to meet required delivery schedules in support of authorized national defense programs,[2] and

If the applicant is a sub-contractor, he should contact his customer to ascertain the appropriate Claimant Agency. In the event the Claimant Agency cannot be determined, the application may be filed with the **Priorities and Allocations Division, Room 4104, Industry and Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.**

1984 Edition

18–53.303–DOC–ITA–999–(C)

FORMS

B. to request assistance in placing rated or authorized controlled materials (ACM) orders.

Requests for assistance must establish:

A. the urgent defense related need for the products, materials or services covered by the associated mandatory acceptance order,

B. that the applicant has exercised reasonable effort to resolve the problem through employment of his own resources.

C. that the request for assistance is timely.

Applicants are required to demonstrate that reasonable efforts have been made to locate at least two alternative sources of supply prior to requesting special priorities assistance on Form ITA-999.

WHERE TO FILE – Each ITA-999 must be sponsored by a Claimant Agency.[1] Complete forms should be filed with the Government agency having jurisdiction over the contract.

Department of Defense – File with local Defense Contract Administration Services Office or plant representative.

Department of Energy (DOE) – File with appropriate Field Office.

General Services Administration – File with the contracting officer in the Regional Office or the Headquarters Office in Washington, D.C., whichever issued the contract.

COPIES TO BE FILED – The applicant should file an original and five (5) copies of this form with the appropriate Claimant Agency.

APPLICATIONS FOR PRIORITY RATING TO OBTAIN CAPITAL/PRODUCTION EQUIPMENT – Prime and subcontractor applications for a priority rating to obtain capital/production equipment for the performance of a rated order or contract for a Department of Defense Form DD-691, "Application for Rating for Production Equipment," in accordance with the instructions on that form. DOE contractors do not use Form DD-691 – contact appropriate DOE Field Office.

SPECIAL INSTRUCTIONS

If the space in any block is insufficient for a clear and complete statement of the information called for, use the "**continuation**" space provided or a separate sheet or letter with a copy attached to each copy of the form. Identify each such statement with the block number concerned.

Entries in block 10 must be restricted to those appearing on a single purchase order of the applicant, except in those instances where "special priorities assistance" is requested for additional purchase orders that have been placed with the same supplier for the same material or item in which case such purchase orders may be combined on one application; however, each purchase order number must be identified and the quantities and rating on each purchase order must be shown separately.

If disclosure of the use to which the particular customers will put applicant's product is prohibited by security regulations, give a general description in block 10 and enter "classified."

[1] "Material" is defined in DPS Reg. 1 as any raw, in process, or manufactured commodity, equipment, component, accessory, part, assembly, or product of any kind.

[2] "National defense programs" mean programs for military and atomic energy production and construction, and military assistance to any friendly foreign nation and directly related activities.

[3] "Claimant Agency" means the Department of Defense, the Department of Energy, Industry and Trade Administration, or other Government agencies or subdivisions thereof which may be designated as such by the Federal Preparedness Agency. DMS Reg. 1, Schedule II, lists the Claimant Agencies which have been authorized.

"Person" means any individual, corporation, partnership, association, or any organized group of persons, and includes any agency of the United States Government or any friendly foreign government.

CONTINUATION

(Identify each statement with the block number concerned)

FORM ITA-999 (FORMERLY DIB-999) (REV. 4-78) **Please sign certification on face of form** USCOMM-DC 56987-P78

NASA/FAR SUPPLEMENT

18-53.303-DD-250 1984 Edition

FORMS

MATERIAL INSPECTION AND RECEIVING REPORT	1. PROC. INSTRUMENT IDEN (CONTRACT)	(ORDER) NO.	6. INVOICE NO. DATE	7. PAGE OF	8. ACCEPTANCE POINT
2. SHIPMENT NO.	3. DATE SHIPPED	4. B/L TCN	5. DISCOUNT TERMS		
9. PRIME CONTRACTOR CODE		10. ADMINISTERED BY CODE			
11. SHIPPED FROM (If other than 9)	FOB:	12. PAYMENT WILL BE MADE BY CODE			
13. SHIPPED TO CODE		14. MARKED FOR CODE			

15. ITEM NO.	16. STOCK/PART NO. DESCRIPTION (Indicate number of shipping containers-type of container-container number.)	17. QUANTITY SHIP'D/REC'D*	18. UNIT	19. UNIT PRICE	20. AMOUNT

21. PROCUREMENT QUALITY ASSURANCE		22. RECEIVER'S USE
A. ORIGIN ☐ POA ☐ ACCEPTANCE of listed items has been made by me or under my supervision and they conform to contract except as noted herein or on supporting documents. DATE / SIGNATURE OF AUTH. GOVT. REP. TYPED NAME AND OFFICE	B. DESTINATION ☐ POA ☐ ACCEPTANCE of listed items has been made by me or under my supervision and they conform to contract, except as noted herein or on supporting documents. DATE / SIGNATURE OF AUTH. GOVT. REP TYPED NAME AND TITLE	Quantities shown in column 17 were received in apparent good condition except as noted. DATE RECEIVED / SIGNATURE OF AUTH. GOVT. REP TYPED NAME AND OFFICE *If quantity received by the Government is the same as quantity shipped, indicate by (✓) mark, if different, enter actual quantity received below quantity shipped and encircle.

23. CONTRACTOR USE ONLY

REPLACES EDITION OF 1 AUG 67 WHICH MAY BE USED

DD FORM 1 NOV 68 250

1984 Edition 18–53.303–DD–250C

FORMS

MATERIAL INSPECTION AND RECEIVING REPORT - *CONTINUATION SHEET*				PAGE	OF
SHIPMENT NO.	DATE SHIPPED	PROC. INSTRUMENT IDEN. (CONTRACT)	ORDERING	INVOICE NO.	

ITEM NO.	STOCK/PART NO. DESCRIPTION *(Indicate number of shipping containers - type of container - container number.)*	QUANTITY SHIP/REC'D	UNIT	UNIT PRICE	AMOUNT

DD FORM 1 OCT 66 250c

☆ U.S. GOVERNMENT PRINTING OFFICE: 1975 — 590-537

NASA/FAR SUPPLEMENT

18–53.303–DD–614 1984 Edition

FORMS

MATERIALS REQUIREMENTS STEEL AND NICKEL ALLOYS	REPORTING AGENCY	PROCUREMENT (Claimant) PROGRAM	REPORT CONTROL SYMBOL
		JOB NUMBER	DATE

DD CODE a	ITEM DESCRIPTION[1] b	TOTAL FOR QUARTERS c	QUARTER C.Y. d	QUARTER C.Y. e	QUARTER C.Y. f	QUARTER C.Y. g
		(Short Tons)	(Short Tons)	(Short Tons)	(Short Tons)	(Short Tons)
1200	*CARBON STEEL (Incl Wr. Iron) TOTAL*					
1211	CASTINGS					
1212	INGOTS, BILLETS, ETC. *(Excl. 1215)*					
1215	BILLETS, STOCK FOR SHELL BODIES					
1221	BARS, COLD FINISHED					
1222	BARS, HOT ROLLED *(Excl. 1223 + 1225)*					
1223	BARS, REINFORCING					
1228	BARS, STOCK FOR SHELL BODIES					
1231	STRUCTURAL SHAPES					
1232	PILING					
1240	PIPE & TUBING, INCL. THRD. CPLGS.					
1251	PLATES					
1252	SHEET AND STRIP *(Excl. 1261)*					
1261	SHEET, GALVANIZED					
1262	TIN, TERNE, TIN MILL BLACK PLATE					
1270	RAILS AND TRACK ACCESSORIES					
1280	WHEELS, TIRES AND AXLES					
1290	WIRE RODS, WIRE AND WIRE PROD.					
1300	*ALLOY STEEL (Excl. 1000 & 1400) TOTAL*					
1311	CASTINGS *(Excluding armor)*					
1312	INGOTS, BILLETS, ETC.					
1314	CASTINGS, ARMOR					
1321	BARS, COLD FINISHED					
1322	BARS, HOT ROLLED					
1331	STRUCTURAL SHAPES					
1340	PIPE & TUBING, INCL. THRD. CPLGS.					
1351	PLATES *(Excluding 1355)*					
1352	SHEET AND STRIP					
1355	PLATES, ROLLED ARMOR					
1370	TRACK ACCESSORIES					
1380	WHEELS, TIRES AND AXLES					
1390	WIRE RODS, WIRE AND WIRE PROD.					
		(M Pounds)	(M Pounds)	(M Pounds)	(M Pounds)	(M Pounds)
1000	*STAINLESS STEEL - NON-NICKEL BEARING - TOTAL*					
1400	*STAINLESS STEEL - NICKEL BEARING - TOTAL*					
0600	*NICKEL ALLOYS - TOTAL*					
0601	5% THRU 29.9% NICKEL CONTENT					
0602	30% THRU 49.9% NICKEL CONTENT					
0603	50% THRU 100% NICKEL CONTENT					

[1] Detailed item definitions are given in the "Coded List of Materials", 1 Aug 1956, issued pursuant to DOD Instruction 4210.1

DD FORM 1 JUN 57 614 PREVIOUS EDITIONS ARE OBSOLETE. GPO 1957 O—437877

1984 Edition

18-53.303-DD-614-1

FORMS

MATERIALS REQUIREMENTS COPPER AND ALUMINUM	REPORTING AGENCY	PROCUREMENT (Claimant) PROGRAM	REPORT CONTROL SYMBOL
			JOB NUMBER / DATE

DD CODE a	ITEM DESCRIPTION[1] b	TOTAL FOR QUARTERS c	QUARTER C.Y. d	QUARTER C.Y. e	QUARTER C.Y. f	QUARTER C.Y. g
		(M Pounds)	(M Pounds)	(M Pounds)	(M Pounds)	(M Pounds)
1510	*BRASS MILL COPPER BASE ALLOY PRODUCTS - TOTAL*					
1511	PLATE, SHEET AND STRIP *(Except 1514)*					
1512	RODS, BARS AND WIRE					
1513	TUBE AND PIPE					
1514	AMMO CUPS AND DISCS					
1520	*BRASS MILL UNALLOYED COPPER PRODUCTS - TOTAL*					
1521	PLATE, SHEET AND STRIP					
1522	RODS, BARS AND WIRE					
1523	TUBE AND PIPE					
1510 + 1520	*BRASS MILL PRODUCTS - TOTAL (Sum Lines 1510 and 1520)*					
1530	*WIRE MILL PROD (Cu Content)*					
1540	*FOUNDRY PRODUCTS*					
1600	*POWDER - TOTAL*					
1601	POWDER, COPPER, UNALLOYED					
1602	POWDER, COPPER BASE ALLOYS					
1600	*ALUMINUM - TOTAL*					
1610	RODS AND BARS, PORCELAIN COATED					
1611	RODS AND BARS, ROLLED *(Excl. 1630 & 1612 & Excl. stock for 1630, 1630 & 1661)*					
1612	RODS AND BARS, ROLLED, FORGING AND IMPACT EXTRUSION STOCK					
1620	WIRE AND CABLE *(Excl. 1630)*					
1630	RIVETS AND RIVET WIRE					
1651	SAND CASTINGS					
1652	MOLD CASTINGS					
1653	DIE CASTINGS					
1654	OTHER CASTINGS					
1661	SHAPES, ROLLED STRUCTURAL					
1663	SHAPES, EXTRUDED *(Excl. 1663 & 1664)*					
1668	SHAPES, EXTRUDED FORGING STOCK					
1664	SHAPES, EXTRUDED, PORCELAIN COATED					
1670	SHEET, STRIP & PLATE *(Excl. 1671 & stock for 1693)*					
1671	SHEET, STRIP & PLATE PORCELAIN COATED					
1680	TUBING					
1691	POWDER					
1692	INGOT					
1693	FOIL *(.005" and thinner)*					

[1] Detailed item definitions are given in the "Coded List of Materials", 1 Aug 1954, issued pursuant to DOD Instruction 4210.1

DD FORM 1 JUN 67 614-1 PREVIOUS EDITIONS ARE OBSOLETE. GPO 876-519

NASA/FAR SUPPLEMENT

18-53.303-DD-1342 1984 Edition

FORMS

DOD PROPERTY RECORD | 1. [ ] ACTIVE [ ] INITIAL [ ] IDLE [ ] CHANGE | 2. JULIAN DATE | 3. I.D./GOVERNMENT TAG NO. | Form Approved OMB No. 0704-0029

SECTION I - INVENTORY RECORD

4. COMMODITY CODE	5. STOCK NUMBER	6. ACQUISITION COST	7. TYPE CODE	8. YR OF MFG	9. POWER CODE	10. STATUS CODE	11. SVC CODE	12. COMMAND CODE	13. ADM OFFICE CODE

14. NAME OF MANUFACTURER	15. MFR'S CODE	16. MANUFACTURER'S MODEL NO.	17. MANUFACTURER'S SERIAL NO.

18. LENGTH	19. WIDTH	20. HEIGHT	21. WEIGHT	22. CERTIFICATE OF NON-AVAILABILITY NUMBER	23. PEP NO.	24. ARD	25. CONTRACT NUMBER

26. DESCRIPTION AND CAPACITY

CONTINUED ON REVERSE SIDE [ ] YES [ ] NO

27. ELECTRICAL CHARACTERISTICS

QUANTITY	HORSEPOWER	VOLTS	PHASE	CYCLE	AC	DC	SPEED	TYPE AND FRAME NUMBER

28. PRESENT LOCATION

28a. DIREC CONTROL NO.

29. POSSESSOR CODE

SECTION II - INSPECTION RECORD

	YES	NO		YES	NO
30. CAN ITEM BE STORED AND MAINTAINED ON SITE FOR AT LEAST 12 MONTHS?			42. MUST ITEM BE REPAIRED/REBUILT/OVERHAULED TO PERFORM ALL FUNCTIONS? $		
31. HAS ITEM BEEN REBUILT/OVERHAULED? DATE IF SO, WHEN?			43. DO QC RECORDS INDICATE SATISFACTORY PERFORMANCE? IF NO, EXPLAIN UNDER REMARKS BELOW.		
32. HAS ITEM BEEN MODIFIED FROM ORIGINAL CONFIGURATION? IF SO, EXPLAIN UNDER REMARKS BELOW.			44. ARE MANUALLY OPERATED MECHANISMS IN WORKING ORDER? IF NO, DESCRIBE UNDER REMARKS BELOW.		
33. WAS ITEM INSPECTED UNDER POWER? IF NOT EXPLAIN UNDER REMARKS BELOW.			45. ARE SCALES, DIALS, AND GAUGES WORKING AND READABLE? IF NO, DESCRIBE UNDER REMARKS BELOW.		
34. ARE MAINTENANCE COSTS NORMAL? IF NOT, EXPLAIN UNDER REMARKS BELOW.			46. ARE HYDRAULIC PUMPS, VALVES, AND FITTINGS OPERATING PROPERLY? IF NO, DESCRIBE UNDER REMARKS BELOW.		
35. ARE SAFETY DEVICES ADEQUATE AND SATISFACTORY? IF NOT, EXPLAIN UNDER REMARKS BELOW.			47. ARE ELECTRONIC SYSTEMS AND CONTROLS OPERATING PROPERLY? IF NO, DESCRIBE UNDER REMARKS BELOW.		
36. ARE INSTALLATION INSTRUCTIONS AVAILABLE FOR TRANSFER?			48. HOW MANY HOURS WAS ITEM USED BY CURRENT POSSESSOR?		
37. ARE OPERATING INSTRUCTIONS AVAILABLE FOR TRANSFER?			49. EXPLAIN UNDER REMARKS LAST USE OF EQUIPMENT DESCRIBED IN ITEM 26 ABOVE.		
38. WAS ITEM LAST USED ON A FINISHING OPERATION?			50. ESTIMATED COST FOR PACKING, CRATING, HANDLING. $		
39. WILL ADJUSTMENTS OR CALIBRATION CORRECT DEFICIENCIES?			51. INDICATE DATE ITEM WILL BE AVAILABLE FOR REDISTRIBUTION.		
40. IS ITEM SEVERABLE WITHOUT DAMAGE TO COMPONENTS? IF NOT, GIVE THEIR REPLACEMENT COST. $			52. CONDITION CODE.		
41. IS ITEM IN OPERABLE CONDITION?			53. OPERATING TEST CODE.		

SECTION III - REMARKS

54. REMARKS

REMARKS CONTINUED ON REVERSE SIDE [ ] YES [ ] NO

SECTION IV - DISPOSITION RECORD

55. CONSIGNEE (NAME AND ADDRESS, INCLUDING ZIP CODE)	56. TYPE OF DISPOSITION	56a. DATE OF DISPOSITION AND PROCEEDS IF SOLD
	[ ] DONATION [ ] DESTRUCTION [ ] SALE [ ] ABANDONMENT	

SECTION V - VALIDATION RECORD

57. VALIDATION (TYPED NAME(S) AND SIGNATURE(S))

DD FORM 1 MAY 78 1342 PREVIOUS EDITION IS OBSOLETE IN THE USAF

1984 Edition 18–53.303–DD–1342–(A)

FORMS

☐ ACTIVE ☐ INITIAL ☐ IDLE ☐ CHANGE | JULIAN DATE | I. D./GOVERNMENT TAG NUMBER

SECTION VI - NUMERICALLY CONTROLLED MACHINE DATA

58. CONTROL MFR | 59. MODEL | 60. SERIAL NO. | 61. MFG DATE

62. CONTROL DESIGN
☐ I.C. ☐ CNC ☐ STORED PROGRAM ☐ EDIT ☐ SOLID STATE ☐ VACUUM TUBE ☐ OTHER:

63. TYPE NUMERICAL CONTROL SYSTEM
☐ POSITIONING ☐ CONTOURING ☐ CONTOURING/POSITIONING

64. DIRECT NC ☐ NO ☐ YES (IF YES, "X" FOLLOWING ITEM(S))
☐ READER BY-PASS ☐ MGT DATA ☐ DEDICATED COMPUTER

65. AXES NAMED PER RS-267 FIGURE

66. EIA FORMAT DETAIL

67. EIA FORMAT CLASSIFICATION SHORTHAND | 68. ROTARY MOTIONS UNDER NC (NAME AND IDENTIFY) | 69. SPECIFY AXES UNDER POSITIONING CONTROL | 70. SPECIFY AXES UNDER CONTOURING CONTROL

71. AXES MAXIMUM TRAVEL (ENTER AXES, X, Y, Z, ETC. AND SPECIFY INCHES OR MM)

72. POSITIONING RATE, MAX

73. FEED RANGE
ROTARY, RPM | LINEAR, IPM | LINEAR, I

74. SPINDLE DATA → | A. NO. OF SPINDLES | B. NO OF SPDL MOTORS | C. HP/SPDL MOTOR | D. TAPER | E. SPEED RANGE | F. NO. OF INCREMENTS | G. TAPE CONTROL ☐ YES ☐ NO

75. EIA ASSIGNED "G" FUNCTION CODES (IDENTIFY FUNCTIONS IN REMARKS THAT ARE NOT EIA ASSIGNED)

76. EIA ASSIGNED "M" FUNCTION CODES (IDENTIFY FUNCTIONS IN REMARKS THAT ARE NOT EIA ASSIGNED)

77. INPUT DATA →
A. STANDARD ☐ RS-273 ☐ RS-274 ☐ RS-328
B. FORMAT ☐ 1 WORD ADD ☐ TAB SEQ ☐ FIXED SEQ ☐ BLOCK DATA
C. CODE ☐ RS-244 ☐ RS-358 ☐ BINARY
D. DIMENSIONAL INPUT ☐ INCH ☐ METRIC ☐ BOTH

78. TOOL CHANGE DATA →
A. NO. OF TURRETS | B. NO. STATIONS EA | C. AUTOMATIC CHANGER ☐ YES ☐ NO | D. NO. OF TOOLS | E. SELECTION ☐ SEQUENTIAL ☐ RANDOM | F. MAX. TOOL DIA. | G. TOOL LENGTH | H. MAX. TOOL WT. | I. TOOL CODING METHOD

79. ROTARY TABLE DATA →
A. INDEXING ☐ MANUAL ☐ NC | B. NO. OF STOPS | C. POSITIONING, NC ☐ YES ☐ NO | D. NO. OF POSITIONS | E. CONTOURING, NC ☐ YES ☐ NO | F. FEED RANGE, RPM

80. NO. OF READERS | 81. READER TYPE ☐ MECH ☐ PHOTO ☐ OTHER: | 82. READER SPEED | 83. INTERPOLATION ☐ PARABOLIC ☐ LINEAR ☐ CIRCULAR ☐ NONE | 84. BUFFER STORAGE ☐ YES ☐ NO | 85. THREADCUTTING MAX. LEAD.

86. CUTTER DIA. COMPENSATIONS: NUMBER OF | MAX. AMOUNT
87. TOOL OFFSETS: NO. OF TOOL OFFSETS | MAX. AMOUNT
88. READOUTS ☐ SEQ. NO. ☐ POSITION ☐ COMMAND DATA ☐ OTHER:

89. FEEDBACK DEVICE ☐ ANALOG ☐ NONE ☐ DIGITAL | 90. MIN. PROGRAMMABLE INCREMENT | 91. MOTOR DRIVE ☐ STEPPING ☐ DC ☐ HYDRAULIC | 92. POST PROCESSOR (NAME)

93. DEVELOPED BY (NAME) | 94. COMPUTER LANGUAGE USED | 95. PART PROGRAM LANGUAGE | 96. APPLICABLE COMPUTER (NAME, MODEL & MIN CORE STORAGE)

97. REQUIRED MANUALS (TITLE AND MANUAL EDITION)

98. REMARKS (FEATURES NOT COVERED ABOVE, FUNCTIONS NOT EIA ASSIGNED, ETC.)

REMARKS CONTINUED ON REVERSE SIDE ☐ YES ☐ NO

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FORMS

DOD INDUSTRIAL PLANT EQUIPMENT REQUISITION	REQUISITION NUMBER	Form Approved O.M.B. No. 0704-0032

SECTION I - ITEM DESCRIPTION

1. COMMODITY CODE	2. MANUFACTURER			2a. MODEL NUMBER
3. STOCK NUMBER	4. POWER CODE	5. ESTIMATED COST	6. PHYSICAL INSPECTION REQUIRED ☐ YES ☐ NO	7. PROCUREMENT SPECIFICATION ATTACHED ☐ YES ☐ NO

8. DESCRIPTION

CONTINUED UNDER REMARKS SECTION ☐ YES ☐ NO

SECTION II - REQUIRING AGENCY/FACILITY CONTRACTOR

9. NAME AND ADDRESS (Include ZIP Code)	10. CONTRACT NUMBER	10a. DATE	11. COMMAND CODE
	12. PROGRAM ☐ MILITARY ☐ CONTRACTOR		

13. INTENDED USE	14. DATE ITEM REQUIRED AT DESTINATION	15. DATE CERT N. A REQUIRED	16. PRIORITY

17. BASIS FOR AUTHORIZATION ("X" applicable box) ☐ PRODUCTION ☐ MOBILIZATION ☐ REPLACEMENT	18. PROCUREMENT PLANNED ☐ YES ☐ NO If "YES", cite Appropriation:	19. REBUILD OVERHAUL CANDIDATE ☐ YES

20. TYPED NAME AND TITLE OF REQUESTING OFFICIAL	21. SIGNATURE OF REQUESTING OFFICIAL	22. DATE

23. CERTIFICATION OF NEED BY ADMINISTERING ACTIVITY	a. ADMINISTERING OFFICE CODE	
b. NAME AND ADDRESS (Include ZIP Code)	c. TYPED NAME AND SIGNATURE OF PRODUCTION REPRESENTATIVE	d. DATE
	e. SIGNATURE OF ADMIN. CONTRACTING OFFICER	f. DATE

SECTION III - APPROVAL AUTHORITY

24. NAME AND ADDRESS (Include ZIP Code)	25. TITLE, SYMBOL AND TELEPHONE NO. OF APPROVING OFFICIAL	
	26. TYPED NAME & SIGNATURE OF APPROVING OFFICIAL	27. DATE

SECTION IV - ALLOCATION AND AUTHORITY TO INSPECT *(TO BE COMPLETED BY DIPEC)*

28. COMMODITY CODE	29. I.D./GOVERNMENT TAG NUMBER	30. DESCRIPTION (See attached copy of DD Form 1342, dated:
31. PRESENT LOCATION (Name, address and ZIP Code)	32. SHIPPED TO	

33. ESTIMATED TIME REQUIRED FOR SHIPMENT FROM DATE OF ACCEPTANCE *(Enter number of days)*

a. AS IS CONDITION	b. TEST REQUIRED	c. REPAIR REQUIRED	d. REPAIR OVERHAUL REQUIRED	e. STANDARD ATTACHMENTS REQUIRED

34. TYPED NAME AND SIGNATURE OF ALLOCATING OFFICIAL	35. DATE	36. DATE OFFER EXPIRES

SECTION V - NON-AVAILABILITY CERTIFICATE *(TO BE COMPLETED BY DIPEC)*

37. The item described in Section I of this form has been screened by DIPEC against the idle inventory of the Department of Defense and it is hereby certified as not available or cannot be delivered on or before the date specified in Section II (item 14). Procurement action resulting from this Certification of Non-Availability must be initiated within 45 calendar days of the date included in this Section (item 40) or complete rescreening is required. Equipment offered by DIPEC in Section IV must be considered if the supplier cannot deliver new equipment before expiration of the period specified in Section IV (item 33).

38. TYPED NAME AND SIGNATURE OF CERTIFYING OFFICIAL	39. DATE CERTIFICATE ISSUED	40. DATE CERTIFICATE EXPIRES	41. CERTIFICATE NUMBER

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CFR TITLE 48 CHAPTER 18

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FORMS

SECTION VI - CERTIFICATION OF ACCEPTANCE

42. THE ITEM ALLOCATED IN SECTION IV OF THIS FORM

☐ HAS BEEN PHYSICALLY INSPECTED AND IS ACCEPTABLE. ☐ IS ACCEPTABLE WITHOUT PHYSICAL INSPECTION

ITEM IS ACCEPTED UNDER ONE OF THESE CONDITIONS: a. ☐ AS IS CONDITION b. ☐ REPAIR REQUIRED

c. ☐ TEST REQUIRED d. ☐ REBUILD OVERHAUL REQUIRED e ☐ OTHER

☐ IS NOT ACCEPTABLE (A complete description of conditions making item unacceptable must be stated under REMARKS below)

43. TYPED NAME AND TITLE OF CERTIFYING OFFICIAL	44. SIGNATURE OF CERTIFYING OFFICIAL	45. DATE

SECTION VII - SPECIAL SHIPPING INSTRUCTIONS

46. SHIP TO (Include ZIP Code)	47. FOR TRANSSHIPMENT TO:

48. MARK FOR:

49. APPROPRIATION CHARGEABLE FOR		d. PAYING OFFICE/ACTIVITY NAME AND ADDRESS (Include ZIP Code)
a. PACKING/CRATING/HANDLING		
b. TRANSPORTATION		
c. OTHER		

50. SPECIAL DISTRIBUTION OF SHIPPING DOCUMENTS AND OTHER INSTRUCTIONS

SECTION VIII - REMARKS

51. REMARKS

GPO 865-789

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FORMS

CONTRACT ADMINISTRATION COMPLETION RECORD	1. SUSPENSE DATE
2. FROM:	3. CONTRACT NUMBER AS AMENDED BY MODIFICATIONS NUMBERED THROUGH _____
4. TO: *(Organizational element performing function checked below)*	5. NAME OF CONTRACTOR

The contract identified above has been physically completed *(i.e., all required deliveries or shipments have been made and/or services performed or terminated)*.

Request column 6c or 6d and 6e and 6f be completed with regard to the function checked in column 6a and this form returned by the suspense date indicated in item 1. If only an anticipated date of completion of required actions can be given by the suspense date, a subsequent advice of final action is requested.

If contract being closed is classified, send signed copy of this form marked "INFORMATION COPY" to cognizant Industrial Security Office.

6. STATUS OF ACTION(S)

"X" a	FUNCTION b	"X" IF REQUIRED ACTION(S) COMPLETED c	ANTICIPATED DATE FOR COMPLETION OF ACTION(S) d	SIGNATURE e	DATE f
	PROPERTY ADMINISTRATION				
	PLANT CLEARANCE				
	CONTRACT TERMINATION				
	OTHER *(Specify)*				

7. REMARKS

8. TYPED NAME OF RESPONSIBLE OFFICIAL	9. SIGNATURE	10. DATE

DD FORM 1 APR 69 1593

EDITION OF FEB 67 MAY BE USED UNTIL EXHAUSTED

1984 Edition 18–53.303–DOE–EV 375

FORMS

DOE Form EV-375 (4-78) 10 CFR 39

U.S. DEPARTMENT OF ENERGY

ISOTOPE ORDER BLANK

FOR USE BY FEDERAL AGENCIES ONLY—SUBMIT IN DUPLICATE

1. FROM: Name and address of requisitioning agency	2. Requisitioning Agency Order No.:
	3. Date

4. SHIP TO:	5. BILL TO:
6. VIA: 7. G/BL No.:	

8. TO: Insert name of the DOE facility from which materials or services will be obtained.

9. The undersigned certifies that he (it) is authorized by

☐ (a) UNITED STATES NUCLEAR REGULATORY COMMISSION License No. _____ or

☐ (b) Exemption or General License provided by NRC regulations to receive the following described byproduct material:

NOTICE: Disregard Item 9 if order is for stable isotopes, technical service not inducing radioactivity, or for cyclotron-produced radioisotopes.

MATERIAL OR SERVICE

10. Catalog Item No. (If any)		Purchase Price	Rental Fee
	BYPRODUCT MATERIAL OR OTHER RADIOISOTOPE: State isotope, chemical form, desired total activity, specific activity.		
	TECHNICAL SERVICE State desired service.		
	STABLE ISOTOPE: State isotope, chemical form, quantity, isotopic concentration (specifying desired enrichment, minimum enrichment).		
	(Use continuation sheet if required)		
	SHIPPING SCHEDULE		
	TECHNICAL SERVICE CHARGE (if any)		
	HANDLING CHARGE (if any)		
	TOTAL		

THIS ORDER IS SUBJECT TO THE TERMS AND CONDITIONS ON REVERSE SIDE

ACCEPTED FOR THE U.S. DEPARTMENT OF ENERGY

By _____

DATE _____

REQUISITIONING AGENCY

_____

By _____

Title _____

DATE _____

NASA/FAR SUPPLEMENT

18-53.303-DOE-EV 375-(A) 1984 Edition

FORMS

TERMS AND CONDITIONS

1. This order is placed in accordance with and subject to the Code of Federal Regulations, Title 10, Atomic Energy, Part 30, issued under Authority of the Atomic Energy Act of 1954, as amended.

2. Byproduct material, technical services or other isotopic materials (other than source and special nuclear material) are furnished at prices and service fees as fixed by the U.S. Department of Energy and in effect on the date of shipment of material or performance of the services. Prices in catalogs issued by the Department or the operator of any DOE facility are subject to change without notice. All transportation costs will be paid by the requisitioning agency, and materials will be shipped F.O.B. the DOE facility handling the transaction. When shipment of material pursuant to this order requires the use of returnable Government-owned containers, title to such containers shall remain in the Government. The buyer will keep the containers in good condition, will not use them for any materials other than the materials shipped therein, and will *deliver* them *to a carrier for return* to the point of shipment, transportation prepaid, within thirty days from the date of receipt *by the buyer* of the shipment. *The buyer agrees to pay to the Department a demurrage charge on each returnable Government-owned container for that period of retention which is in excess of the said 30-day period.*

3. The right to revoke or cancel this order is reserved to DOE.

4. Material ordered from a DOE facility will be shipped as nearly approximating the activity specified in the order as is possible, but no representation is made that radioisotopes will be of a particular quality, quantity, or activity, or will be delivered at specified times. The requisitioning agency agrees to report promptly any discrepancies between the material supplied and that ordered so that replacement or other appropriate adjustment may be made.

5. Payment will be made direct to the operator of the DOE facility from which the materials or services are obtained.

INSTRUCTIONS

1. This isotope order blank has been prepared for use by all Federal agencies ordering byproduct material, technical services, or other isotopic materials (other than source and special nuclear material) from DOE or DOE facilities owned by the U.S. Department of Energy and operated for DOE by contractors. No other type of order blank, purchase order, or contract will be accepted by DOE or DOE facilities.

2. When submitting this order form the requisitioning agency should furnish a prepared bill of lading on which shipment will be made. If such bill of lading is not furnished, shipment will be made collect on a commercial bill of lading to be converted at destination.

3. The DOE utilizes the services of contractors operating its facilities to perform distribution functions for DOE under cost-type contractual arrangements whereby expenses of the facilities are borne by DOE and revenue from distribution of byproduct materials, special technical services, and other isotopic materials is deposited for the account of the Government, used to reduce costs of operation, or paid over as directed by DOE in accordance with applicable contract provisions.

4. The contractor or DOE office accepting the order for DOE will retain the original and return an accepted copy of the order to the requisitioning agency.

FOR INFORMATION ON HOW TO APPLY FOR A "BYPRODUCT MATERIAL LICENSE," FORM NRC-374, OR TO OBTAIN ADDITIONAL COPIES OF THIS ORDER BLANK WRITE TO:

U.S. NUCLEAR REGULATORY COMMISSION
MATERIALS BRANCH
DIVISION OF MATERIALS AND FUEL CYCLE
FACILITY LICENSING
WASHINGTON, D.C. 20555

CFR TITLE 48 CHAPTER 18

1984 Edition 18–53.303–NRC–313I

FORMS

NRC Form 313 I (12-81) 10 CFR 30 — U.S. NUCLEAR REGULATORY COMMISSION

APPLICATION FOR BYPRODUCT MATERIAL LICENSE
INDUSTRIAL

See attached instructions for details.

Completed applications are filed in duplicate with the Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety, and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555 or applications may be filed in person at the Commission's office at 1717 H Street, NW, Washington, D. C. or 7915 Eastern Avenue, Silver Spring, Maryland.

1. APPLICATION FOR: *(Check and/or complete as appropriate)*
- ☐ a. NEW LICENSE
- ☐ b. AMENDMENT TO: LICENSE NUMBER
- ☐ c. RENEWAL OF: LICENSE NUMBER

2. APPLICANT'S NAME *(Institution, firm, person, etc.)*

TELEPHONE NUMBER: AREA CODE – NUMBER EXTENSION

3. NAME AND TITLE OF PERSON TO BE CONTACTED REGARDING THIS APPLICATION

TELEPHONE NUMBER: AREA CODE – NUMBER EXTENSION

4. APPLICANT'S MAILING ADDRESS *(Include Zip Code)*
(Address to which NRC correspondence, notices, bulletins, etc., should be sent.)

5. STREET ADDRESS WHERE LICENSED MATERIAL WILL BE USED *(Include Zip Code)*

(IF MORE SPACE IS NEEDED FOR ANY ITEM, USE ADDITIONAL PROPERLY KEYED PAGES.)

6. INDIVIDUAL(S) WHO WILL USE OR DIRECTLY SUPERVISE THE USE OF LICENSED MATERIAL
(See Items 16 and 17 for required training and experience of each individual named below)

	FULL NAME	TITLE
a.		
b.		
c.		

7. RADIATION PROTECTION OFFICER — *Attach a resume of person's training and experience as outlined in Items 16 and 17 and describe his responsibilities under Item 15.*

8. LICENSED MATERIAL

LINE NO.	A: ELEMENT AND MASS NUMBER	B: CHEMICAL AND/OR PHYSICAL FORM	C: NAME OF MANUFACTURER AND MODEL NUMBER *(If Sealed Source)*	D: MAXIMUM NUMBER OF MILLICURIES AND/OR SEALED SOURCES AND MAXIMUM ACTIVITY PER SOURCE WHICH WILL BE POSSESSED AT ANY ONE TIME
(1)				
(2)				
(3)				
(4)				

	E: DESCRIBE USE OF LICENSED MATERIAL
(1)	
(2)	
(3)	
(4)	

NRC FORM 313 I (12-81)

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FORMS

9. STORAGE OF SEALED SOURCES			
LINE NO.	CONTAINER AND/OR DEVICE IN WHICH EACH SEALED SOURCE WILL BE STORED OR USED. A.	NAME OF MANUFACTURER B.	MODEL NUMBER C.
(1)			
(2)			
(3)			
(4)			

10. RADIATION DETECTION INSTRUMENTS						
LINE NO.	TYPE OF INSTRUMENT A	MANUFACTURER'S NAME B	MODEL NUMBER C	NUMBER AVAILABLE D	RADIATION DETECTED (alpha, beta, gamma, neutron) E	SENSITIVITY RANGE (milliroentgens/hour or counts/minute) F
(1)						
(2)						
(3)						
(4)						

11. CALIBRATION OF INSTRUMENTS LISTED IN ITEM 10

☐ a. CALIBRATED BY SERVICE COMPANY
NAME, ADDRESS, AND FREQUENCY

☐ b. CALIBRATED BY APPLICANT
Attach a separate sheet describing method, frequency and standards used for calibrating instruments.

12. PERSONNEL MONITORING DEVICES

TYPE (Check and/or complete as appropriate.) A	SUPPLIER (Service Company.) B	EXCHANGE FREQUENCY C
☐ (1) FILM BADGE ☐ (2) THERMOLUMINESCENCE DOSIMETER (TLD) ☐ (3) OTHER (Specify): _____		☐ MONTHLY ☐ QUARTERLY ☐ OTHER (Specify) _____

13. FACILITIES AND EQUIPMENT (Check were appropriate and attach annotated sketch(es) and description(s).

☐ a. LABORATORY FACILITIES, PLANT FACILITIES, FUME HOODS (Include filtration, if any), ETC.
☐ b. STORAGE FACILITIES, CONTAINERS, SPECIAL SHIELDING (fixed and/or temporary), ETC.
☐ c. REMOTE HANDLING TOOLS OR EQUIPMENT, ETC.
☐ d. RESPIRATORY PROTECTIVE EQUIPMENT, ETC.

14. WASTE DISPOSAL

a. NAME OF COMMERCIAL WASTE DISPOSAL SERVICE EMPLOYED

b. IF COMMERCIAL WASTE DISPOSAL SERVICE IS NOT EMPLOYED, SUBMIT A DETAILED DESCRIPTION OF METHODS WHICH WILL BE USED FOR DISPOSING OF RADIOACTIVE WASTES AND ESTIMATES OF THE TYPE AND AMOUNT OF ACTIVITY INVOLVED. IF THE APPLICATION IS FOR SEALED SOURCES AND DEVICES AND THEY WILL BE RETURNED TO THE MANUFACTURER, SO STATE.

NRC FORM 313 I (12-81)

1984 Edition 18–53.303–NRC–313I–(B)

FORMS

INFORMATION REQUIRED FOR ITEMS 15, 16 AND 17
Describe in detail the information required for Items 15, 16 and 17. Begin each item on a separate page and key to the application as follows: 15. RADIATION PROTECTION PROGRAM. Describe the radiation protection program as appropriate for the material to be used including the duties and responsibilities of the Radiation Protection Officer, control measures, bioassay procedures *(if needed)*, day-to-day general safety instruction to be followed, etc. If the application is for sealed source's also submit leak testing procedures, or if leak testing will be performed using a leak test kit, specify manufacturer and model number of the leak test kit. 16. FORMAL TRAINING IN RADIATION SAFETY. Attach a resume for each individual named in Items 6 and 7. Describe individual's formal training in the following areas where applicable. Include the name of person or institution providing the training, duration of training, when training was received, etc. a. Principles and practices of radiation protection. b. Radioactivity measurement standardization and monitoring techniques and instruments. c. Mathematics and calculations basic to the use and measurement of radioactivity. d. Biological effects of radiation. 17. EXPERIENCE. Attach a resume for each individual named in Items 6 and 7. Describe individual's work experience with radiation, including where experience was obtained. Work experience or on-the-job training should be commensurate with the proposed use. Include list of radioisotopes and maximum activity of each used.

18. CERTIFICATE *(This item must be completed by applicant)*	
The applicant and any official executing this certificate on behalf of the applicant named in Item 2, certify that this application is prepared in conformity with Title 10, Code of Federal Regulations, Part 30, and that all information contained herein, including any supplements attached hereto, is true and correct to the best of our knowledge and belief. WARNING.–18 U.S.C., Section 1001; Act of June 25, 1948; 62 Stat. 749; makes it a criminal offense to make a willfully false statement or representation to any department or agency of the United States as to any matter within its jurisdiction.	
a. LICENSE FEE REQUIRED *(See Section 170.31, 10 CFR 170)*	b. CERTIFYING OFFICIAL *(Signature)*
	c. NAME *(Type or print)*
(1) LICENSE FEE CATEGORY:	d. TITLE
(2) LICENSE FEE ENCLOSED: $	e. DATE

NRC FORM 313 I (12-81) GPO 686-424

NASA/FAR SUPPLEMENT

[FR Doc. 84–7536 Filed 3–28–84; 8:45 am]
BILLING CODE 7510–01–C

federal register

Thursday
March 29, 1984

Part III

Veterans Administration

48 CFR Ch. 8

Acquisition Regulation; Interim Final Rule

VETERANS ADMINISTRATION

48 CFR Chapter 8

Acquisition Regulations

AGENCY: Veterans Administration.

ACTION: Interim Final Rule.

SUMMARY: The VA (Veterans Administration) is issuing an interim final regulation pursuant to OFPP (Office of Federal Procurement Policy) Policy Letter 83–2, section 5. This regulation will be effective April 1, 1984, but will not become a final regulation until assessment of all comments submitted by April 30, 1984. This regulation will be known as the VAAR (Veterans Administration Acquisition Regulation) and is codified as Chapter 8 of Title 48 of the Code of Federal Regulations.

The purpose of the VAAR is to implement and supplement the FAR (Federal Acquisition Regulation). The FAR was issued on September 19, 1983, in the **Federal Register** by the General Services Administration, Department of Defense and National Aeronautics and Space Administration. The FAR is a uniform system of acquisition regulations promulgated pursuant to Executive Order 12352, Federal Procurement Reforms.

The FAR becomes effective on April 1, 1984 and will take the place of the Federal Procurement Regulations, Defense Acquisition Regulations and the NASA Procurement Regulations. Consequently the VAPR (Veterans Administration Procurement Regulation) codified as Chapter 8, Title 41, CFR, is superseded by Chapter 8 of Title 48, CFR on April 1, 1984. The VAAR implements the FAR where implementation is necessary, and interprets or supplements the FAR where no FAR provisions provide specific coverage for areas unique to the VA.

DATES: This interim regulation is effective April 1, 1984. Written comments should be submitted not later than April 30, 1984, for consideration in the final regulation.

ADDRESS: Interested persons are invited to submit written comments, suggestions or objections to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection only at the Veterans Administration Central Office in room 132 of the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, (202) 389–2334.

SUPPLEMENTARY INFORMATION:

I. Background

This interim regulation does not generally establish new policy. It primarily transplants the current VAPR into the new format prescribed by the FAR. However new coverage includes the designation of the Agency Procurement Executive in Part 801; new provisions in Part 849 regarding contract termination; and revised negotiation authority for scarce specialist services and mutual use, or exchange of use, of specialized medical resources (38 U.S.C. 4117 and 38 U.S.C. 5053), contained in Part 815.

To the extent that the substance of the present VAPR will be modified, those changes will consist of interpretative rules, general statements of policy or rules of VA organization procedure or practice. For the reasons discussed below, the VA finds that publication for prior public comment is impracticable, unnecessary and contrary to public interest.

Due to the extremely short time allowed for conversion of our acquisition regulation, the new VAAR published herein does not include coverage for a few acquisition subjects now included in the FAR. The VA is currently reviewing topical areas including Acquisition Plans (FAR Subpart 7.1), Contractor Versus Government Performance (FAR Subpart 7.3) and ADP Acquisitions (FAR Part 39) for possible development of additional VAAR regulations. Such development will be promulgated as proposed rules with full public participation.

Under Pub. L. 93–400 all executive agency procurement policies and regulations are subject to those prescribed by the Office of Federal Procurement Policy. Office of Federal Procurement Policy Letter 83–2, "Publicizing the Development of Procurement Policies and Regulations," prescribes the general policy for obtaining views of the public prior to issuing final procurement rules. Paragraph 5. of the Policy Letter provides for waiver of the requirement to solicit views when circumstances make such solicitation impracticable. Since it is necessary to provide VA acquisition regulation coverage consistent with the new FAR system, on the effective date of the FAR (April 1, 1984), this option is being exercised and this VAAR will become effective April 1, 1984, as an interim final rule. It is essential to have the VAAR in place on that date in order to avoid disruption, confusion, and delays in the VA procurement process, in the interest of both the VA and the VA's contractors. The VAAR will not become final until all comments are assessed and any changes warranted have been published in the **Federal Register.** This process is in accordance with OFPP Policy Letter 83–2.

II. Executive Order 12291

Pursuant to the memorandum from David Stockman, Director, Office of Management and Budget, to Donald Sowle, Administrator, Office of Federal Procurement Policy, and Christopher DeMuth, Administrator, Information and Regulatory Affairs, dated December 15, 1983, this interim final rule is exempt from Sections 3, 4, and 5 of the Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Because this interim final rule does not come within the term "rule" as defined in the RFA (54 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change, in itself, will not have a significant economic impact on a substantial number of small entities because the VAAR will consist primarily of a reformating of the content of the present VAPR's. To the extent that the VAAR changes or goes beyond the VAPR's, it does so by implementing and interpreting the FAR. Any economically significant change will result from the FAR, not this implementing VA regulation.

IV. Paperwork Reduction Act

The information collection and recordkeeping requirements that are imposed upon the public under these regulations have been approved by the Office of Management and Budget, in accordance with section 3504(h) of the Paperwork Reduction Act.

Information on and copies of the information collection requirements can be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. Comments and questions about the information collections and recordkeeping requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Dick Eisinger, Desk Officer for the VA, 726 Jackson Place, NW., Washington, D.C. 20503, (202) 395–6880.

List of Subjects in 48 CFR Chapter 8

Government procurement, VA acquisition regulations.

Approved: March 20, 1984.

By direction of the Administrator.
Everett Alvarez, Jr.,
Deputy Administrator.

For the reasons set out in the preamble, Title 48 of the Code of Federal Regulations is amended by establishing Chapter 8 to read as follows:

CHAPTER 8—VETERANS ADMINISTRATION

SUBCHAPTER A—GENERAL

PART 801—VETERANS ADMINISTRATION ACQUISITION REGULATIONS SYSTEM

PART 802—DEFINITIONS OF WORDS AND TERMS

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PART 801—VETERANS ADMINISTRATION ACQUISITION REGULATIONS SYSTEM

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801.000 Scope of part.

This part prescribes general policies and background regarding the Veterans Administration Acquisition Regulations (VAAR). It includes information regarding the maintenance and administration of the VAAR and includes procedures for deviations from the VAAR and the Federal Acquisition Regulations (FAR).

Subpart 801.1—Purpose, Authority, Issuance

801.101 Purpose.

(a) This subpart establishes Chapter 8, Veterans Administration Acquisition Regulations, of Title 48—Federal Acquisition Regulation System, Code of Federal Regulations.

(b) The VAAR must be utilized in conjunction with the FAR. The VAAR cannot be utilized by itself.

801.102 Authority.

The VAAR and any amendments thereto are issued by the Administrator of Veterans Affairs as provided by 38 U.S.C. 210 and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)).

801.103 Applicability.

(a) The FAR and the VAAR apply to all acquisitions of the agency (including construction) made with appropriated funds and procurements made with Supply Fund monies (38 U.S.C. 5021).

(b) The FAR and VAAR will apply to the special procurement programs authorized by Title 38, United States Code (Viz., Veterans Canteen Service and the Loan Guaranty programs), to the extent indicated in the VAAR.

801.103-70 Exclusions.

The FAR and VAAR will not apply to purchases and contracts which utilize General Post Funds when such regulations would infringe upon a donor's prerogative to specify the exact item to be purchased and/or the source of supply.

801.104 Issuance.

801.104-1 Publication and code arrangement.

(a) VA (Veterans Administration) acquisition policies and procedures which directly affect the public will be published in the **Federal Register** as Chapter 8 of Title 48, Code of Federal Regulations. Related material, not affecting the public, may also be published in the **Federal Register** when its inclusion will provide a logical, comprehensive statement of Veterans' Administration acquisition policies and procedures.

801.104-3 Copies.

Cumulative editions of Chapter 8 of Title 48, Code of Federal Regulations are printed annually and may be purchased by the public from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

Subpart 801.2—Administration

801.201 Maintenance of the FAR.

This subpart describes the Veterans Administration's participation in the maintenance of the FAR.

801.201-1 The two councils.

A designee of the Office of Procurement and Supply will represent the Veterans Administration on the CAA (Civilian Agency Acquisition) Council.

801.201-70 Agency Procurement Executive.

The Associate Deputy Administrator for Logistics (005) is the VA Agency Procurement Executive appointed in accordance with Executive Order 12352, dated March 17, 1982. The Agency Procurement Executive is responsible for the development and oversight of agency-wide procurement systems. This responsibility includes overseeing the development of the agency position on proposed FAR policies and the implementing VAAR and the evaluation and monitoring of the agency procurement systems performance.

Subpart 801.3—Agency Acquisition Regulations

801.301 Policy.

(a) VAAR, amendments and interim changes thereto will be issued by the Administrator of Veterans Affairs after necessary reviews by cognizant VA officials.

(b) Implementing procedures, instructions and guidelines necessary to implement the VAAR and the FAR may be issued by the heads of contracting activities. Such issuances may include delegations of authority, review and approval for acquisition action up to the dollar level delegated to that contracting activity by this regulation as well as providing procedural guidance for users. Such issuances will be the minimum necessary to provide a logical implementation of FAR and VAAR requirements and will be internal to the facility, i.e., it will not specify reporting/recordkeeping requirements for the public (see 801.301-70(b)).

801.301-70 Paperwork Reduction Act requirements.

(a) It is the policy of the Government to keep to the minimum the amount of recordkeeping and reporting required of the public. This objective applies to the Veterans Administration acquisition system.

(b)(1) Contractors will not be requested to maintain systems of records unless prescribed in FAR or this VAAR. A deviation to this prohibition may be processed in accordance with § 801.403 in order to allow the contracting officer to require contractor reporting or recordkeeping beyond that prescribed in FAR and VAAR. The request for deviation will clearly specify what information or recordkeeping will be required and why it is required. The request will be signed by the head of the contracting activity.

(2) The Director, Office of Procurement and Supply (91) will review the request and upon concurrence will likewise submit the request to OMB (Office of Management and Budget) for approval as prescribed by the Paperwork Reduction Act of 1980. If approved, the Director, Office of Procurement and Supply will send the approval back to the requester with the OMB clearance number.

(c) In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this VAAR have been approved by OMB and have been given the following approval numbers:

48 CFR part or section where identified and described	Current OMB control number
809.504(d)	2900–0418
836.606–2	2900–0422
852.236–72(b)	2900–0422
852.236–79	2900–0422
852.236–81 through 852.236–85	2900–0422
852.236–88	2900–0422
871.201–2	2900–0416

801.303 Codification and public participation.

The VAAR is codified as Chapter 8 of Title 48, Code of Federal Regulations. Codified changes to the VAAR will be published in the **Federal Register.** The Director, Office of Procurement and Supply, arranges distribution of the issues to VA contracting activities and the Office of Procurement and Supply should be notified of changes to the distribution list.

801.304 Agency control and compliance procedures.

Office of Procurement and Supply is responsible for ensuring that the VAAR and amendments thereto are developed as prescribed by the FAR.

Subpart 801.4—Deviations From the FAR or VAAR

801.403 Individual deviations.

(a) When contracting officers, other than those assigned to the Office of Construction, consider it necessary to deviate from the policies set forth in the FAR or VAAR, a request for authority to do so will be submitted to the Director, Office of Procurement and Supply (91). The request will clearly set forth the circumstances warranting the deviation and the nature of the deviation.

(b) Contracting officers assigned to the Office of Construction will, in individual cases, secure prior authorization from the Director, Office of Construction (08) before any deviation is taken. A copy of each such authorization that is granted will be furnished the Director, Office of Procurement and Supply (91).

(c) When a deviation in an individual case is authorized by either the Director, Office of Procurement and Supply, or the Director, Office of Construction, the authorization will be filed in the purchase or contract file, whichever is appropriate. The Director, Office of Procurement and Supply, will review each deviation authorized and when considered necessary either prepare a change to the VAAR or recommend a change to the FAR through the CAA Council.

801.404 Class deviations.

The Director, Office of Procurement and Supply is responsible for determining the need for class deviations. If determined necessary, the Director, Office of Procurement and Supply will request deviation authority from the Deputy Administrator through the Agency Procurement Executive as well as complying with the provisions in FAR 1.404.

801.470 Rulemaking.

(a) VAAR amendments which implement FAR requirements, OFPP (Office of Federal Procurement Policy) directives and legislation or are related to agency management or personnel, will be issued as "Final Rules" in the **Federal Register** as provided in the Administrative Procedures Act, 5 U.S.C. 553.

(b) VAAR amendments which significantly affect the public and for which the Veterans Administration has discretion (as opposed to amendments required by FAR, OFPP or legislation) will be developed in accordance with the proposed rulemaking procedures of the Administrative Procedures Act. This procedure generally involves issuing a notice of proposed rulemaking in the **Federal Register** inviting public comment. Any comments received will be reviewed and when appropriate will be incorporated in the final rule. The final rule will also be published in the **Federal Register** and will include a discussion of the comments received and their disposition.

Subpart 801.6—Contracting Authority and Responsibilities

801.601 General.

(a) This subpart establishes general contracting officer authority and responsibility. However, other provisions in both the FAR and the VAAR contain some contracting officer limitations and it is incumbent upon each contracting officer to be aware of those limitations.

(b) Personnel, other than those designated in 801.602, may determine quality, quantity and delivery requirements for items or services to be purchased. However, under no circumstances will individuals who have not been delegated contracting authority commit the Government for purchases of supplies, equipment or services. Individuals making such commitments may be held financially liable for the amount of the obligation.

801.602 Contracting officers.

(a) Except as otherwise provided for by law, VA regulations and these acquisition regulations, the authority vested in the Administrator to execute, award, and administer contracts, purchase orders, and other agreements (including interagency agreements) for the expenditure of funds involved in the acquisition of personal property, or services (excluding construction and architect engineer service), and for the sale of personal property, is hereby delegated to the Agency Procurement Executive for further delegation to those employees of the Veterans Administration appointed or designated to the following positions:

(1) Director, Office of Procurement and Supply.

(2) Directors, VA Supply Depots.

(3) Director, VA Marketing Center.

(4) Director, Procurement Service, Central Office.

(5) Chiefs, Marketing Divisions, VA Marketing Center.

(6) Chiefs, Supply Services, VA field stations.

(b) The contracting officers named in paragraph (a) of this section may appoint one or more of their subordinates as a contracting officer and authority is hereby delegated to such subordinates, to execute, award and administer contracts, purchase orders, and other agreements for the acquisition of supplies, equipment, nonpersonal services, and for the sale of personal property. Appointments will be made in accordance with FAR 1.603–3 and 801.603–3.

(c) When exercising the authority contained in this chapter 8, the designated employee is identified as the contracting officer and will function within the limits prescribed by law, VAAR and FAR.

801.602–2 Responsibilities.

(a) In the administration of a contract, many problems can and do arise that make the advice and assistance of the General Counsel either desirable or necessary. The final decision as to the action to be taken, however, must be made by the contracting officer in each instance. To reduce to the absolute minimum the possibility of litigation resulting from his/her decision, the contracting officer shall, except as provided in paragraphs (b) and (c) of this section, submit the problem through channels in sufficient detail to the General Counsel for advice or assistance.

(b) Default action may be taken without consulting the General Counsel when the contractor fails to deliver supplies or equipment, or to render the services required within the specified time, or fails to comply with the applicable specifications, unless the contracting officer has reason to doubt that the default action is legal or proper.

(c) Contracts containing a mutual termination clause may be terminated without reference to the General Counsel.

801.602-70 Legal/technical review requirements to be met prior to contract execution.

(a) The following categories of proposed contracts and agreements will be reviewed and concurred in by the Office of Procurement and Supply and/or General Counsel.

(1) All fixed-price formally advertised (or Small Business Restricted Advertised) contracts involving $250,000 or more in either appropriated or nonappropriated funds and indefinite quantity contracts where expenditures of $250,000 or more can reasonably be expected. (Technical reviews from $250,000 through $499,999; technical and legal review for $500,000 or more.) (For contracts awarded by the Veterans Administration Marketing Center, the dollar amount is $1,000,000.)

(2) All fixed-price construction contracts involving $500,000 or more in either appropriated or nonappropriated funds.

(3) All negotiated contracts, including proposed Small Business Administration 8(a) contracts, for which it is anticipated that more than $200,000 in appropriated or nonappropriated funds will ultimately be involved. (For contracts awarded by the Veterans Administration Marketing Center, the dollar amount is $500,000.) The contract audit required by 815.805-5 and FAR 15.805-5 remains applicable as specified.

(4) All proposed agreements and contracts coming within the purview of one or more of the following:

(i) Contracts for insurance.

(ii) Utility connection agreements involving $50,000 or more.

(iii) Utility service agreements involving $50,000 or more.

(iv) Contracts for consulting services (see Subpart 837.2) and management and professional services (see 837.271).

(v) Contracts for research or research and development involving $50,000 or more.

(vi) Automatic data processing equipment, when purchased from other than a Federal Supply Service contract, involving $50,000 or more.

(vii) All contracts for scarce medical specialist services.

(viii) All contracts for the mutual use, or exchange of use, of specialized medical resources.

(ix) Agreements with other Federal agencies involving the expenditures of Veterans Administration funds of $5,000 or more.

(5) All proposed letter contracts and ensuing formal contracts involving expenditures of $5,000 or more.

(6) Any proposed agreement that is unique, novel or unusual (including all consignment agreements, regardless of anticipated dollar value).

(7) Step One of two-step formally advertised procurements when the anticipated value is more than $200,000.

(b) The review and concurrence of the General Counsel is also required for proposed change orders, final decisions or settlement agreements by contracting officers imposing additional liability upon the Government amounting to 10 percent of the amount originally obligated or $10,000, whichever is greater.

(c) In addition to the requirements of paragraphs (a) and (b) of this section, the following require review and concurrence of the General Counsel:

(1) Changes or revisions to all contract clauses.

(2) Changes or revisions to prescribed VA contract forms.

(d) In addition to meeting the legal review requirements of paragraphs (a), (b) and (c) of this section, solicitations and contracts awarded and administered by the Office of Construction also require prior legal review by the General Counsel in the situations outlined below. Requests for review will be made and recorded by the contracting officer.

(1) Terminations, including final decision (cure) letters disputes and claims in excess of $25,000.

(2) Assignment of claims.

(3) Substantive modifications, including proceed orders, of contracts. For purposes of this paragraph any modification or proceed order which may result in a change in the contract price of more than $25,000 or any modification or proceed order granting a time extension of more than 20 days, will be deemed substantive.

(4) Proposed awards to other than the low evaluated bidder.

(5) Proposed no-awards for reasons other than excessive prices.

(6) Proposed consideration of late bids, late offers and later modifications of bids, when it is anticipated that the circumstances involved may result in protest.

(7) Findings and determinations to support negotiations for contracts over $100,000.

(8) Determinations of nonresponsibility and nonresponsiveness.

(e) When legal assistance is requested by any Central Office contracting activity, the contracting officer will brief the General Counsel regarding the facts and points of issue to facilitate prompt resolution.

(f) With regard to solicitations and contracts awarded and administered by the Central Office contracting activities, the General Counsel will be requested to participate in conferences where it is expected that legal problems or contract provisions will be considered, and in meetings attended by legal representatives of private parties or other Government agencies. Assigned procurement counsel will be requested to participate in the drafting of correspondence involving controversial or sensitive contractual matters of a significant nature.

(g) All protests against award will be reviewed by General Counsel in accordance with the provisions specified in 814.407-8(a).

(h) Excluded from these legal review requirements are:

(1) Agreements, licenses, easements, or deeds dealing with management, sale, or lease of properties acquired by the Veterans Administration as a result of liquidation of guaranteed, direct, acquired or vendee loans.

(2) Orders or contracts for procurement of leased telecommunications systems, installation of and changes to telephone PBX systems at individual Veterans Administration locations or orders issued under GSA area-wide contracts with the American Telephone and Telegraph Company and local telephone companies.

801.602-71 Processing contracts for legal/technical review.

(a) All competitively awarded solicitations requiring legal and/or technical review will have such reviews completed prior to opening of bids or proposals.

(b) *Department of Medicine and Surgery Field Stations, VA Marketing Center, VA Supply Depots.* (1) Proposed contracts or agreements specified in 801.602-70(a) (1), (2), (3), (4) (iii) through (vi), (5), (6) and (7) will be forwarded by the contracting officer directly to the Director, Office of Procurement and Supply (93). The Director, Office of Procurement and Supply will review the submissions and when applicable,

forward them directly to the General Counsel (025).

(2) Proposed sharing agreements and contracts for specialized medical services specified in 801.602–70(a)(4)(vii) and (viii) will be forwarded to Central Office in accordance with 815.204 for review and submission to the General Counsel (023).

(3) Proposed interagency agreements specified in 801.602–70(a)(4)(ix) will be forwarded by the approving official to the Director, Office of Procurement and Supply (91). The Director, Office of Procurement and Supply, will review the submissions and forward them directly to the General Counsel (025).

(4) Proposed utility connection agreements specified in 801.602–70(a)(4)(ii) will be forwarded by the contracting officer directly to the Director, Engineering Service. The Director, Engineering Service, will review the submissions and forward them to the General Counsel (025) through the Director, Office of Construction.

(5) Proposed change orders specified in 801.602–70(b) will be forwarded by the contracting officer directly to the Director, Engineering Service. The Director, Engineering Service will review the submissions and forward them to the General Counsel (025).

(6) Proposed final decisions or settlement agreements specified in 801.602–70(b) will be forwarded by the contracting officer directly to the Director, Office of Procurement and Supply. The Director, Office of Procurement and Supply, will review the submissions and forward them to the General Counsel (025).

(7) Proposed revisions to contract clauses specified in 801.602–70(c) will be forwarded by the contracting officer directly to the Director, Office of Procurement and Supply. If concurred in, the Director, Office of Procurement and Supply, will forward them directly to the General Counsel.

(c) *Department of Veterans Benefits field stations.* (1) All proposed State reimbursement contracts and Guidance Center and Vocational Rehabilitation contracts which are anticipated to ultimately involve the expenditure of $100,000 or more, will be forwarded by the contracting officer directly to the Director, Vocational Rehabilitation and Counseling Service, for review and approval. The Director, Vocational Rehabilitation and Conseling Service will review the submissions and forward them to the General Counsel.

(2) Any other proposed agreement or contract specified in 801.602–70(a) will be forwarded by the station Director to the appropriate Regional Director for coordination with Director(s) of the concerned service(s) and submission to the General Counsel.

(3) Any other element of contracting falling within 801.602–70 (b) and (c) will be processed in accordance with paragraph (b)(2) of this section.

(d) *Central Office.* Any element of contracting prescribed for legal review in 801.602–70 originating in Central Office, will be submitted for legal review by the contracting officer, or approving official in the case of agreements with other Government agencies, in accordance with department and staff office instructions.

801.602–72 Documents to be submitted for legal review.

The following documents are to be submitted for legal review:

(a) For proposed construction contracts, a copy of all solicitation documents, excluding drawings. These documents will be submitted no later than at the time they are furnished to prospective bidders. Where feasible, these documents should be submitted for review prior to the time they are furnished to prospective bidders.

(b) For sharing agreements and scarce medical specialist contracts, the documents referred to in 815.204(e).

(c) For all other proposed contracts and agreements, a copy of the documents to be used in the solicitation and/or award of contract, including any other documents which support the proposed procurement action, e.g., determination and findings in the case of negotiated procurement. Solicitation documents will be submitted no later than at the time they are mailed to prospective bidders. Where feasible, these documents should be submitted for review prior to the time they are mailed to prospective bidders.

(d) Contract changes described in 801.602–70(b) and 801.602–71(a)(5).

(1) A *draft* of the proposed change order. This should be prepared on an SF (Standard Form) 30, Amendment of Solicitation/Modification of Contract, and should specify the exact language to be used. Changes in work, time and cost should be specifically described.

(2) The contracting officer's statement describing the need for the changed work. This should also be accompanied by any back-up documentation. Include a statement that the work is or is not within the original scope of the contract.

(3) A copy of the pertinent technical sections of the Master Specifications which are involved in the proposed change work. Also, include a copy of the drawing which the contracting officer's technical representative (COTR) has marked up to delineate the proposed changed work.

(4) The COTR's technical evaluation of the proposed change.

(5) Costing information including:

(i) The contractor's cost proposal in the format required by the Changes Clause in the General Conditions.

(ii) The COTR's independent cost breakdown.

(iii) The architectural engineer's independent cost breakdown.

(iv) Any other relevent costing information, such as independent market research, which will be used as negotiating critera.

(v) The COTR's technical evaluation report on the contractor's cost proposal.

(6) The telephone numbers of the contracting officer and the COTR.

(7) If a proceed order is necessary for the continuation of logical progress of construction, the Office of Procurement and Supply should be called prior to issuing the document.

801.602–73 Certification by reviewing official.

In submitting proposed agreements or contracts received from field stations to the General Counsel, the Central Office reviewing officials will state on the transmittal memorandum or within the file that the proposal conforms to the Federal Acquisition Regulations and Veterans Administration Acquisition Regulations to the best of their knowledge.

801.602–74 Results of General Counsel's legal review.

(a) Upon completion of the review, the General Counsel will advise the appropriate Central Office activity or contracting officers as to whether the proposal was approved as submitted or provide them with the recommended changes. The appropriate Central Office activity will advise the contracting officer as to whether: (1) The submission was approved as is, or (2) provide a copy of the changes required. Where changes are required, the contracting officer will take immediate action to amend the solicitation document.

(b) The General Counsel's review will be completed as expeditiously as possible, with due regard to those procurement actions where circumstances dictate an unusually short period for completing procurement action.

801.603 Selection, appointment, and termination of appointment.

801.603–3 Appointment.

(a) When an employee's qualifications are established by his/her supervisor

and the individual is to be appointed as a contracting officer in accordance with 801.602(b), SF 1402, Certificate of Appointment, will be issued for display in the employee's working area. The certificate will be signed by the next higher superior who fills one of the positions listed under 801.602(a). (Existing appointments will be confirmed by issuance of SF 1402.)

(b) The appointee's class title of position will be shown beneath the appointee's name on the SF 1402. The name of the station and organization will be entered on the face of SF 1402.

801.603-4 Termination.

(a) Appointments will remain effective, unless revoked sooner, until the contracting officer is reassigned or employment is terminated.

(b) A new Certificate of Appointment will be issued and the old certificate terminated when there is any change in the contracting officer's grade and corresponding class title of position or limitation of authority.

801.603-70 Representatives of contracting officers.

(a) In carrying out the responsibilities of FAR 1.602-2, the contracting officer may designate another Government contracting officer, or other Government employees, or another contractor:

(1) To furnish technical guidance and advice or generally supervise the work performed under the contract. Such designations will be in writing and will define the scope and limitation of the representative's authority; and, will be addressed to the designee with a copy to be forwarded to the contractor except as indicated in 801.603-71. Except as provided in paragraph (c) of this section representatives will not be authorized to make any commitments or changes which will affect the price, quantity, quality or delivery terms. (All changes to a contract must be authorized by a contracting officer acting within the scope of his/her authority.)

(2) To take actions authorized in the contract, such as issue delivery orders, reject unsatisfactory items, order replacement of such items (materials or services) and, when necessary, declare contractor in default on specific delivery orders. Except for blood, this authority will be delegated only to other Government contracting officers under centralized indefinite delivery type contracts and the contract will so state. Centralized contracts for blood will provide that contracting officers at ordering offices are authorized to designate representatives and alternate representatives to place delivery orders subject to the same restrictions stated in paragraph (a)(3) of this section.

(3) To place oral or other informal delivery orders for items such as, but not limited to, bread, milk, and blood against local indefinite delivery type contracts on which blanket purchase arrangements have been established and funds have been obligated. The designation of representatives and alternates will be in writing and will define the scope and limitations of the representative's authority, and will be addressed to the employee(s) with a copy to the contractor. Such designations will be made only by the prime contracting officer and are not redelegable.

(b) In the administration of research and development contracts, any representative appointed pursuant to this section must be acceptable both to the contracting officer and the department head or staff office director concerned. When it is necessary to designate a representative under this paragraph (b), the clause in 852.270-1 will be observed.

(c) Contracting officers of the Office of Construction may authorize resident engineers assigned to that office to make individual contract changes within the following limits:

(1) Resident engineers in grade GS-14 may be authorized to make changes not exceeding $20,000 and 20 days of time extension.

(2) Resident engineers in grade GS-13 may be authorized to make changes not exceeding $10,000 and 10 days of time extension.

801.603-71 Representatives of contracting officers; receipt of equipment, supplies, and nonpersonal services.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, any contracting officer may, without prior notification to the contractor or vendor, designate the Chief, Storage and Distribution Section, or other competent personnel, to represent him/her in receiving and inspecting supplies, equipment and services at his/her station. Duties such as, but not limited to, the following will be performed by these designees:

(1) The inspection and certification as to compliance with the quality and quantity requirements of the purchase order or contract; and

(2) Inspection of supplies and equipment for condition and quantity and the acceptance of supplies, equipment, and services, based on quality inspection made by other authorized representatives.

(b) The Chief, Central Office Library Division, and the Chief, Library Service, at a field station, are designated the representatives of the contracting officer to receive, inspect and accept library books, newspapers, and periodicals. Purchase documents will specify that delivery will be made direct to the library.

(c) The Chief, Stock Control Division, VA Supply Depot, Hines, Ill., is hereby designated as the representative of each contracting officer and purchasing agent of the various marketing divisions of the VA Marketing Center, Hines, Ill., for the purpose of accepting, on behalf of the Veterans Administration, items purchased for stock. The Chief, Stock Control Division, may designate one or more employees of the Incoming Property Section, Supply Control Division, to represent him/her and authority is hereby delegated to such designees to accept such property on behalf of the Veterans Administration. Designations will be confined to those employees to whom such responsibility has been assigned by their position descriptions. The Chief, Fiscal Service, will be furnished a list of such designees. Where inspection for compliance with specifications, purity, quality, or other element must be made by the Service and Reclamation Division or other testing agency, acceptance will be contingent upon receipt of a properly prepared inspection report.

(d) The Chiefs, Service and Reclamation Divisions, Veterans Administration Supply Depots at Hines, Ill., Somerville, N.J., and Bell, Calif., are hereby designated as the respresentatives of the contracting officers and purchasing agents of the various marketing divisions of the Veterans Administration Marketing Center, Hines, Ill., for the purpose of inspecting, when requested, supplies and equipment for compliance with technical, mechanical, operating, and other specifications. The results of such inspections will be forwarded to the Chief, Stock Control Division, Veterans Administration Supply Depot, Hines, IL 60141, when the item(s) involved is for stock, and to the appropriate contracting officer or purchasing agent for all other items.

(e) The Chief of each Service and Reclamation Division may designate one or more employees of his/her division to represent him/her; and, authority is hereby delegated to such designees to perform the inspection functions set forth in paragraph (d) of this section. (Designations shall be in writing with a copy furnished to the Director, Veterans Administration Marketing Center, Hines, Ill. Designations will remain in effect unless revoked. The reassignment

or termination of either the designee or the Chief, Service and Reclamation Division, issuing the designation will serve as an automatic rescission of the designation.)

801.603-72 Ratification of unauthorized contract awards.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom procurement authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act, other Federal laws, Chapters 1 and of Title 48, Code of Federal Regulations, and good procurement practice; e.g., certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met; i.e., certification of the availability of funds, determinations and findings, competition of sources, determination of contractor responsibility, certification of current pricing data, price-cost analysis, administrative approvals, negotiations of appropriate contract clauses, etc.

(1) Contracting officers shall not ratify contractual commitments made by other personnel of VA without prior approval. At field stations, the approving authority is the director of the field station concerned. For Central Office contracting officers, the approving authorities are the heads of the departments and directors of the staff offices concerned, and the Director, Office of Administration. This approval authority shall not be redelegated.

(2) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(i) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to, a statement as to why the procurement office was not utilized, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed contract price, citation of appropriation available, and a statement of whether the contractor has commenced performance.

(ii) The contracting officer will review the file and forward it to the approving authority with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the approving authority will coordinate the request for ratification with the Office of General Counsel or the District Counsel, as appropriate.

(iii) If ratification is authorized, the file will be returned to the contracting officer for issuance of a purchase order or contract, as appropriate.

(b) In the case of otherwise proper contract awards made by contracting officers in excess of the limits of their delegated authority, the need for ratification will be brought to the attention of the head of the contracting activity. That individual will take such action as may be indicated to preclude future instances of such awards.

801.670 Special and limited delegation.

The authority vested in the Administrator to execute, award and administer contracts, purchase orders and other agreements for the expenditure of funds involved in the acquisition of the specific services set forth in this 801.670 and its subsections, is hereby delegated to the Agency Procurement Executive for further delegation to those employees appointed or designated to the positions specified in these subsections.

801.670-1 Architectural and engineering services—Central Office.

(a) Authority to execute, award, and administer contracts and related documents involving the expenditure of funds for the acquisition or architectural and engineering services and of services of artists for works of art authorized in connection with new buildings, is delegated to the following:

(1) Director, Office of Construction.

(2) Project Directors.

(b) The contracting officers named in paragraph (a) of this section may designate the Deputy Project Director and/or the Senior Project Supervisors as a contracting officer; and, authority is hereby delegated to such subordinates to execute, award, and administer contracts, purchase orders, and other agreements for the purposes stated in paragraph (a) of this section. Designations will be in writing and will specifically state the scope and limitations of the designee's contractual authority.

801.670-2 Construction contracts—Central Office.

(a) Authority to execute, award, and administer contracts and related documents involving the expenditure of funds for the acquisition of construction services is delegated to the following:

(1) Director, Office of Construction.

(2) Project Directors.

(b) The contracting officers named in paragraph (a) of this section may designate the Deputy Project Director and/or the Senior Project Director Supervisors as a contracting officer; and, authority is hereby delegated to such subordinates to execute, award, and administer contracts, purchase orders, and other agreements for the purposes stated in paragraph (a) of this section. Designations will be in writing and will specifically state the scope and limitations of the designee's contractual authority.

801.670-3 Utility-connection and other site facility contracts—Central Office.

(a) Authority to execute, award, and administer contracts and related documents involving the expenditure of funds for the acquisition of utility connections and other site facilities is delegated to the following:

(1) Director, Office of Construction.

(2) Director of Engineering.

(3) Chief, Utilities Contract Administration Division.

(b) Contracting officers identified in paragraph (a) may delegate contracting authority to the Chief, Supply Service, at the facility involved.

801.670-4 Construction contracts—field stations, supply depots.

The Chief, Supply Service, at a field station, the Director, VA Supply Depot, and any employee designated by them in accordance with 801.602(b) of this chapter are authorized to execute, award, and administer contracts for construction projects assigned by the Chief Medical Director, under delegation of the Director, Office of Construction, or those accomplished with station or depot funds. Contracting officers, in executing, awarding and administering construction contracts, including those for maintenance and repair projects, will be guided by Federal Acquisition Regulations, Veterans Administration Acquisition Regulations, and procedures established by the Director, Office of Construction.

801.670-5 Publications Service—Central Office.

Authority to place orders for printing services against contracts established by the Government Printing Office, and for specialty forms, tabulating cards, marginally punched continuous paper, and art and design services, against contracts established by the General Services Administration, and for printing, duplicating, or other reproduction services, as well as microfilming, against contracts established by the Office of Procurement and Supply, is delegated as follows:

(a) To the Director, Publications Service, Office of Administration, Central Office.

(b) To the Chief, Printing Procurement Division, and the Supervisors of both the Commercial and Government contracting activities for orders not exceeding $10,000 per transaction, when so delegated by the Director, Publications Service.

801.670-6 Issue of Government bills of lading—transportation of remains of deceased beneficiaries.

The Chief, Medical Administration Service, at a Veterans Administration medical center, or the person acting in that capacity, is delegated authority to issue and to sign as "Issuing Officer," Government bills of lading for the shipment of the remains of beneficiaries expiring in a Veterans Administration medical center.

801.670-7 Issue of Government bills of lading—transportation of property.

(a) Authority to issue and sign Government bills of lading for the transportation of supplies, material, and equipment is delegated to the following:

(1) Chiefs, Transportation Sections, VA Supply Depots.

(2) Chief, Warehouse Section, VA Forms and Publications Depot.

(3) Traffic Manager, Office of Procurement and Supply, Central Office.

(b) The emloyees named in paragraph (a) of this section may designate one or more of their subordinates as a contracting officer; and, authority is hereby delegated to such subordinates to issue and sign Government bills of lading for the transportation of supplies, material, and equipment. Designations will be in writing and specifically set forth the scope and limitation of the designee's authority.

801.670-8 Building and Supply Service—Central Office.

(a) Authority is delegated to the Chief, Supply Division, Building and Supply Service, Office of Administration, VA Central Office, to execute, award and administer contracts, purchase orders and other agreements for the acquisition of personal property or services and for the sale of personal property for Central Office activities as set forth below:

(1) Small purchases pursuant to FAR Part 13.

(2) Orders under existing Federal Government contracts, not to exceed the maximum order limitation specified in the contract.

(3) ADP maintenance contracts, not to exceed the small purchase limitation specified in FAR Part 13.

(4) Special space alteration services delegated to agencies by General Services Administration for space occupied by the VA Central Office within the National Capital Region.

(b) The contracting officer named in paragraph (a) of this section may designate one or more subordinates as a contracting officer; and, authority is hereby delegated to such subordinates to execute, award and administer contracts, purchase orders, and other agreements for the acquisition of supplies, equipment, nonpersonal services, and for the sale of personal property. Designations will be in writing, specifically state the scope and limitation of the designee's contractual authority and shall be confined to only those subordinates who are actively engaged in purchasing and contracting functions.

(c) When exercising the authority contained in this section, the designated employee is identified as the contracting officer and will function within the limits prescribed by law, VA Acquisition Regulations and the Federal Acquisition Regulations.

801.670-9 Architectural and engineering services—field stations, supply depots.

The Chief, Supply Service, at a field station, the Director, VA Supply Depot, and any employee designated by them in accordance with 801 602 of this chapter are authorized to execute, award, and administer contracts for the acquisition of architectural and engineering services when the cost of such services are chargeable to station or depot funds.

801.670-10 Loan guaranty program.

(a) The authority to execute, award, and administer contracts, purchase orders, and other agreements for the expenditure of funds for supplies or services necessary to carry out the provisions of chapter 37 of Title 38, United States Code, including but not limited to contracts for the services of technical fee personnel, and contracts for the maintenance, protection, repair, rehabilitation, enlargement, completion, conversion, or demolition of properties acquired under chapter 37 of Title 38, United States Code, is delegated to:

(1) Chief Benefits Director.

(2) Director, Loan Guaranty Service.

(3) Director, Regional Office.

(4) Director, VA Medical and Regional Office Center.

(5) Director, VA Center.

(6) Loan Guaranty Officer.

(7) Assistant Loan Guaranty Officer.

(b) The contracting officers named in paragraph (a) of this section may designate one or more of their subordinates as a contracting officer; and, authority is hereby delegated to such subordinates to execute, award, and administer contracts, purchase orders, and other agreements for the purposes stated in paragraph (a) of this section. Designations will be in writing and will specifically state the scope and limitations of the designee's contractual authority.

801.670-11 Education and rehabilitation programs.

(a) Except as stated in this section, the authority to negotiate, award, and administer contracts, purchase orders, and other agreements for the expenditure of funds for the vocational rehabilitation program is delegated to:

(1) Chief, Benefits Director.

(2) Director, Vocational Rehabilitation and Counseling Service.

(3) Director, Regional Office.

(4) Director, VA Medical and Regional Office Center.

(5) Director, VA Center.

(b) The Chief Benefits Director, and the Director, Education Service and Director, Vocational Rehabilitation and Counseling Service, are delegated authority to execute, award and administer contracts, agreements, or supplements thereto for correspondence courses. The authority of the Director, Vocational Rehabilitation and Counseling Service, is limited to correspondence courses for the vocational rehabilitation program.

(c) The Chief Benefits Director, Director, Vocational Rehabilitation and Counseling Service, and Directors, Regional Office and VA Medical and Regional Office Centers, are delegated authority to execute, award and administer contracts, agreements, or supplements thereto with educational institutions and other approved agencies for the purpose of providing services relative to the counseling of persons eligible for vocational rehabilitation or educational assistance under Title 38, United States Code.

(d) The Chief Benefits Director, and the Director, Education Service, are delegated authority to execute, award and administer contracts, agreements, or supplements thereto with State approving agencies for services relating to approving courses offered by educational institutions and training establishments.

(e) The contracting officers named in paragraphs (a), (b), and (c) of this section may designate one or more of their subordinates and authority is hereby delegated to such subordinates to negotiate, award, and administer contracts, purchase orders, and other agreements for the purposes stated in paragraphs (a), (b), and (c) of this

section. Designation of subordinates will be in writing by name or position title and will specifically state the scope and limitations of the contractual authority of each designee.

801.670-12 Medical, dental, and ancillary service.

(a) The Chief of Staff, the physician assigned the responsibility for the ambulatory care function, and Chief, Medical Administration Service, at a Veterans Administration station are delegated authority to execute authorizations for medical, dental, and ancillary services under $10,000 per authorization when such services are not available from existing contracts or agreements. Forms specified in Part 853 of this chapter will be used for this purpose and when ordering such services from existing contracts.

(b) The contracting officers named in paragraph (a) of this section may designate one or more or their subordinates to execute the forms for purposes stated in paragraph (a) of this section. Designations will be in writing and will specifically set forth the scope and limitations of the designee's authority.

801.670-13 Department of Memorial Affairs.

Authority for the Department of Memorial Affairs to procure supplies, equipment and nonpersonal services is delegated as follows:

(a) Authority to execute, award, and administer contracts and related documents involving the expenditures of funds for the acquisition and transportation of headstones and markers is delegated to the Director, Monument Service, the Assistant Director for Procurement, and the Chief, and Assistant Chief, Funds and Contracts Division, of the Monument Service.

(b) Authority to issue and sign Government bills of lading for the transportation of headstones and markers is further delegated to:

(1) Staff Assistant for Transportation, Monument Service.

(2) Chief, Transportation Division, Monument Service.

(c) Authority to procure, in emergency situations when the servicing supply organization cannot be utilized, and in accordance with the provisions of FAR Part 13, supplies, equipment, and nonpersonal services (including construction) required for the operation of national cemeteries is delegated to:

(1) Chief Memorial Affairs Director and Deputy Chief Memorial Affairs Director.

(2) Director and Deputy Director, National Cemetery Area Office.

(d) Authority to procure items and nonpersonal services up to $300 per transaction for the operation of national cemeteries is delegated to the Director of each national cemetery. The authority is to be used only in emergency situations when the servicing supply organization cannot be utilized, and the method of purchase is limited to the use of SF 44, Purchase Order—Invoice—Voucher, (FAR 13.505-3).

801.670-14 Letters of agreement.

(a) Authority to execute, award, and administer letters of agreement (subject to the limitation prescribed in 837.270) is delegated to the following:

(1) General Counsel.

(2) Director, Office of Personnel and Labor Relations.

(3) Chief Medical Director.

(4) Chief Benefits Director.

(5) Chief Memorial Affairs Director.

(6) Director, Office of Procurement and Supply.

(7) Inspector General.

(8) Directors, Regional Medical Education Centers (limited to obtaining instructors and training pursuant to section 4122 of Title 38, United States Code).

(9) Directors, Domiciliary and Medical Centers (limited to obtaining peer review of research (see 837.270)).

(b) The contracting officers named in paragraph (a)(1) through (7) of this section may designate one or more subordinates, and authority to execute the same duties and responsibilities is hereby delegated to such subordinates. Such subordinates will be no more than one organizational level below the contracting officers designated in paragraph (a) of this section, except that the Chief Medical Director may designate the Regional Directors. All such designations will be in writing, will specifically state the scope and limitations of the designees' contractual authority, and will also specifically prohibit further delegation by the designees. Copies of the delegation will be submitted to the Office of Procurement and Supply (93).

(c) Copies of all letters of agreement issued by the designees identified in paragraphs (a) and (b) will be forwarded to the servicing contracting activity in order that the procurement action may be entered into the Federal Procurement Data System.

801.670-15 $300 small purchase authority for Prosthetics Service personnel.

As prescribed by the VA Department of Medicine and Surgery Manual M-2, Part IX, Chapter 4, Section A, Prosthetics Service personnel at VA Medical Centers may issue orders for open market prothetic items or prosthetic items not in excess of $300 per transaction. VA Form 10-2421, Prosthetics Authorization and Invoice will be used for such orders.

801.680 Contracting authority of the Inspector General.

(a) As provided by section 6(a) of Pub. L. 95-452 (October 12, 1978), the Inspector General is authorized to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of the Act, to the extent and in such amounts as may be provided in advance by appropriations Acts.

(b) In exercising the special authority provided in paragraph (a) of this section, the Inspector General may request the assistance of the servicing Supply Service in developing appropriate contract or agreement documents.

(c) If, in the opinion of the Inspector General, a reason to exercise the special authority does not exist, the services required by the Inspector General shall be obtained by the servicing Supply Service in accordance with the provisions of FAR and VAAR.

(d) Contracts entered into under the authority of paragraph (a) of this section are subject to the provisions of the Federal Acquisition Regulations. In addition, such contracts are subject to those provisions of VAAR which implement and supplement the FAR on matters other than those stemming from or related to delegations of the Administrator's contracting authority.

PART 802—DEFINITIONS OF WORDS AND TERMS

Subpart 802.1—Definitions

802.100 Definitions.

In the Veterans Administration, "head of contracting activity" means the Director, Procurement Service, Central Office; Project Directors, Office of Construction; Director, Building and Supply Service, Central Office; Director, Publications Service, Central Office; Director, Monument Service, Central Office; Chiefs, Marketing Divisions, VA Marketing Center; and the Chief, Supply Service at a field facility.

(38 U.S.C. 210 and 40 U.S.C. 486(c))

PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 803.1—Safeguards

Sec.
803.101 Standards of conduct.
803.101–3 Agency regulations.

Subpart 803.2—Contractor Gratuities to Government Personnel

803.203 Reporting suspected violations of the Gratuities clause.

Subpart 803.3—Reports of Identical Bids and Suspected Antitrust Violations

803.301 General.
803.303 Reporting suspected antitrust violations.

Subpart 803.4—Contingent Fees

803.408 Evaluation of the SF 119.
803.408–1 Responsibilities.
803.409 Misrepresentations or violations of the Convenant Against Contingent Fees.

Subpart 803.5—Other Improper Business Practices

803.502 Subcontractor kickbacks.

Subpart 803.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

803.603 Responsibilities of the contracting officer.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 803.1—Safeguards

803.101 Standards of conduct.

803.101–3 Agency regulations.

(a) Standards of conduct for all VA employees, including contracting officials, are found in 38 CFR Part O. From time to time supplementing guidance regarding Agency-authorized exceptions to FAR 3.101–2 and disciplinary measures for persons violating the standards of conduct, may be issued by the Administrator or the designated VA Ethics Officer. Heads of contracting activities will ensure that all employees are cognizant of the applicable regulations.

(b) Requirements for employee financial disclosure are contained in 38 CFR Part O, Subpart D. Generally contracting officers and all supervisory contracting officials must file financial disclosure statements.

(c) *Ethics in Government Act.* Former employees are not specifically prohibited under section 207 of Title 18, United States Code, from acting as consultants for the Veterans Administration. However, former employees are prohibited, for certain periods of time, from representing or otherwise acting as agents of other parties for the purpose of obtaining Government contracts.

(d) The certification in 852.203–70 will be made a part of all solicitations.

Subpart 803.2—Contractor Gratuities to Government Personnel

803.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities Clause will be reported to the head of the contracting activity through the contracting officer. The head of the contracting activity will confirm that violations are evident and that reporting these violations to officials designated in paragraph (b) would be warranted.

(b) When violations of the Gratuities Clause warrant actions described in FAR 3.204(c) the head of the contracting activity will request instructions from the VA General Counsel (025) through the Director, Office of Procurement and Supply (90).

Subpart 803.3—Reports of Identical Bids and Suspected Antitrust Violations

803.301 General.

Executive Order 10936 of April 1961 requiring reporting of identical bids to the Attorney General has been revoked by Executive Order 12430 of July 1983. Identical bids and other suspected antitrust violations will be reported in the manner prescribed in FAR 3.303 and this subpart.

803.303 Reporting suspected antitrust violations.

Instances of possible antitrust violations will be reported by procurement activities in accordance with FAR 3.303 to the Director, Office of Procurement and Supply (90) for review and submission to the General Counsel, who will determine whether or not to submit the case to the Attorney General.

Subpart 803.4—Contingent Fees

803.408 Evaluation of the SF 119.

803.408–1 Responsibilities.

When determining an appropriate course of action with respect to information furnished on a Standard Form 119, Statement of Contingent or Other Fees, the head of the contracting activity will review the contracting officer's recommendations. The review by the head of the contracting activity shall be documented on the contract file.

803.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Suspected violations of the Covenant Against Contingent Fees shall be reported to the head of the contracting activity for evaluations as prescribed in FAR 3.408-2.

(b) Before taking any administrative action the head of the contracting activity shall consult with their respective VA District Counsels. Contracting officers in Central Office shall consult with the Office of the General Counsel.

Subpart 803.5—Other Improper Business Practices

803.502 Subcontractor kickbacks.

Suspected violations of the Anti-kickback Act will be reported to the Office of the General Counsel.

Subpart 803.6—Contracts With Government Employees Or Organizations Owned or Controlled by Them

803.603 Responsibilities of the contracting officer.

Excepting those contracts which pertain to the sale of manual arts and occupational therapy products, Veterans Administration contracting officer shall, prior to entering into a contract with Government employees or business concerns substantially owned or controlled by Government employees, make the written determinations required by FAR 3.603.

PART 804—ADMINISTRATIVE MATTERS

Subpart 804.1—Contract Execution

804.101 Contracting officer's signature.

(a) Contracting officers will personally sign all contracts, changes thereto and contract enforcement correspondence in accordance with FAR 4.101. The signing of the contractual documents will not be accomplished by facsimile stamps.

(b) In the event a contracting officer's name and title has been typed, stamped or printed on the contract and the contracting officer is not available to sign the contract, a designee may sign for the contracting officer. Such designee must be a contracting officer as specified in 801.602 and must have specific contracting authority to cover the contract to be signed.

(38 U.S.C. 210 and 40 U.S.C. 486(c))

PART 805—PUBLICIZING CONTRACT ACTION

Subpart 805.2—Synopses of Proposed Contracts

Sec.
805.202 Exceptions.
805.205 Special situations.
805.207 Preparation and transmittal of synopses.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 805.2—Synopses of Proposed Contracts

805.202 Exceptions.

(a) In accordance with 8(e)(1)H of the Small Business Act, as amended, competitive procurements of perishable subsistence are exempted from the requirement for synopsizing. This execption does not apply to annual requirements-type contracts (such as milk and bread) for which the synopsizing can be timely accomplished.

(b) Scarce medical specialist and mutual use, or exchange of use contracts negotiated under the authority of 38 U.S.C. 4117 and 5053, are exempt from the synopsizing requirement, when such contract awards are made pursuant to the authority contained in 815.204–70. This exemption is based upon Comptroller General Decision B–195559.2, dated November 2, 1981.

805.205 Special situations.

To facilitate the use of the alternative procedure in FAR 5.205(c)(2), contracting officers are hereby delegated authority to procure paid advertising in a daily newspaper circulated in the local area, for the purpose of publicizing a proposed procurement of architect-engineer services expected not to exceed $10,000.

805.207 Preparation and transmittal of synopses.

(a) Synopses of proposed procurements will be forwarded to the Department of Commerce for publication in the Commerce Business Daily (CBD) via teletype Advanced Records System (ARS).

(1) For this purpose the CBD synopsis form will be completed in accordance with the instructions on the reverse side of that form and forwarded to the teletype office with completed Standard Form 14, Telegraphic Message, as a cover transmittal. "See attached" will be noted on the SF 14 in the block marked "Message to be transmitted."

(2) Routing symbol "RUCHODY" will be used in transmitting the material to the Department of Commerce.

(b) At such time as an architect-engineer evaluation board is ready to advertise for architect-engineer services, it must establish the geographic area within which architect-engineer firms (including joint ventures) will be considered. The area determined must be large enough to assure selection of three to five firms highly qualified for the particular project involved, but not so large as to make the evaluation process unduly burdensome.

(1) For large projects, the area will generally be Statewide, but may be limited to sections of States or the metropolitan areas. Where there is a scarcity of qualified firms, the area of consideration may include more than one State. In addition, special consideration may be given to projects located near State lines, particularly where the economic, cultural and social centers for the worksite are located across the State boundary in a contiguous State.

(2) For small projects, the geographic area of consideration is appropriately local, but will be wide enough to assure the selection of at least three highly qualified firms.

(3) Special problems of evaluation and of contract administration arise with respect to joint-venture applications representing numerous firms from all over the nation organizing with a small local firm not otherwise qualified. Accordingly, notices may contain a statement that "Joint-venture participation will be considered and evaluated on the demonstrated interdependency of each joint-venture member on the other, which makes that union a viable design force for this particular project."

SUBCHAPTER B—ACQUISITION PLANNING

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

808.001 Priorities for use of Government supply sources.

Subpart 808.3—Acquisition of Utility Services

808.304–1 GSA long-term contracts.
808.304–2 GSA area-wide contracts.
808.304–4 Consolidated purchase, joint use, or cross-service.
808.304–5 Agency acquisition.
808.307–2 Precontract review by GSA.
808.307–70 Alternative precontract review by VA.

Supbart 808.4—Ordering From Federal Supply Schedules

808.401 General.
808.404–1 Mandatory use.
808.404–3 Requests for waivers.
808.405–5 Termination for default.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

808.001 Priorities for use of Government supply sources.

(a) Procurement will be effected from the following sources in the descending order of priority as indicated herein:

(1) VA excess.

(2) VA supply depot stock.

(3) Other government agencies excess.

(4) Federal Prison Industries.

(5) Procurement list of products available from the Committee for Purchase from the Blind and Other Severely Handicapped.

(6) GSA stock and other Government Agency Inventory.

(7) VA decentralized contracts.

(8) Mandatory Federal Supply Schedule contracts.

(9) Optional use Federal Supply Schedule contracts.

(10) Commercial concerns, educational, or nonprofit institutions, as applicable.

(b) *Public exigency.* A source lower in priority may be utilized in a public exigency as defined in FAR 15.202 and in Federal Property Management Regulation 41 CFR 101–25.101–5. Justification for each deviation must be included in the procurement file.

(c) *Eligible Beneficiaries.* When it is determined that a therapeutic benefit to eligible beneficiaries will result from personal selection of shoes, clothing and incidentals, acquisition from the Veterans Canteen Service or commercial sources is authorized. When dress shoes similar to Federal Prison Industries, Inc., Style No. 86–A are purchased from commercial sources, FPI clearance No. 1206 will be cited on the purchase document.

Subpart 808.3—Acquisition of Utility Services

808.304–1 GSA long-term contracts.

(a) If the contracting officer determines that a GSA long-term contract may be justified in accordance with the provisions outlined in FAR 8.304–1, GSA will be requested to negotiate a long-term contract.

(b) The request will be submitted to General Services Administration, Federal Supply and Services, Public Utilities Management Division, Washington, D.C. 20406. It will state the reason a long-term contract is believed justified and will include the following information:

(1) Copy of existing contract or agreement.

(2) Copies of all current rate schedules.

(3) Record of past 12 months usage, preferably in the form of copies of bills or invoices.

(4) Statement regarding any anticipated or planned future changes.

(5) Point and characteristics of delivery.

(6) Statement covering equipment or connection requirements and ownership.

(7) Names and addresses of all suppliers, both regulated and unregulated, of the required service.

808.304-2 GSA area-wide contracts.

When a GSA area-wide contract for the required utility service is available, utility services will be procured thereunder as provided by FAR 8.304-2, unless special rates can be negotiated under the area-wide contract or a separate contract. When provided in the area-wide contract, connection agreements may also be obtained thereunder.

808.304-4 Consolidated purchase, joint use, or cross-service.

If a consolidated purchase, joint use, or cross-service agreement would be advantageous, an appropriate memorandum of understanding will be entered into, as provided by FAR 8.304-4. If assistance is required, requests will be forwarded to GSA.

808.304-5 Agency acquisition.

When either GSA area-wide contracts, GSA long-term contracts, consolidated purchase, joint use, or cross-service agreements are not available, the contracting officer will obtain required utility services and/or connections as provided in FAR 8.304-5.

808.307-2 Precontract review by GSA.

Except as provided in FAR 8.307-3, proposed utility procurements meeting the criteria of FAR 8.307-1 will be forwarded to General Services Administration, Federal Supply and Services, Public Utilities Management Division, Washington, D.C. 20406, for prior review.

808.307-70 Alternative precontract review by VA.

Prior review of contracts for utility connections and contracts for combined utility connections and services consumated by the designated contracting officer(s) in Central Office will be made by technical and administrative personnel in the Office of Construction, when required by FAR 8.307-1.

Subpart 808.4—Ordering From Federal Supply Schedules

808.401 General.

The Director, VA Marketing Center, advertises, negotiates, awards the contracts, and is responsible for contract administration for FSS (Federal Supply Schedule) Groups 65 and 89. The Director issues the Federal Supply Schedules containing the necessary information for placing delivery orders with the contractors for the above FSS Groups.

808.404-1 Mandatory use.

The contracting officer shall submit a request to the Director, VA Marketing Center to negotiate a separate contract when requirements will exceed the maximum order limitation cited in the contract.

808.404-3 Requests for waivers.

When an ordering agency finds an item which is identical to an item which is the lowest cost acceptable item available from Federal Supply Group 65 and 89 but available at a lower delivered price from a lower priority source, the ordering activity must obtain the approval of the Director, VA Marketing Center, prior to initiating purchase action with the lower priority source. An identical item is defined as: (a) Nondrug item—same manufacturer and model number, (b) drug item—having the same NDC (National Drug Code) number. Approval requests must identify the item available on contract including contract number, item number, and description, vendor and delivered price. A description of the proposed item, name of the vendor, quantity, proposed price, and the name of the vendor representative making the offer must be included.

808.405-5 Termination for default.

The Director, VA Marketing Center is the authorized contracting officer to terminate for default any and all items covered by Federal Supply Groups 65 and 89. When notified of default action by the Director, VA Marketing Center, the contracting officer shall:

(a) Refuse to accept further performance by the contractor;

(b) Place no further orders with the contractor;

(c) Repurchase against the contractor in default from sources designated by the Director, VA Marketing Center; or

(d) Proceed as otherwise directed by the Director, VA Marketing Center.

PART 809—CONTRACTOR QUALIFICATIONS

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Authority: 38 U.S.C. 210, 40 U.S.C. 486(c) and 42 U.S.C. 2453(c).

Subpart 809.1—Responsible Prospective Contractors

809.104-2 Special standards.

Standards applicable to subsistence will be established based on preaward surveys prescribed by 809.106-1.

809.106-1 Conditions for preaward surveys.

(a) Preaward on-site evaluation will be made for contracts covering the products and services of bakeries, dairies, ice cream plants and laundry and dry cleaning activities. A committee under the direction of the contracting officer and composed of representatives of the medical service and/or using service chiefs or designees appointed by the station director will inspect and evaluate the plant, personnel, equipment and processes of the prospective contractor. Prior to any inspection, the contracting officer will inquire whether the plant has been recently inspected and approved by another Veterans Administration station or Federal agency. Approved inspection reports of another Veterans Administration station will be accepted by Veterans Administration stations and approved inspection reports of other Federal agencies may be accepted as satisfactory evidence that the facilities of the bidder meet the requirements of the Invitation for Bid, provided inspection was made not more than 6 months prior to the proposed contract period.

(b) Preaward on-site evaluation of dairy plants will not be made by the Veterans Administration when acceptable bids are received from suppliers of those dairy products designated as No. 1 in the Federal Specifications. Suppliers must have received, prior to opening of bids, a pasteurized milk rating of 90 percent or more for the type of product being

supplied, on the basis of the U.S. Public Health Service milk ordinance and code. Such rating must be current (not over 2 years old), and will have been determined by certified State milk sanitation rating officer in the State of origin or by the Public Health Service and will continue at 90 percent or more during the period of the contract. Firms not so rated may only offer dairy products designated as No. 2 in the Federal Specifications. Award to such firms may be made only after completion of a preaward on-site evaluation conducted in accordance with paragraph (a) of this section.

(c) Prior to any open market purchase of fresh bakery products (such as pies, cakes, cookies), the plant where these products are produced or prepared will be inspected and evaluated as provided in paragraph (a) of this section. On-site evaluation will be made at least annually.

Subpart 809.2—Qualified Products

809.206 Acquiring qualified products.

(a) Federal Qualified Products Lists are lists of products qualified under the applicable Federal or interim Federal specification. Such lists may be used as authorized by the appropriate department or staff office. Requests to receive copies of existing Federal Qualified Products Lists will be submitted to the Director, Office of Procurement and Supply (91) for transmittal to General Services Administration. Requests to establish a Federal Qualified Products List for a commodity will be submitted to the Director, Office of Procurement and Supply (91), supported by one or more of the following justifications:

(1) The time required for testing after award would unduly delay delivery of the supplies being purchased.

(2) The cost of repetitive testing would be excessive.

(3) The tests would require expensive or complicated testing apparatus not commonly available.

(4) The interest of the Government requires assurance, prior to award, that the product is satisfactory for its intended use.

(5) The determination of acceptability would require performance data to supplement technical requirements in the specification.

(b) VA Qualified Products Lists are lists of products qualified by the VA under VA specifications or purchase descriptions. Such lists may be established as authorized by the appropriate department or staff office.

(1) VA Qualified Products Lists will be supported by one or more of the justifications in 809.206(a) or the following:

(i) Where tests result in substantial or repetitive rejections, or

(ii) Where professional requirements of performance, balance, design, or construction cannot economically be developed into clear specifications, and professional judgment is required in determining the acceptability of items meeting VA requirements.

(2) In the event that the requirement for VA Qualified Products List is established for any given product, known suppliers of the type of item required will be notified and given an opportunity to submit samples for inspection, and test based upon guarantee that they will deliver the item to be inspected, provided the item is acceptable. A qualified products list shall not be used as a means of restricting competition to favored suppliers. All suppliers so desiring shall be given an opportunity to have their products tested for acceptability.

(3) Costs involved in the inspection and test will be borne by the VA. The supplier will be required to bear the cost of the sample and its transportation to the inspecting point. After inspection, the sample shall be returned to the supplier "as is" unless it is destroyed by inspection or disposed of or retained by the VA as authorized by the supplier.

(4) Items which have been accepted for the qualified products list will be subject to constant review for compliance with the applicable specification. Where there is a variance between the specification and item, the supplier shall be requested to furnish an item that conforms to the specification. Failure or inability on the part of the supplier to provide an item that conforms to the specification will be sufficient cause to consider the item unacceptable in response to subsequent invitations.

(5) The acceptance of an item for the qualified products list does not guarantee acceptance in any future purchase, nor does it constitute a waiver of the requirements of the specifications as to acceptance, inspection, testing or other provisions of any future contract involving such item.

(6) Bid invitations covering products which have been included in a qualified products list will include the clause set forth in FAR 52.209–1 or 52.209–2 as applicable.

809.270 Qualified products for convenience/labor saving foods.

(a) Each VA medical district's Dietetic Service representative is delegated authority to establish a common Qualified Products List for convenience/labor-saving foods for the use of medical centers within his/her respective district. The medical district Dietetic Service representative will notify the Director, Dietetic Service, VA Central Office, of the establishment of each Qualified Products List and amendments to each established list.

(b) Each medical center is authorized to use its district Qualified Products List. Each medical center may test food of its own choice, but will submit test results to the district Dietetic Service representative. The Dietetic Service representative will coordinate and consolidate the test results and recommendations of individual medical centers with other medical centers within the district in order to avoid unnecessary duplication.

(c) The approved medical district Qualified Products List will be furnished each Supply office within the district. The Supply Services will have access to complete and accurate records of established Qualified Products Lists and all test results. These records will be made available to the Office of Procurement and Supply, VA Central Office, upon request.

Subpart 809.4—Debarment, Suspension, and Ineligibility

809.400 Scope of subpart.

This subpart prescribes procedures for debarring or suspending contractors and the inclusion of those contractors on the consolidated list of debarred, suspended or ineligible bidders.

809.403 Definitions.

"Fact-finding" as used in this subpart shall mean a gathering of facts which is accomplished through informal meetings with the contractor, submission of information, either verbally or in writing, by the contractor, and any other method deemed appropriate by the debarring official.

809.404 Consolidated list of debarred, suspended, and ineligible contractors.

(a) The Office of Procurement and Supply (93) shall be responsible for the action described in FAR 9.404(c) (1), (2), (4) and (6).

(b) The Office of Procurement and Supply (91) shall be responsible for the actions described by FAR 9.404(c) (3) and (5).

809.405 Effect of listing.

The Director, Office of Procurement and Supply shall make the determinations required by FAR 9.405(a) and 9.405–2 to solicit from, award contracts to, or consent to subcontracts with contractors whose names are

included on the consolidated list of debarred, suspended or ineligible contractors.

809.406 Debarment.

809.406-1 General.

(a) The Director, Office of Procurement and Supply is the debarring official for the Veterans Administration.

(b) Any Veterans Administration employee may submit a recommendation to the Director, Office of Procurement and Supply that a firm or individual be debarred by the Veterans Administration.

(c) Such recommendations must be supported by documentary evidence of a cause listed in FAR 9.406-2.

809.406-3 Procedures.

(a) The Director, Office of Procurement and Supply shall, upon a receipt of recommendations for debarment, appoint a designee to conduct an investigation, initiate debarment and present the facts to the debarring official for consideration and action.

(b) The appointed designee shall issue the proposed debarment notice as required by FAR 9.406-3(c).

(1) If no reply is received from the firm or individual to the notice of proposed debarment, the case will be referred to the debarring official for decision on the basis of information available.

(2) When a reply is received, the information provided will be considered by the appointed designee prior to making a recommendation to the debarring official. If the contractor's submission in opposition to the debarment raises a genuine dispute over facts material to the proposed debarment, the designee appointed by the Director, Office of Procurement and Supply will conduct a fact-finding as prescribed by FAR 9.406-3(b)(2).

(3) Upon completion of the fact-finding with respect to disputed facts, a written finding of facts will be provided to the debarring official.

(4) The debarring official shall make a decision on the basis of all information available including findings of facts, and/or arguments submitted by the contractor.

809.406-4 Period of debarment.

The period of debarment will be based upon the circumstances involved but will not, except in unusual circumstances, exceed a period of 3 years. The Director, Office of Procurement and Supply may for those firms or individuals debarred by the Veterans Administration decide to remove the debarment, reduce the period of debarment, or amend the scope of the debarment, if indicated, after review of documentary evidence submitted by or in behalf of the contractor setting forth the appropriate grounds for granting of such relief. Such grounds may be, but are not limited to, newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management or the elimination of the cause for which debarment was imposed.

809.407 Suspension.

809.407-1 General.

The Director, Office of Procurement and Supply is the suspending official for the Veterans Administration.

809.407-3 Procedures.

(a) Suspension may be recommended by any Veterans Administration employee. These recommendations will be submitted to the Director, Office of Procurement and Supply and must be supported by documentary evidence of a cause listed in FAR 9.407-2.

(b) The Director, Office of Procurement and Supply shall designate an official to initiate suspension, conduct an investigation and present the facts to the suspending official for consideration and appropriate action.

(c) The designee shall issue the proposed suspension notice as required by FAR 9.407-3(c).

(1) If no reply is received from the contractor to the notice of proposed suspension, the case will be referred to the suspending official for decision on the basis of information available.

(2) When a reply is received, the information provided will be considered by the official conducting the suspension proceedings prior to referring the case with recommendations to the suspending official. If the contractor's submission in opposition to the suspension raises a genuine dispute over facts material to the proposed suspension, the designee of the Director, Office of Procurement and Supply will conduct a fact-finding as prescribed by FAR 9.407-3(b)(2).

(3) Upon completion of the informal hearing with respect to the disputed facts, a written findings of facts will be prepared and presented to the suspending official.

(4) The suspending official shall make a decision on the basis of all information available including findings of facts, and/or arguments submitted by the contractor.

Subpart 809.5—Organizational Conflicts of Interest

809.504 Contracting officer's responsibilities.

(a) Contracting officers will be responsible for determining the existence of actual and/or potential organizational conflicts of interest which would result from the award of the contract. The contracting officer will be guided by information submitted by offerors and by his/her own judgment. The contracting officer may obtain the advice of legal counsel and the assistance of technical specialists in evaluating potential organizational conflicts.

(b) If it is determined that organizational conflicts of interest will be created by the award of the contract, the contracting officer may find an offeror nonresponsible.

(c) Notwithstanding the existence of organizational conflicts of interest, it may be determined that the award of the contract would be in the best interest of the Government. In that case, the contracting officer may set terms and conditions which will reduce the organizational conflicts of interest to the greatest extent possible, with the approval of the head of the contracting activity.

(d) The contracting officer will, in addition to any certifications required by this subpart, require in all solicitations for consulting services that the offeror submit as part of an offer a statement which discloses all relevant facts relating to existing or potential organizational conflicts of interest surrounding the contract and/or the proposed use of subcontractors during the contract.

809.505 General rules.

The determination that organizational conflicts of interest exist can only be made when facts surrounding individual contracting situations are known. Therefore, it is up to the contracting officer to exercise common sense, good judgment and sound discretion in making such a determination and to take steps to mitigate to the greatest extent possible organizational conflicts of interest. The contracting officer will be guided by at least two underlying principles. These are that organizational conflicts of interest may result from (a) conflicting roles and interests of the contractor, in which case he/she would be unable to give unbiased and objective advice or may otherwise produce a biased work product; or (b) unfair competitive advantage which

exceeds a normal flow of benefits from the award of the contract.

809.508-2 Contract clause.

The representation in 852.209-70, Organizational Conflicts of Interest, will be made a part of all solicitation for consulting services.

Subpart 809.7—Defense Production Pools and Research and Development Pools

809.702 Contracting with pools.

Veterans Administration contracting officers will be advised of, consider bids from, and make awards to, Small Business and Defense Production Pools. The Chief Medical Director, or designee, will notify the appropriate departments and staff offices when such pools are approved.

PART 810—SPECIFICATIONS, STANDARDS AND PURCHASE ORDER DESCRIPTIONS

Sec.

810.005 Management of purchase descriptions.
810.006 Using specifications and standards.
810.007 Deviations.
810.011 Solicitation provisions and contract clauses.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

810.005 Management of purchase descriptions.

(a) *General requirements.* When a purchase description is used to describe required items of mechanical equipment, the invitation for bids or request for proposals will include the service data manual clause (852.210-70) and guarantee clause (852.210-71).

(b) *Invitation for bids, "brand name or equal" descriptions.* The invitation for bids or request for proposals on mechanical equipment using "brand name or equal" purchase descriptions will contain the service data manual clause (852.210-70) and guarantee clause (852.210-71).

810.006 Using specifications and standards.

(a) *Exceptions to mandatory use of Federal specifications.* The exception to the mandatory use of Federal specifications, with respect to purchases not exceeding $10,000 authorized by FAR 10.006(a)(ii) does not apply to items (1) purchased from GSA stock, (2) available from a Federal supply schedule contract, or (3) identified by a VA X-Series Specification.

(b) *Optional use of interim Federal specifications.* (1) Interim Federal specifications, developed by VA, as indicated in the preamble, are mandatory under the same conditions and with the same exceptions as provided for Federal specifications.

(2) Suggested changes to interim Federal specifications used on an optional basis will be handled as in 810.007.

(c) *Military and departmental specifications.* (1) The monetary exemption to the use of Federal specifications contained in FAR 10.006(a)(ii) is equally applicable to Veterans Administration, military and departmental specifications. Contracting officers may, when they deem it to be advantageous to the Veterans Administration, utilize these specifications when procuring supplies and equipment costing less than $10,000. However, when purchasing items of perishable subsistence, contracting officers shall observe only those exemptions set forth in paragraphs (c)(5) and (6) of this section.

(2) When circumstances will not permit a field station to use a Veterans Administration specification without deviation, the contracting officer shall, prior to taking any procurement action, submit to the Director, Office of Procurement and Supply, or Director, VA Marketing Center, Hines, Ill., whichever is appropriate, a request for authority to deviate from the specification. The request will specifically detail the reasons why the deviation is essential to the station's operation. The approving authority will coordinate the request with the using service in Central Office. The contracting officer will be advised as to the approval or disapproval of the request. If approved the letter of approval will be filed in the appropriate purchase or contract file.

(3) The Veterans Administration has adopted for use in the procurement of packinghouse products, the purchase descriptions and specifications set forth in the Institutional Meat Purchase Specifications (IMPS), and the IMPS General Requirements, which have been developed by the U.S. Department of Agriculture. Purchase descriptions and specifications for dairy products, poultry, eggs, fresh and frozen fruits and vegetables, as well as certain packinghouse products selected from the IMPS especially for Veterans Administration use, are contained in the Federal Hospital Subsistence Guide. A copy of this guide and the IMPS may be obtained from any Veterans Administration contracting officer.

(4) Contract terms and conditions governing the procurement of subsistence items listed in the Federal Hospital Subsistence Guide and IMPS are set forth in VA Form 10-1365. This form shall be attached to and made a part of each solicitation for such items when applicable.

(5) The military specifications for meat and meat products contained in Federal Hospital Subsistence Guide shall be used by the Veterans Administration only when purchasing such items of subsistence from the Defense Logistics Agency (DLA). Military specifications for poultry, eggs, and egg products contained in Federal Hospital Subsistence Guide may be used when purchasing either from DLA or from local dealers.

(6) Except as authorized in Part 846 of this chapter, contracting officers shall not deviate from the specifications contained in Federal Hospital Subsistence Guide, and the IMPS without prior approval of the Director, Office of Procurement and Supply.

(7) Items of meat, cured pork and poultry, not listed in either the Federal Hospital Subsistence Guide or the IMPS, will not be purchased without prior approval of the Director, Office of Procurement and Supply.

(8) In the absence of mandatory documents, specifications or purchase descriptions of other agencies may be used by the various Marketing Divisions when appropriate. These specifications or purchase descriptions may be modified to meet the needs of the Veterans Administration. If repeated use of a modified specification or purchase description is required, the Director, VA Marketing Center shall consider converting it to a Veterans Administration specification.

(9) A field station may use a specification or purchase description of another agency without prior approval when the specification or description will, without modification, satisfy its needs. If, however, the specification or description must be modified to meet the station's needs, the procedure set forth in paragraph (c)(2) of this section will be followed.

(10) The Director, Publications Service, is responsible for developing, publishing, and distributing Veterans Administration specifications covering printing and binding.

(11) Veterans Administration specifications, as they are revised, are placed in stock in the VA Forms and Publications Depot. Station requirements of these specifications will be requisitioned from that source.

(d) *Government paper specification standards.* Invitations for bids, requests for proposals, purchase orders, or other procurement instruments covering the purchase of paper stocks to be used in duplicating or printing, or which specify

the paper stocks to be used in buying printing, binding, or duplicating will require that such paper stocks be in accordance with the government Paper Specification Standards issued by the Joint Committee on Printing of Congress.

(e) *Veterans Administration binding specifications.* (1) All binding or rebinding of books, magazines, pamphlets, newspapers, slip cases and boxes will be procured in accordance with Government Printing Office (GPO) specifications and will be procured from the servicing GPO Regional Printing Procurement Office for procurements exceeding $500 or, when appropriate, from commercial sources, Subpart 808.75.

(2) There are three types of binding/rebinding: (i) Class A (hard cover); (ii) Perfect (glued); and (iii) Lumbinding (sewn). The most suitable type of binding will be procured to satisfy the requirements, based upon the intended use of the bound material.

(f) *Mandatory use and applications of Federal standards.* (1) Requests for exceptions to Federal Standards not authorized by FAR 10.006(a)(ii) will be submitted with adequate justification to the Director, Office of Procurement and Supply (91A) for submission to General Services Administration.

(2) Federal standards do not preclude the use of existing Government stocks or acceptance of excess property not in full conformity with the standard items.

810.007 Deviations.

(a) *Deviations from Federal specifications.*—(1) *Field station.* When a deviation from a Federal specification is deemed necessary because of a specific requirement, the contracting officer will request such authority from the Director, Office of Procurement and Supply, prior to procurement. The request will specify exactly how the station proposes to deviate from the current specification and why the particular deviation is essential to the station's operations. The contracting officer will be advised as to approval or disapproval of the request. If approved, the Director, Office of Procurement and Supply, will, when necessary, forward the notice required by FAR 10.007(a)(4) to the General Services Administration.

(2) *Marketing center.* When the essential needs of the Veterans Administration are not adequately covered by an existing Federal specification, the Chief of the Marketing Division concerned will:

(i) When the required deviation affects only the packing, packaging, marking or labeling, and the item is being purchased for depot stock, coordinate the deviation with the Director, VA Supply Depot, Hines, Ill., through the Director, VA Marketing Center. If, in the opinion of the Director, VA Supply Depot, the proposed deviation will not affect storage, handling or transportation, the Director, VA Marketing Center, will be advised of his/her concurrence. The Director, VA Marketing Center, will then approve the deviation.

(ii) When the deviation specified in paragraph (a)(2)(i) of this section is for an item that is not being purchased for depot stock, document the reasons why the deviation is essential, and obtain the approval of the Director, VA Marketing Center, who will report the approval to the Director, Office of Procurement and Supply.

(iii) When the required deviation affects other than packing, packaging, marking, or labeling, coordinate the required deviation with the using service in Central Office. If approved by the using service, a request for authority to deviate will be submitted to the Director, Office of Procurement and Supply, through the Director, VA Marketing Center, Hines, Ill. It will specify in detail why the specific deviation is essential to the Veterans Administration's operations and be accompanied by a copy of the using service's comments. The appropriate marketing division chief will be advised as to the approval or disapproval of the request. If approved, the Director, Office of Procurement and Supply, will when necessary forward the notice required by FAR 10.007(a)(4) to the General Services Administration.

810.011 Solicitation provisions and contract clauses.

(a) *Specifications.* When product specifications are cited in an invitation for bids or requests for proposals, the citation shall include: (1) Desired options, (2) deviations authorized in accordance with 810.007, listed in numerical sequence, and (3) shall conform to the following:

Shall be type ———, grade ———, in accordance with (type of specification) No. ———, dated ———— and amendment ——— dated ————, except paragraphs ——— and ——— which are amended as follows:

PART 812—CONTRACT DELIVERY OR PERFORMANCE

Subpart 812.1—Delivery or Performance Schedules

Sec.
812.104 Contract clauses.

Subpart 812.2—Liquidated Damages

812.202 Policy.
812.204 Contract clauses.

Subpart 812.3—Priorities, Allocations, and Allotments

812.302 General.

Subpart 812.5—Suspension on Work, Stop-Work Orders, and Government Delay of Work

812.503 Stop-work orders.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 812.1—Delivery or Performance Schedules

812.104 Contract clauses.

When delivery is required by or on a particular date, the time of delivery clause set forth in FAR 52.212–1 as it relates to f.o.b. destination contracts will state that the delivery date specified is the date by which the shipment is to be delivered, not the shipping date. In f.o.b. origin contracts, the clause will state that the date specified is the date shipment is to be accepted by the carrier.

Subpart 812.2—Liquidated Damages

812.202 Policy.

Liquidated damages provisions will not be routinely included in supply or construction contracts, regardless of dollar amount. The decision to include liquidated damages provisions will conform to the criteria in FAR 12.202. In making this decision, consideration will be given to whether the necessity for timely delivery or performance as required in the contract schedule is so critical that a probable increase in contract price is justified. Liquidated damages provisions will not be included as insurance against selection of a non-responsible bidder, as a substitute for efficient contract administration, or as a penalty for failure to perform on time.

812.204 Contract clauses.

When the liquidated damages clause prescribed in FAR 52.212–4 and 52.212–5 is to be used and where partial performance may be utilized to the advantage of the Government, the clause in 852.212–70 will be included in the contract.

Subpart 812.3—Priorities, Allocations, and Allotments

812.302 General.

(a) Priorities, allocations, and allotments of critical materials are controlled by the Department of Commerce. Essentially such priorities, etc., are restricted to projects having a direct connection with supporting current defense needs. The Veterans Administration is not authorized to assign a priority rating to its purchase

orders or contracts involving the acquisition or use of critical materials.

(b) In those instances where it has been technically established that it is not feasible to use a substitute material, the Department of Commerce has agreed to assist us in obtaining critical materials for maintenance and repair projects. They will also, where possible, render assistance in connection with the purchase of new items, which may be in short supply because of their use in connection with the defense effort.

(c) Contracting officers having problems in acquiring critical materials will ascertain all the facts necessary to enable the Department of Commerce to render assistance to the Veterans Administration in acquiring these materials. The contracting officer will submit a request for assistance containing the following information to the Director, Office of Procurement and Supply (90):

(1) A description of the maintenance and repair project or the new item, whichever is applicable.

(2) The critical material and the amount required.

(3) The contractor's sources of supply including any addresses. If the source is other than the manufacturer or producer, also list the name and address of the manufacturer or producer.

(4) The Veterans Administration contract or purchase order number.

(5) The contractor's purchase order number, if known, and the delivery time requirement as stated in the solicitation or offer.

(6) The additional time the contractor claims will be necessary to effect delivery if priority assistance is not provided.

(7) The nature and extent of the emergency that will be generated at the station, e.g., (i) damage to the physical plant, (ii) impairment of the patient care program, (iii) creation of safety hazards, and (iv) any other pertinent condition that will result because of failure to secure assistance in obtaining the critical materials.

(8) If applicable, a statement that the item required is for use in a construction contract which was authorized by the Director, Office of Construction (08), to be awarded and administered by the station contracting officer.

Subpart 812.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

812.503 Stop-work orders.

When the contracting officer has determined that it is advisable to suspend work, pending a decision by the Government, and a supplemental agreement providing for the suspension is not feasible, he/she will request approval to issue a stop-work order to the appropriate contracting officer designated in 801.602.

SUBCHAPTER C—CONTRACTING MEHTODS AND CONTRACT TYPES

PART 813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 813.5—Purchase Orders

Sec.

813.505–2 Agency forms in lieu of Optional Forms 347 and 348.
813.506–70 Oral purchase orders.
813.507 Clauses.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 813.5—Purchase Orders

813.505–2 Agency forms in lieu of Optional Forms 347 and 348.

(a) VA Form 90–2138, Order for Supplies or Services, and VA Form 90–2139, Order for Supplies or Services (Continuation), provide in one interleaved set of forms a purchase or delivery order, vendor's invoice, and receiving report. They will be used in lieu of and in the same manner as Optional Form 347, Order for Supplies or Services and Optional Form 348, Order for Supplies or Services Schedule—Continuation.

(b) The following order forms are for use when ordering the indicated medical, dental and ancillary services up to $10,000 per authorization when such services are not available under existing contracts.

(1) VA Form 10–7078, Authorization and Invoice for Medical and Hospital Services.

(2) VA Form 10–7079, Request for Outpatient Medical Services.

(3) VA Form 10–2570d, Dental Record, Authorization and Invoice for Outpatient Services.

(c) In authorizing patient travel as set forth in VA Manual MP–1, Part II, Chapter 3, VA Form 10–2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, will be used as provided by that manual.

(d) Standard Form 182, Request, Authorization, Agreement, and Certification of Training, will be utilized for the procurement of training in the manner prescribed in 870.104.

(e) VA Form 10–2421, Prosthetics Authorization and Invoice, will be used as prescribed in 801.670–15 for indicated services not in excess of $300.

813.506–70 Oral purchase orders.

Oral purchase orders, when considered advantageous to the Veterans Administration, may be used for transactions not in excess of $2,500. The transaction will be assigned a purchase order number and receipt documentation will be obtained on the copies of the purchase request utilized as a property voucher and receiving report. Documentation as to competition will be in accordance with FAR 13.106c.

813.507 Clauses.

When using VA Form 90–2138 for maintenance contracts involving services performed on Government property and which have the potential for property damage and liability claims, the Contractor's Responsibilities clause found in 852.237–70 will be attached. Applicable maintenance contracts include but are not limited to window washing, pest control and elevator maintenance.

PART 814—FORMAL ADVERTISING

Subpart 814.1—Use of Formal Advertising

Sec.

814.103 Policy.
814.103–1 General.
814.104 Types of contracts.
814.104–70 Fixed-price contracts with escalation.

Subpart 814.2—Solicitation of Bids

814.201 Preparation of invitations for bids.
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Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 814.1—Use of Formal Advertising

814.103 Policy.

814.103–1 General.

Contracts in excess of the small purchase limitation or in excess of $1,000 for contracts made for repairs to property acquired by the Veterans Administration under chapter 37, Title 38, United States Code, will be made by formal advertising when all of the following elements necessary to formal advertising are present.

(a) A complete, adequate and realistic specification or purchase description is available or can be written.

(b) There are two or more suppliers who are willing and able to compete effectively for the contract.

(c) There is sufficient time to prepare the invitation completely setting forth the needs of the VA, the terms and conditions upon which it will do business and to complete the administrative determinations, including evaluation, essential to this type of procurement.

(d) The award can be made on the basis of price alone to a reasonable and responsive bidder.

814.104 Types of contracts.

814.104–70 Fixed-price contracts with escalation.

When contracts of this nature are authorized pursuant to 816.102(b), contracting officers will be guided by the provisions of FAR 16.203.

Subpart 814.2—Solicitation of Bids

814.201 Preparation of invitations for bids.

(a) Invitations for bids for supplies, equipment and services will be serially numbered at the time of issue. The number will consist of the station or marketing division number, the serial number of the invitation, and the fiscal year in which issued, e.g., 101–24–84. A series beginning with the number 1 will be started each fiscal year. Invitations for bids for supplies, equipment and services which are issued, accepted and become contracts in the same fiscal year but, because of procurement leadtime, will not be performed until the ensuing fiscal year will be numbered in the series of the year in which they are issued. However, invitations issued in one fiscal year that will result in a contract that will become effective and performed only in the ensuing fiscal year will be numbered in the ensuing fiscal year series.

(b) Invitations for construction contracts will bear the applicable specification number and project number, if assigned. When no specification or project number is assigned, the invitation will be assigned a number in the current fiscal year series as provided in paragraph (a) of this section.

(c) In order to preclude adverse criticism of the Veterans Administration by prospective bidders relative to the disclosure of bid prices prior to bid opening, the provision entitled "Caution to Bidders Bid-Envelopes," as set forth in 852.214–70, will be prominently placed in all invitations for bids.

(d) To realize the greatest possible price advantage for the Government, items that may be processed by a contractor to effect a reduction in cost factors such as production, inspection and delivery, may be listed for award on both individual item and summary item bases. Items will be listed individually and, in addition, a summary price will be solicited for those items the contracting officer determines to be of a related character and normally handled by a majority of prospective bidders.

(1) When different products are to be combined for a summary price, the quantity, unit and unit price columns opposite the summary item will be crossed out, e.g.:

(Item No.) Summary bid for furnishing items ——— to ——— inclusive on an all or none basis:

Quantity	Unit	Unit price	Amount
XX.....	XX.....	XX.....	XX.

(Bidder will enter amount.)

(2) When a single unit price is solicited for a single product for delivery to various destinations, or for multiple deliveries, the total quantity required will be listed opposite the summary item, e.g.:

(Item No.) Summary bid for furnishing items ——— to ——— inclusive on all or none basis:

Quantity	Unit	Unit price	Amount
XX.....	XX.....	XX.....	XX.

(Bidder will enter unit price and amount.)

(3) Invitations containing a summary bid request will contain the following statement:

The award will be made on either an individual item basis or summary bid basis, whichever results in the lowest cost to the Government. Therefore, to assure proper evaluation of all bids, a bidder quoting a summary bid price must also quote a price on each individual item included in the summary bid price.

(e) Bid invitations for supplies, equipment, or services (other than construction) must define the extent to which alternate bids will be authorized and considered. Alternates specified on construction projects will be considered for acceptance only as a part of the basic item.

(1) When an alternate item will be considered only if no bids or insufficient bids are received on the item desired, the clause set forth in 852.214–71(a) will be included in the invitation.

(2) When an alternate item will be considered on or equal basis with the item specified, the clause set forth in 852.214–71(b) will be included in the invitation.

(3) In addition to the clauses referenced in paragraph (e) (1) or (2) of this section, the clause set forth in 852.214–71(c) will be included in the invitation when bids will be allowed on different packaging, unit designation, etc.

(f) When a contracting officer determines that it will be advantageous to the Government to make the award by group or groups of items, a provision for such award will be included in the invitation for bids.

(1) This may apply when:

(i) The items in the group or groups are readily available from the sources to be solicited; and

(ii) It is desirable to make a minimum number of contracts; or

(iii) Furniture or fixtures are required for a single project and uniformity of design is desirable; or

(iv) The articles required will be assembled and used as a unit.

(2) Solicitations for supplies and services, other than construction, will contain the "Aggregate Award" clause set forth in 852.214–72.

(3) Solicitations for construction contracts which solicit prices on an item and alternate item basis (when it is intended that a single aggregate award will be made for all items in the solicitation within certain fiscal limitations) will contain a statement as to the order of priority in which the alternate items will be awarded. This priority will be based on the relative importance of an item, the Veterans Administration's estimate, and the amount of funds available. Such

schedules will be substantially as follows:

Item No. 1—Furnish all labor, material, equipment, etc., to paint buildings No. 1, 2, and 3, $———.
Alternate items in order of priority. Furnish all labor, material, equipment etc. to paint:
Item No. 2—Building No. 1 only $———.
Item No. 3—Building No. 2 only $———.
Item No. 4—Building No. 3 only $———.

A single award will be made on Item No. 1, but in the event the offer exceeds the funds available, a single award will be made on Item No. 2, or a combination of Items Nos. 2 and 3. Offerors should quote a price on each item listed.

814.202 General rules for solicitation of bids.

814.202-4 Bid samples.

When it has been determined that samples are necessary to the proper awarding of a contract, the clause set forth in 852.214-73 will be added to the provision in FAR 52.214-20.

814.203 Methods of soliciting bids.

814.203-1 Mailing or delivery to prospective bidders.

(a) The contracting officer will include either a bid envelope, or Optional Form 17, Sealed Bid Label, with each invitation for bids furnished to prospective bidders.

(b) Standard Form 1442, Solicitation, Offer, and Award, may be distributed 10 to 14 days prior to the issue of drawings and specifications.

814.203-2 Dissemination of information concerning invitations for bids.

Except as provided in 805.205 and 38 CFR 2.3 and 2.4, paid advertising for procurement of supplies, equipment, and services will be used only upon written approval of the Administrator. Each request for approval will set forth the circumstances which preclude procurement being accomplished satisfactorily by normal advertising methods. The request will be submitted through channels and routed through the Director, Office of Procurement and Supply (93), for preparation of recommendations to the Administrator.

814.204 Records of invitations for bids and records of bids.

(a) A single register will be established and maintained by the issuing office on a fiscal year basis for all solicitations by invitations for bid or requests for proposal number, date of issue, date of opening, commodity or service involved and disposition, i.e., contract number or purchase order number or, when applicable, no award.

(b) Maintenance of the contract file prescribed by Part 804 and retention of canceled Invitation for Bid files will fulfill the requirements set forth in FAR 14.204.

814.205 Solicitation mailing lists.

814.205-1 Establishment of lists.

From the bidders mailing list applications received, each contracting activity will compile and keep current a Bidders Mailing List file. The lists will be maintained according to the commodity classification or group of items normally listed on the same invitation for bids.

814.205-2 Removal of names from solicitation mailing lists.

Except as provided for in FAR 14.205-2, no Veterans Administration contracting officer, or other employee, shall remove from the bidders mailing list the name of any prospective bidder.

814.205-5 Release of solicitation mailing lists.

When invitations for bids for supply and service contracts have been issued, contracting officers may furnish, upon request of an individual or institution having a bona fide interest in such information, a list of the prospective bidders to whom invitations for bids were submitted. The provisions of FAR 14.205-5 will be observed with respect to invitations for bids for construction contracts.

814.208 Amendment of invitation for bids (construction).

Amendments will be sent to holders of drawings and specifications by certified mail, return receipt requested. (Amendments may be made by telegram, if time does not permit mailing.)

Subpart 814.3—Submission of Bids

814.301 Responsiveness of bids.

Where the timeliness of the submission of a bid, modification or withdrawal cannot be administratively determined in accordance with FAR 14.301, the matter will be submitted by the contracting officer directly to the Comptroller General for decision. The submission will include copies of all pertinent papers. A copy of each submission will be forwarded to the Director, Office of Procurement and Supply.

814.302 Bid submission.

A bid hand-carried by the bidder or his agent will be considered late unless delivered to the addresses designated in the bid invitation prior to the time set for opening.

814.304 Late bids, late modifications of bids, or late withdrawal of bids.

814.304-2 Notification to late bidders.

The notification to late bidders will specify the final date by which the evidence must be received to be considered. This date must be within the time allowed by the apparent low bidder for acceptance of his bid.

814.304-4 Records.

All bids received by mail (or telegram where authorized) will be time and date stamped immediately upon receipt at the VA installation mail room and in the office of the addressee designated in the invitation. This will firmly establish the time of receipt of bids, or when bids are received in the office of the addressee subsequent to the time of opening, and it will establish whether or not the delay was due to mishandling on the part of the VA.

Subpart 814.4—Opening of Bids and Award of Contract

814.402 Opening of bids.

(a) The contracting officer shall serve as, or designate, a bid opening officer, and shall also designate a recorder.

(b) The form and amount of bids security and name of surety will be read aloud and recorded.

814.403 Recording of bids.

The information required for bid evaluation shall be recorded on the appropriate Abstract of Offers form (SF 1409 or SF 1419). The evaluation data may be recorded on supplemental sheets or forms such as VA Form 10-2237b, Request for Dietetic Supplies, providing that such supplemental sheets or forms are covered by one of the forms authorized above for recording bid or price data. In addition to those instructions set forth in FAR 14-403, the bid opening officer shall certify on the abstract the date and hour at which the bids were opened. Where erasures, strikeovers, or changes in price are noted at the time of opening, a statement to that effect will also be included on, or attached to, the abstract or record of bids.

814.404 Rejection of bids.

814.404-1 Cancellation of invitations after opening.

A copy of each invitation for bids which is canceled as provided for in FAR 14.404-1, together with the abstract showing to whom such bids were sent, will be filed in a separate folder identified by the invitation number. Invitations for bids which result in no bids being received will be handled in

like manner. In each instance the abstract will be annotated to show why an award was not made. These folders will be retained for the current and two succeeding fiscal years.

814.404-2 Rejection of individual bids.

(a) When a bid that is being considered for an award is found to be incomplete, e.g., all pages of the invitation have not been returned by the bidder, the contracting officer will take whichever of the following actions that is appropriate:

(1) Make a determination that the bid as submitted is in such a form that acceptance would create a valid and binding contract, requiring the contractor to perform in accordance with all of the material terms and conditions of the invitation. Such a determination may be based on the fact that the bid as submitted includes evidence that the offeror intends to be bound by all the material terms and conditions of the invitation.

(2) Make a determination that the bid as submitted is in such form that acceptance would not create a valid and binding contract.

(b) When a single bid is received in response to a solicitation, the offer shall not be rejected simply because it specifies a bid acceptance time which is shorter than that contained in the solicitation, unless a compelling reason exists for rejecting such a bid. Insufficient time to properly evaluate an offer shall be considered a compelling reason for rejection; however, the contracting officer will first request the offeror to extend the acceptance date of the bid to allow for proper evaluation.

Note.—In those cases where more than one bid is received, an individual bid which is not in compliance with the Government's bid acceptance time shall be rejected as nonresponsive since consideration of such an offer would unfairly disadvantage other bidders.

814.404-70 Questions involving the responsiveness of a bid.

Questions involving the responsiveness of a bid which cannot be resolved by the contracting officer may be submitted to the Comptroller General through the Director, Office of Procurement and Supply (93B) or the Director, Office of Construction (08), as appropriate. Pertinent documentation must accompany the submission.

814.406 Mistakes in bids.

814.406-3 Other mistakes disclosed before award.

(a) In accordance with the provisions of the FAR 14.406-3(e), the authority of the Administrator to make the administrative determinations set forth in FAR 14.406-3 (a), (b), (c), and (d) is hereby delegated, without power of redelegation to the Director, Office of Procurement and Supply. This delegation in no way impairs the delegations contained in Comptroller General decision B-122003, dated November 22, 1954.

(b) When a bidder alleges a mistake in his or her bid prior to award, after complying with the provisions of FAR 14.406-3, the contracting officer will submit the complete file to the Director, Office of Procurement and Supply (93B) for an administrative determination. Based upon the evidence submitted, the Director, Office of Procurement and Supply, will determine the action to be taken by the contracting officer. Prior to its release to the contracting officer, this determination will be submitted to the General Counsel (025) for approval. Pending receipt of the determination, no award shall be made.

(c) Based on the evidence, when the Director, Office of Procurement and Supply, believes that the case should be submitted to the Comptroller General for decision, he/she will prepare the submission and forward it to the Comptroller General through the General Counsel (025). The decision of the Comptroller General will be furnished to the contracting officer by the Director, Office of Procurement and Supply (93B). A copy of each such decision will be furnished to the General Counsel (025).

814.406-4 Mistakes after award.

(a) When a contracting officer corrects a mistake in bid pursuant to FAR 14.406-4(a), a copy of the contract amendment or supplemental agreement together with a copy of the contracting officer's determination will be forwarded to the Director, Office of Procurement and Supply (93B).

(b) For mistakes in bid alleged after award, the contracting officer's proposed determination, prepared in accordance with FAR 14.406-4, will be forwarded to the General Counsel (025) through the Director, Office of Procurement and Supply (93B) for legal coordination. The results of this coordination will be transmitted to the contracting officer by the Director, Office of Procurement and Supply (93B). The final determination on the alleged mistake in bid after award will be made by the contracting officer.

(c) The Director, Office of Procurement and Supply (93B) will maintain the agency records of mistakes in bids after award required by FAR 14.406-4.

814.407 Award.

814.407-1 General.

(a) Prior to award of a contract for the purchase of a firm or indefinite quantity of supplies, equipment or services (excluding construction) at an actual or estimated cost of $200,000 or more, contracting officers will forward to the Chief, Supply Service for station-level contracts, to the Director, VA Marketing Center, for Market Center contracts, and the Director, Procurement Service (93) for Central Office contracts.

(1) By written notice:

(i) Name and address of proposed awardee.

(ii) Amount of contract.

(iii) Statement of clean bid (no exceptions, protests or mistakes, etc.)

(iv) Contracting officer's determination of bidder's responsibility (history of performance with the Veterans Administration).

(2) On other than routine awards:

(i) A copy of the appropriate specification.

(ii) A copy of each bid received including any correspondence accompanying a bid.

(iii) Copies of correspondence received in lieu of a bid.

(iv) A copy of the abstract.

(v) Contracting officer's determination of bidder's responsibility.

(vi) Statement as to proposed inspection and testing to assure compliance with specifications.

(vii) Contracting officer's analysis of bids received and his/her determination as to the award.

(b) The official designated in paragraph (a) of this section after completion of his/her review, will inform the contracting officer whether an award should or should not be made. In the event an award is not recommended, the specific reason for such a decision will be furnished the contracting officer.

(c) Multiple bids submitted by one individual on his/her own behalf or on behalf of two or more companies, or by two or more affiliated companies, may be considered in making an award, provided the bids were not submitted:

(1) For the purpose of circumventing a law such as the Davis-Bacon Act or the Walsh-Healy Public Contracts Act, or

(2) For any other purpose which would be prejudicial to the United States or to other bidders.

(d) To preclude any bidder from gaining an unfair advantage through the submission of multiple bids which are equal in all respects to other low bids received under the same invitation for bids, only one such bid shall be

considered in the award by lot. The selection of the bid (of the equal multiple bids received) to represent the person or firm, or affiliates thereof, shall be by lot.

814.407-8 Protests against award.

(a) *General.* When a protest against the award of a contract or a request from the GAO (General Accounting Office) for an agency report relative to a protest against an award lodged with that agency is received in Central Office, the protest or request will be immediately forwarded to the Director, Office of Procurement and Supply (93B). Protests or requests concerning Central Office architect-engineer or construction contracts will be forwarded to the Director, Office of Construction (08). The Director, Office of Construction or the Director, Office of Procurement and Supply (93B), whichever is appropriate, will immediately notify the contracting officer, furnish him/her a copy of the protest and request that he/she furnish the information required by FAR 14.407-8(a)(2). The contracting officer will notify all parties involved in or affected by the protest and secure from them their views as provided in FAR 14.407-8(a) (3) and (c). The documented file required by FAR 14.407-8(a)(1) will be prepared by the contracting activity and forwarded to either the Director, Office of Procurement and Supply (93B) or Director, Office of Construction (08) and must be received within 10 workdays after notification of a protest lodged with the General Accounting Office. All reports to GAO specified in FAR 14.407-8 will be submitted through the General Counsel (025) for legal review.

(b) *Letter to protester.* When a protest has been lodged with the contracting officer and has been subsequently denied by the contracting officer, the letter to the protestor detailing the contracting officer's reasons for denying the protest will conclude with the following statement, naming the appropriate VA official:

Should you disagree with this decision, you may file an appeal with either the (Director, Office of Procurement and Supply (93B), or the Director, Office of Construction) VA Central Office, 810 Vermont Avenue, N.W., Washington, D.C. 20420, or the Comptroller General, General Accounting Office, ATTN: Bid Protest Control Unit, Washington, D.C. 20548. Appeals must be received within 10 workdays after receipt of this letter. By filing an appeal with the (Director, Office of Procurement and Supply (93B), or the Director, Office of Construction) VA Central Office, you may waive your right of further appeal to the Comptroller General at a later date.

(c) *Protest before award.* When a written protest has been lodged with the contracting officer, and he/she considers it desirable to do so, he/she may obtain the views of the Comptroller General. The submission to the Comptroller General will be sent through the Director, Office of Procurement and Supply (93B) or the Director, Office of Construction, as appropriate, and will include the material indicated in FAR 14.407-8(a)(2). The contracting office will notify the protesting individual or firm promptly in writing of the decision of the Comptroller General.

(1) While a case involving a protest before award is pending with the Comptroller General, no award may be made except when, in the opinion of the contracting officer, the needs of his/her facility will not permit delay in awarding the contract. He/she will document the specific reasons why the award must be made and submit a request for approval to the Director, Office of Procurement and Supply (93B) or the Director, Office of Construction (08), whichever is appropriate.

(2) The Director, Office of Procurement and Supply (93B) and the Director, Office of Construction (08), whichever is appropriate, will notify the Comptroller General of the contracting officer's intent to award and request advice as to the status of the case. Upon receipt of this advice, the Director, Office of Procurement and Supply or the Director, Office of Construction will approve the request or advise the contracting officer as to the action to be taken.

(d) *Protest after award.* When a written protest is lodged with the contracting officer, he/she will review the basis for award.

(1) If the contracting officer determines that the award was proper, he/she will furnish the protester a written explanation of the basis for the award which is responsive to the allegations of the protest. The contracting officer will advise the protester that he/she may appeal the determination to the Director, Office of Procurement and Supply (93B) or the Director, Office of Construction in the case of a Central Office architect-engineer or construction contract, or the Comptroller General.

(2) If the contracting officer determines that the award is questionable, he/she will advise the contractor of the protest and invite him/her to submit his/her views and relevant information. At the same time, the contracting officer will seek to obtain a mutual agreement with the contractor to suspend performance on a no-cost basis. Whether or not the contractor agrees, the case will be submitted promptly to the Director, Office of Procurement and Supply (93B) or the Director, Office of Construction in the case of a Central Office architect-engineer or construction contract, who will either advise the contracting officer of the appropriate action to take, or submit the case to the Comptroller General for his/her decision.

814.407-70 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if (a) the specifications used in the invitation were not restrictive, (b) adequate competition was solicited, (c) the price is reasonable, and (d) the bid is otherwise in accordance with the invitation for bids. Such determination will be made in writing, and included on or attached to the abstract of bids.

814.407-71 Recommendation for award (construction).

(a) For Central Office contracts, the Director, Office of Construction, after analyzing all bids received, will submit a memorandum to the Administrator (00) recommending award or other disposition of the project. A copy of each of the following will accompany the memorandum:

(1) The invitation.

(2) Each bid received.

(3) The abstract.

(4) Any other pertinent data.

(b) On station level contracts, the Chief, Engineering Service, will analyze all bids received and submit to the contracting officer a memorandum recommending award or other disposition of the project. However, the final decision to accept or reject the lowest responsive bid and the determination as to the responsibility of a prospective contractor shall be made by the contracting officer alone.

814.408 Information to bidders.

(a) Prior to award, no information as to probable acceptance or rejection of any offer shall be given to any bidder or other person outside the Veterans Administration.

(b) Except as provided in paragraphs (c) and (d) of this section, information as to performance under contract or an accepted bid is not public information and will be released to persons outside the VA only upon the authority of the immediate supervisor of the contracting officer.

(c) Except as provided in paragraph (d) of this section, the contracting officer may furnish information as to performance under a contract to those having a legitimate interest, such as

banks, other financial companies and Government departments and agencies.

(d) When litigation is involved, all information will be furnished through the General Counsel (025).

PART 815—CONTRACTING BY NEGOTIATION

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815.901 General.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 815.1—General Requirements for Negotiations

815.103 Use of negotiation.

Contracts in excess of the small purchase limitation specified in FAR Part 13 (or $1,000 for repairs to properties acquired under Chapter 37, Title 38, United States Code), will be entered into by negotiation only in the absence of any one or more of the elements essential to formal advertising set forth in 814.103, or when:

(a) It is determined that the procurement should be effected from small business in accordance with FAR Part 19.

(b) It is determined that the procurement should be effected from labor surplus area concerns in accordance with FAR Part 20.

(c) Items to be purchased are for authorized resale.

815.104 Authorization and approval.

Proposed contracts for the purchase of a firm quantity of supplies or equipment, at a cost in excess of $200,000, are subject to the procedure set forth in 814.407–1.

Subpart 815.2—Negotiation Authorities

815.200 Scope of subpart.

(a) Subject to the requirements and limitations prescribed in FAR Subparts 15.1, 15.2, and 15.3, and Subparts 815.1, 815.2, and 815.3, Veterans Administration contracting officers, acting within the scope of their authority, may negotiate contracts for the acquisition of supplies, equipment and services. Each solicitation and contract will cite the negotiation authority selected.

(b) In those instances where a purchase in excess of the small purchase limitation specified in FAR Part 13 may be negotiated under more than one authority, the contracting officer will select the authority he/she deems most appropriate to accomplish the purchase and will include in the contract file complete justification for his/her selection in a determination and findings conforming to FAR Subpart 15.3.

(c) In addition to the controls specified in this Subpart, the Administrator's approval of certain proposed contracts is required as prescribed in Subpart 837.2.

815.203 Purchases under the small purchase limitation.

(a) Procurement of medical services and resources authorized by sections 4117 and 5053 of Title 38, United States Code, costing less than the small purchase limitation specified in FAR Part 13 may be procured by negotiation under authority of FAR 15.203 except as prescribed in 815.204–70. Each such contract and revision thereof is, however, subject to the same approval as those costing in excess of the small purchase limitation.

(b) Except as provided in this paragraph, purchases authorized to be negotiated under the special procurement authorities contained in Title 38, United States Code, will be negotiated under the authority of FAR 15.203 when the amount of purchase is not in excess of the small purchase limitation (FAR Part 13). An exception exists in the case of services or supplies purchased in support of property acquired under the Loan Guaranty program. For such purchases, 38 U.S.C. 1820(b) requires formal advertising if the amount will exceed $1,000.

(c) Procurements of consulting, management, administrative and professional services costing less than the small purchase limitation and made under the authority of 38 U.S.C. 213 are subject to the controls set forth in Subpart 837.2.

815.204 Personal or professional services.

(a) Various sections of Title 38, United States Code, authorize the Administrator to enter into contracts for the purpose of acquiring personal or professional services. These authorizations do not, however, stipulate the manner in which such contracts are to be entered into, i.e., negotiation or formal advertising. Civilian agencies are, under the authority of FAR 15.204, authorized to procure such services by negotiation. Therefore, when the services listed in this section are to be acquired by the Veterans Administration, at a cost in excess of the small purchase limitation (FAR Part 13), a contract will be negotiated by the contracting officer. These contracts will cite in addition to the authority to negotiate (except for those negotated under 38 U.S.C. 4117 or 38 U.S.C. 5053), FAR 15.204, the appropriate section of Title 38 which authorizes the contract.

(b) Architect-engineer services when required in conjunction with construction (see Subpart 836.6 of this chapter) will cite as the authority for such negotiations FAR 15.204 and 38 U.S.C. 5002.

(c) Contracts with medical schools, clinics, and any other group or individual capable of furnishing such services to provide scarce medical specialist services at Veterans Administration facilities (including but not limited to services of physicians, dentists, podiatrists, optometrists, nurses, physicians' assistants, expanded function dental auxiliaries, technicians, and other medical support personnel) will be negotiated under authority of 38 U.S.C. 4117. Such contracts must provide that services are rendered at Veterans Administration facilities.

(d) Contracts with hospitals (or medical installations having hospital facilities or organ banks, blood banks, or similar institutions) or medical schools, or clinics in the medical community for:

(1) The mutual use, or exchange of use, of specialized medical resources when such a contract will obviate the need for a similar resource to be provided in a Veterans Administration facility; or

(2) The mutual use, or exchange of use, of specialized medical resources in a Veterans Administration facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective

capacity will be negotiated under authority of 38 U.S.C. 5053.

(e) Proposed contracts for the services and resources specified in paragraphs (c) and (d) of this section may be entered into for one year only. When deemed essential to the mission of the stations, proposed renewal contracts will be negotiated for the subsequent year. Except as provided in paragraph (f) of this section, such proposed contracts will be submitted for approval to the Deputy Associate Deputy Chief Medical Director for Operations (10BA), when authority is 38 U.S.C. 5053, or Director, Office of Procurement and Supply (90), when authority is 38 U.S.C. 4117, so as to reach Central Office 60 days prior to effective date of the contract.

(1) Complete justification for all contracts will be submitted, as approval depends on the adequacy of the justification.

(2) Proposed contracts under authority of 38 U.S.C. 4117 will be submitted in five copies, and contracts under authority of 38 U.S.C. 5053 will be submitted in six copies.

(3) The transmittal letter and each supporting document will be submitted in the same number of copies as the contract. As an incomplete submission delays processing of the proposed contract in Central Office, care should be exercised to assure that the proper number of copies are submitted, and that submissions are complete (e.g., complete name and address of the other party or parties to the contract are included).

(4) Proposed contracts of the type specified in paragraph (d) (1) and (2) of this section will be accompanied by a recommendation of the station director as to the geographical limits to be applied to the medical community.

(5) A copy of all executed sharing contracts, both new and renewal, will be forwarded to the Deputy Associate Deputy Chief Medical Director for Operations (10BA) for review and for purposes of making the annual report to Congress as required by 38 U.S.C. 5057.

(f) Proposed renewal sharing contracts under the authority of 38 U.S.C. 5053 and proposed renewal scarce medical specialist services contracts under the authority of 38 U.S.C. 4117 may be approved by the appropriate Medical District Director when such contract proposals meet the following conditions:

(1) No new services are being added to the sharing contract. (Services may be deleted from the contract without Central Office approval, but only if such deletions do not effectively result in an individual item or total cost increase in excess of 10 percent over the cost in the previous contract.) No individual cost item that is being acquired from the contractor (non-Veteran Administration facility identified in the contract) will increase in cost more than 10 percent over the cost for that same item in the previous contract and there will be no increases in full-time equivalent employee requirements for scarce medical specialist service contracts.

(2) The total cost of a scarce medical specialist services contract will not increase more than 10 percent over the total cost of the previous contract.

(3) The sharing proposal has been reviewed for legal sufficiency by the District Counsel responsible for servicing the Veterans Administration facility involved. The District Counsel shall be sent, along with the sharing proposal, a copy of the previous sharing agreement for the same services so that a comparison can be made of the two documents.

(4) All contract clauses required by Chapters 1 and 8, Title 48, Code of Federal Regulations, are included in the proposal.

(5) Equal Employment Opportunity clearance has been obtained, when required (see Part 822).

(6) Certified cost or pricing data was obtained from the contractor when required by FAR 15.804. Cost or pricing data was submitted by the contractor on Standard Form 1411, Contract Pricing Proposal Cover Sheet, in accordance with FAR 15.804–6.

(7) When cost or pricing data was required, an audit was obtained in accordance with FAR 15.805–5 and 815.805–5.

(8) When cost or pricing data was required, a technical analysis has been performed on the contractor's proposal in accordance with FAR 15.805–4 and 815.805–4.

(g) Contracts for professional or technical services with private or public agencies not specifically authorized in any other section of Title 38, United States Code, may be acquired under 38 U.S.C. 213 and negotiated under FAR 15.204 when the cost of such services will exceed the small purchase limitation (See FAR Part 13). (See Subpart 837.2 regarding controls over the procurement of consulting, management, administrative and professional services).

(h) See 837.104 regarding personal service contracts having an employer-employee relationship.

815.204–70 Medical schools and related institutions.

Contracts of the type specified in 815.204, paragraphs (c) and (d), and 815.203(a) may be negotiated with medical schools and related institutions without competition (see Comptroller General Decision B–195559.2). Such contracts shall be negotiated under the authority of this 815.204–70 and 38 U.S.C. 4117 and 38 U.S.C. 5053, as appropriate. The requirements of 815.204, paragraphs (e) and (f), shall be applicable to all such procurement actions.

815.207 Medicines or medical supplies.

(a) Except as provided in this 815.207 or when specific prior approval has been granted by the Director, Office of Procurement and Supply, to a field station contracting officer, no Veterans Administration contracting officer shall enter into a contract by negotiation under authority of FAR 15.207, when the estimated cost of the item(s) required, singly or collectively, is in excess of the small purchase limitation (see FAR Part 13) for a single transaction.

(b) When an individual is designated to act in the capacity of one of the positions specified in this 815.207, that individual is authorized to consummate contracts in excess of the small purchase limitation (FAR Part 13) in the same manner as the incumbent of the position. The contracting officer's title will be indicated on the contract documents and official correspondence with the contractor. This will verify to the contractor that the contracting officer possesses the necessary contracting authority. Additionally, the contracting officer's title will appear on the applicable determinations and findings.

(c) The following contracting officers are authorized to award negotiated contracts in excess of the small purchase limitation (FAR Part 13) for medicines or medical items:

(1) Director, Office of Procurement and Supply.

(2) Director, Procurement Service.

(3) Director, Veterans Administration Marketing Center.

(4) Chief of each of the following Marketing Divisions:

(i) Medical Supplies;

(ii) Medical Equipment;

(iii) Federal Supply Schedules;

(iv) Pharmaceutical Products;

(5) Four contracting officers for each Marketing Division when so designated by the Marketing Division Chief.

815.209 Subsistence supplies.

(a) Except as provided in this 815.209 or when specific prior approval has been granted by the Director, Office of Procurement and Supply, to a field station contracting officer, no Veterans

Administration contracting officer shall enter into a contract by negotiation under authority of FAR 15.209 when the estimated cost of the item(s) required, singly or collectively, is in excess of the small purchase limitation (FAR Part 13) for a single transaction.

(b) When an individual is designated to act in the capacity of one of the positions specified in this 815.209, that individual is authorized to consummate contracts in excess of the small purchase limitation (FAR Part 13) in the same manner as the incumbent of the position.

(c) The following contracting officers are authorized to negotiate contracts in excess of the small purchase limitation (FAR Part 13) for the purchase of subsistence supplies:

(1) Director, Office of Procurement and Supply.

(2) Director, Procurement Service.

(3) Director, Veterans Administration Marketing Center.

(4) Chief, Marketing Division for Subsistence.

(5) Three senior contracting officers, Marketing Division for Subsistence, when so designated by the Marketing Division Chief.

815.210 Impractical to secure competition by formal advertising.

(a) Contracts for paid advertising for community placement homes and for recruitment purposes may be negotiated under the authority of this 815.210, after the request for the procurement of such advertising has been approved by one of the officials designated in 38 CFR 2.3 and 2.4

(b) Contracts for the procurement of paid advertising in the purchase or sale of supplies, equipment or services, may be negotiated under authority of this 815.210, only after the request for such procurement has been approved by the Administrator. (See FAR Subpart 5.5 regarding procedures for contracting for paid advertising).

815.211 Experimental, developmental, or research work.

Research authorized to be conducted by the Veterans Administration, in accordance with the provisions of Title 38, United States Code, will be negotiated under the authority of FAR 15.211 (except prosthetics research authorized by 38 U.S.C. 5023 will be negotiated under the authority of FAR 15.215).

815.215 Otherwise authorized by law.

Various sections of Title 38, United States Code, authorize the Administrator to enter into certain contracts, and certain types of contracts, without regard to any other provision of law. Veterans Administration contracting officers entering into contracts by negotiation for any of the following items or services, estimated to cost in excess of the small purchase limitation (See FAR Part 13), will cite, in addition to FAR 15.215 and 815.215, the appropriate section of Title 38, United States Code, as their authority to do so:

(a) Contracts for orthopedic and prosthetic appliances and related services including research. FAR 15.215 and 38 U.S.C. 5023. Contracts for items and services negotiated under this authority require a technical review under the provisions set forth in 801.602–70, even though the dollar amounts may not meet the levels specified in the section.

(b) Contracts to purchase or sell merchandise, equipment, fixtures, supplies and services for the operations of the Veterans Canteen Service. FAR 15.215 and 38 U.S.C. 4202.

(c) Contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 5009(b)(2), provided that (1) the establishment, operation and maintenance of such facilities have been authorized by the Administrator or designee; and (2) the station director determines in writing that operation by contract or lease is both desirable and warranted. FAR 15.215 and 38 U.S.C. 5009(b)(2).

(d) Contracts for laundry and other common services such as the purchase of steam, may be negotiated with non-profit, tax-exempt, educational, medical, or community institutions, when specifically approved by the Administrator or designee and when such services are not reasonably available from private commercial sources, FAR 15.215 and 38 U.S.C. 5022(c). Requests to enter into such contracts will be submitted to the Associate Deputy Chief Medical Director (10B), for approval by the Administrator or designee.

(e) Contracts or agreements with public or private agencies for the services of translators. FAR 15.215 and 38 U.S.C. 213.

Subpart 815.8—Price Negotiation

815.800 Scope of subpart.

The principles set forth in FAR Subpart 15.8, as well as those in this subpart, on the basic policy, pricing techniques, requirements for cost or pricing data, and the evaluation and audit of cost and pricing data apply to all negotiated cost-reimbursement, time-and-material, labor hour, firm fixed-price contracts and contract modifications. These principles also apply to annual revisions of prices under cost-reimbursement contracts as well as to the negotiation of initial prices.

815.804–2 Requiring certified cost or pricing data.

Under the circumstances prescribed in FAR 15.804–2(a), the contracting officer will require the prospective contractor to submit and to have any prospective subcontractor submit to the prime contractor, cost or pricing data and to certify to its accuracy and completeness. This data will be submitted by the contractor on SF 1411, Contract Pricing Proposal Cover Sheet, and will be used by the contracting officer in the evaluation of the offer and in the negotiation of the contract price or contract modification. The cost or pricing data is required to determine the reasonableness of the proposed price where such price is based on the cost of the proposed work. It is not required when the contracting officer determines that prices are based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public or prices set by law or regulation. To receive an exemption from the requirement for submission or certification of cost or pricing data when prices are based on established catalog or market prices or prices set by law or regulations, the contractor must ordinarily claim it on Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when required by FAR Subpart 15.804–3(e).

815.804–70 Preproduction and start-up and other nonrecurring costs.

In evaluating start-up and other nonrecurring costs, the extent to which these costs are included in the proposed price and the intent to absorb or recover any such costs in any future noncompetitive procurement or other pricing action will be determined. The contracting officer will ascertain, with the assistance of the Assistant Inspector General, Office of Audit (52), as required or considered necessary, that payment of such costs is not duplicated. For example, cost of equipment paid for by the Government through a setup or connection agreement will not be included in depreciation costs of a subsequently negotiated agreement.

815.805–4 Technical analysis.

(a) Contracting officers are responsible for the technical and administrative sufficiency of the contracts they enter into and ensuring

that all legal and technical reviews are accomplished. To this end, initial and revised pricing of all negotiated prime contracts (including subcontract pricing under them) and contract modifications will be subject to technical analyses to the degree the contracting officer deems necessary (see 801.602–70 for required legal reviews). Technical analyses of the proposals will be requested by the contracting officer from the appropriate technical personnel to address, as a minimum, the items set forth in FAR Subpart 15.805–4. Contracting officers shall not begin negotiation of or award any negotiated contracts or contract modifications before receipt, analysis and consideration of documented technical evaluations for every procurement action requiring such analysis under the conditions prescribed in FAR 15.805–4. The results of such analyses will be documented in the contract file and will also be made available to the auditor performing the preaward audit required by 815.805–5.

(b) When, in the opinion of the contracting officer, the complexity of the proposed contract warrants, he/she will submit the proposed contract to the Director, Office of Procurement and Supply (93), for review and comment. When deemed advisable, the Director, Office of Procurement and Supply (93), will request the General Counsel to accomplish a legal review. This review is in addition to the legal review specified in 801.602–70.

815.805–5 Field pricing support.

(a) When cost or pricing data are required in accordance with FAR 15.804, the contracting officer will request an audit before negotiating any proposed contracts or contract modifications resulting from a proposal in excess of $500,000. When initiating the audit, contracting officers in the Office of Procurement and Supply and Office of Construction who are located in the VA Central Office have the option to request audits directly from the cognizant audit agencies or requesting audits through the Assistant Inspector General for Policy, Planning and Resources (53C). All other contracting officers located in the VA Central Office and the Office of the General Counsel will send requests for audit to the Assistant Inspector General for Policy, Planning and Resources (53C). Contracting officers located at the VA Medical Centers, marketing centers and supply depots are required to arrange for audits through the Director, Office of Procurement and Supply or the Director, Office of Construction.

(b) When cost or pricing data are required for proposal less than $500,000 and an audit is not required, the contracting officer will make a cost and price analysis to evaluate the reasonableness of individual cost elements and to ensure that the overall price offered is fair and reasonable. The price and cost analysis techniques are set forth in FAR 15.805–2 and 15.805–3. The contracting officer located in Central Office may request an audit or request the Assistant Inspector General for Policy, Planning and Resources (53C) to render such accounting assistance or technical advice deemed desirable. A field station contracting officer may request such assistance and advice from the Assistant Inspector General for Policy, Planning and Resources (53C).

(c) When cost or pricing data are required in accordance with FAR 15.804 and the proposal is in excess of $500,000, an audit may not be requested under the following conditions:

(1) Information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price.

(2) Prices for a contract modification to a formally advertised fixed-price contract have been established and written in the basic fixed-price contract.

(3) Negotiated fixed-price or cost-reimbursement utility connection or site facility agreements, developed by the Office of Construction, representing contracts for the construction of service facilities or site clearance where cost data submitted (construction cost estimates) will be evaluated by design and cost engineering staffs of the Office of Construction.

(d) When using the exclusions in paragraph (c) of this section as a basis for not submitting cost and pricing data for preaward audit, contracting officers will fully justify the reasons for so doing and document such justification in the contract file.

Subpart 815.9—Profit

815.901 General.

If a profit or fee is involved, it must be established as a dollar amount and not as a percentage of the cost estimate, in order to avoid the cost-plus-a-percentage-of-cost system of contracting which is not legal (see FAR Part 16). Once established, the profit or fee cannot be escalated during the period of the contract. However, when a change order materially affects the scope of the work, an additional profit or fee or an appropriate reduction may be negotiated.

PART 816—TYPES OF CONTRACTS

Subpart 816.1—Selecting Contract Types

Sec.
816.102 Policies.

Subpart 816.3—Cost-Reimbursement Contracts

816.306 Cost-plus-fixed-fee contracts.

Subpart 816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

816.603 Letter contracts.

Subpart 816.70—Unauthorized Agreements

816.7001 Letters of availability.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 816.1—Selecting Contract Types

816.102 Policies.

(a) Contracts for supplies or nonpersonal services awarded (except for small purchases under Part 813 and FAR Part 13) are to be of the following types:

(1) Firm fixed price for a period of one year or less.

(2) Firm fixed price for one year with options for succeeding years. (See 817.202 and FAR 17.2).

(3) Fixed price with economic price adjustment. (See FAR 16.203).

(b) Contracts of the type specified in paragragh (a)(3) of this section which include an economic price adjustment provision other than the clause for service contracts (FAR 22.1006(c)) require the prior approval of the Director, Office of Procurement and Supply (90). The request for approval is to clearly set forth the need for the provision.

(c) Contracts of the type specified in paragraphs (a) (2) and (3) of this section are to be entered into only when such contracts are clearly shown to be advantageous to the Veterans Administration. The contracting officer is to document the contract file to show the specific and compelling reasons for selection of the particular type contract.

(d) Any contract involving direct obligation of appropriations and which extends beyond the appropriation of the year in which the contract period begins or which is for more than one fiscal year, is to contain provisions to the effect that:

(1) It is made for the period covered by the contract, subject to the availability of appropriations in the ensuing year(s), and

(2) No service is to be performed by the contractor after September 30 of each fiscal year unless and until specifically authorized by the contracting officer or representative.

(e) Architect-engineer contracts, construction contracts, or professional engineer contracts, financed by "no year appropriations" are not subject to the requirements of paragraph (d) of this section.

Subpart 816.3—Cost-Reimbursement Contracts

816.306 Cost-plus-fixed-fee contracts.

(a) Contracts of this type may be entered into only after the contracting officer has made the determination required by FAR 16.301–3(c). The determination is to be made a part of the contract file.

(b) The amount of the fee to be paid or allowed to a prime contractor or subcontractor under this type of contract shall be negotiated by the contracting officer within the statutory limitations. (See FAR 15.903(d)).

Subpart 816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

816.603 Letter contracts.

Prior to execution of a letter contract, the department or staff office head concerned shall approve the contracting officer's written determination that no other type contract is suitable (See FAR 16.603–3). The determination is to establish the limit of the effectiveness of the letter contract; i.e., the date by which the definitive contract is to be executed, within the limits established in FAR 16.603–2 (c) and (d).

Subpart 816.70—Unauthorized Agreements

816.7001 Letters of availability.

(a) *Description.* A letter of availability (sometimes inappropriately called a letter of intent) is a letter to a supplier primarily for the purpose of obtaining a place on the supplier's production or delivery schedule for long lead time items. Such a letter typically indicates that products or services are being considered for procurement, but that the statement of intent is not to be construed as a commitment. Such letters of availability are sometimes solicited by prospective contractors, or they may be originated by Government personnel. A letter of availability is distinguished from a letter contract which is specifically authorized in FAR 16.603.

(b) *Policy.*

(1) Unless specifically authorized by the Director, Office of Procurement and Supply, letters of availability are not to be utilized for the following reasons:

(i) While such letters of availability may disclaim Government liability, they may induce potential contractors to initiate costly preparations in anticipation of contract award.

(ii) Procurements announced in such letters do not always materialize. The result may be costly to the Government, the prospective contractor, or both. If the author of the letter of availability is an authorized contracting officer of the agency, the Government may be bound by action, even though the action is contrary to sound procurement practices and/or fiscal regulations. If the author of the letter of availability lacks procurement authority, the prospective contractor may incur substantial expenditures which may not be recovered from the Government, but for which the prospective contractor may seek to hold the unauthorized author personally liable.

(iii) The issuance of a letter of availability may violate the "Anti-Deficiency Act" (31 U.S.C. 1341).

(2) It is recognized that potential contractors have a need to obtain procurement information at the earliest possible moment in order to make timely preparations. To this end, procurement personnel are expected to act as efficiently and expeditiously as possible on all procurement actions.

PART 817—SPECIAL CONTRACTING METHODS

Subpart 817.1—Multi-Year Contracting

Sec.
817.102 Policy.
817.102–1 Uses.

Subpart 817.2—Options

817.202 Use of options.

Subpart 817.4—Leader Company Contracting

817.402 Limitations.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 817.1—Multi-Year Contracting

817.102 Policy.

817.102–1 Uses.

The Veterans Administration does not currently have statutory multi-year contracting authority. It is the policy of the VA not to exercise, at this time, multi-year contracting procedures for no year funds.

Subpart 817.2—Options

817.202 Use of options.

(a) All solicitations developed pursuant to Office of Management and Budget Circular A–76 (Revised) cost comparisons will provide for one year renewal options as prescribed in FAR Subpart 17.2. Requests to use less or more than the prescribed contract period for Circular A–76 (Revised) cost comparisons will be forwarded to the Director, Office of Procurement and Supply (90).

(b) Each contract awarded with renewal options and which is subject to the Service Contract Act of 1965 will use the clause prescribed in FAR 22.1006(c).

Subpart 817.4—Leader Company Contracting

817.402 Limitations.

(a) Except as provided in 817.402(b), no leader company contracts shall be initiated or consummated.

(b) The Director, Office of Procurement and Supply (90) may designate a contracting officer to enter into a leader company contract when considered beneficial to the agency and the Government. When a contracting officer is designated the authority to enter into a leader company contract, the designation will be by name for a specific contract. The proposed contract with a determination and finding will be submitted for legal review in accordance with 801.602–71.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

819.000 Scope of part.

Subpart 819.2—Policies

819.201 General policy.
819.202–5 Data collection and reporting requirements.
819.202–70 Additional responsibilities.

Subpart 819.5—Set-Asides for Small Business

819.502–2 Total set-asides.
819.502–3 Partial set-asides.

Subpart 819.8—Contracting With the Small Business Administration (THE 8(a) PROGRAM)

819.801 General.
819.807–70 Commitments of the Office of Construction's funded projects for the 8(a) program.
819.809–70 Procurement of supplies, services, and research and development.
819.809–71 Procurement of construction.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

819.000 Scope of part.

This subpart sets forth the Veterans Administration small business program including section 8(a) contracts with SBA (Small Business Administration) and unilateral set-asides. It establishes responsibility for making such determinations, reviewing

determinations and evaluation of the program.

Subpart 819.2—Policies

819.201 General policy.

(a) The Associate Deputy Administrator for Logistics (005) is designated the Director, Office of Small and Disadvantaged Business Utilization (OSDBU). The Deputy Director, OSDBU (005C), will report directly to the Director and will supervise and direct the OSDBU staff. The OSDBU will be responsible for the overall supervision of the Veterans Administration Small and Disadvantaged Business Utilization program and will assist departments and staff offices in developing their respective small business programs.

(b) The Director, Office of Construction will develop and coordinate the agency small business program, as it affects construction projects, with the OSDBU.

(c) The Director, Veterans Canteen Service (VCS), will designate an employee of his/her organization to serve as liaison between the VCS and the Office of Small and Disadvantaged Business Utilization on small business problems affecting the VCS.

(d) The Chief Memorial Affairs Director, Chief Benefits Director, Director, Office of Construction, Director, Office of Administration, Director, VA Marketing Center and Directors of Veterans Administration field stations with Supply activities will designate an employee of their respective organizations to serve as a small and disadvantaged business specialist. This employee will be a full-time employee of the respective contracting activity, will be familiar with the supplies and services purchased at the activity, and will be fully cognizant of the regulations implementing the Small Business Act. The principal duties will include assisting the Small Business Administration Procurement Center Representative (if assigned) in activities and functions relating to sections 8 and 15 of the Small Business Act. The name, telephone number, and mailing symbol of each designee and any successor will be forwarded to the Director, Office of Small and Disadvantaged Business Utilization, through the Director, Office of Procurement and Supply.

819.202-5 Data collection and reporting requirements.

Department heads, staff office directors and heads of contracting activities will, in addition to the responsibilities designated in FAR 19.202-5, cooperate with the Office of Small and Disadvantaged Business Utilization in formulating specific socio-economic procurement goals and providing other data necessary for goal assessment.

819.202-70 Additional responsibilities.

In addition to the duties designated in FAR 19.202, VA contracting officers will perform the following functions in furtherance of the small business and Labor Surplus Area (LSA) programs:

(a) Develop a plan of operation to increase the share of contracts and purchase orders awarded to small business and LSA concerns.

(b) Promote the disadvantaged business program through the SBA 8(a) procedures set forth in Subpart 819.8.

(c) Review the types and classes of items and services to be purchased to determine the applicability of individual small business set-asides and LSA set-asides. Class set-asides, established in accordance with criteria in FAR 19.503, shall be reviewed at least annually to determine whether items or services procured under a unilateral or joint set-aside should be modified or withdrawn. Updated lists of acquisitions reserved for small business on a class basis shall be maintained by heads of contracting activities.

(d) Make maximum utilization of the SBA small business source list (i.e., Procurement Automated Source System) when considering the disposition of all procurement requirements. Small business source lists are available through the SBA Regional Offices.

(e) Assure that small business firms are identified on bid abstracts.

(f) Assure that specifications are not unduly restrictive, thereby enabling small business participation to the maximum extent feasible.

(g) Assist and counsel small business firms with individual problems.

(h) Provide for counseling nonresponsive or nonresponsible small business bidders to help qualify them for future awards.

(i) Attend conferences and meetings publicizing the small business program.

(j) Promote the award of research contracts to small business and LSA firms.

(k) Promote goals for small business, small business set-asides, small business subcontracting, 8(a) procurements, labor surplus area set-asides, and purchases from women-owned businesses.

(l) Review all urgent and sole source procurements to determine that they are sparingly made, thoroughly documented and approved by the head of the contracting activity.

(m) If the contracting officer is assigned an SBA Resident Procurement Center Representative, assure that the representative is provided an opportunity and reasonable time to review any solicitation which meets the dollar threshold for which small business and small disadvantaged business subcontracting plans are required. Additionally, prior to the execution of any negotiated contractual document requiring a subcontracting plan, the total procurement package including the proposed subcontracting plan will be made available to the Resident Procurement Center Representative with a reasonable time allowed for review. The Procurement Center Representative may submit recommendations, which will be advisory in nature, to the contracting officer. The Procurement Center Representative will also be provided a copy of the subcontracting plan finally negotiated by the contracting officer. A copy of any subcontracting plan submitted pursuant to a formally advertised procurement will also be provided the Resident Procurement Center Representative upon execution of the contractual document.

(n) Assure that the small and disadvantaged business specialist notifies the SBA of the award of contracts, amendments, or modifications that contain subcontracting plans. The notification will contain the contractor's name and address, place of performance, dollar amount, performance period, description of contract item or items, and name and address of the contracting officer. A copy of the award document is sufficient for these purposes. The notification will be sent to the Assistant Regional Administrator for Office of Procurement and Technical Assistance in the SBA region where contract performance is to take place.

(o) Assure that plans are forwarded as specified in FAR 19.705-6(b).

Subpart 819.5—Set-Asides for Small Business

819.502-2 Total set-asides.

(a) When in accordance with FAR 19.502-2, the entire amount an individual or class of acquisitions is set-aside for exclusive small business participation, the face page of the solicitation shall include the appropriate product or service classification and related small business size standard in conjunction with one of the following notices:

(1) Notice of total small business set-aside, page , applies to all items in this solicitation.

(2) Notice of total small business set-aside, page , applies to items through in this solicitation.

(b) When a total small business-LSA set-aside is made, one of the following statements, as applicable, will be placed on the face of the solicitation:

(1) Notice of total set-aside for small business concerns agreeing to perform as LSA concerns, page , applies to all items in this solicitation.

(2) Notice of total set-aside for small business concerns agreeing to perform as LSA concerns, page , applies to items through in this solicitation.

(3) Notice of total set-aside for small business concerns agreeing to perform as LSA concerns, page , applies to items in this solicitation.

(4) Notice of total set-asides for small business concerns agreeing to perform as LSA concerns, page , applies to items through in this section.

(c) Contracting officers must ensure that appropriate product or service classification and the related size standard are included in each solicitation.

(d) All proposed procurement for construction anticipated to cost between $2,000 and $1 million and all proposed procurements for architect-engineer services for minor construction projects ($2 million and less) will be considered as though SBA had initiated a set-aside request. Determinations of the need to deviate from this policy made by the head of a contracting activity will require review by the Director, Office of Small and Disadvantaged Business Utilization, as prescribed in 819.502.71.

819.502-3 Partial set-asides.

When, in accordance with the provisions of FAR 19.502-3, it is determined that a particular procurement will be partially set aside for exclusive small business participation, the solicitation for bids will have appropriate product or service classification, appropriate size standard and whichever of the following statements is applicable, placed on the face page:

(a) Notice of partial small business set-aside, page , applies to Item through Item in this solicitation.

(b) Notice of partial small business set-aside, page , applies to all items in this solicitation.

Subpart 819.8—Contracting With the Small Business Administration (the 8(a) Program)

819.801 General.

(a) No contract will be entered into with SBA under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) unless a certification is made by the Administrator of that agency, or designee, that SBA is competent to perform the contract.

(b) When it is determined that the requirements of the Veterans Administration are appropriate for inclusion in this program, the contracting officer will make this fact known to the proper officials of the SBA regional office servicing his/her area. If the certification required by paragraph (a) of this section is received, the Veterans Administration contracting officer will secure from SBA the name(s) and location(s) of their subcontractor(s) and the unit price(s) to be paid. Should these prices be within a range acceptable to the Veterans Administration, the contracting officer will notify SBA of acceptance.

(c) The contract will be made between the Veterans Administration and SBA and will be administered by the Veterans Administration.

(d) In addition to meeting the requirements of 801.602-70, contracting officers will secure cost and pricing data prescribed in FAR 15.804-2 when negotiating contracts under the SBA 8(a) program. Contracts with an anticipated value of $500,000 or more shall be processed for audit in accordance with 815.805-5.

819.807-70 Commitments of the Office of Construction's funded projects for the 8(a) program.

Major and minor projects funded by the Office of Construction (including those delegated to the Department of Medicine and Surgery) which have been committed to the 8(a) program will not be withdrawn from that program without the consent of the Office of Small and Disadvantaged Business Utilization (005C). Requests for consent from 005C will normally be in writing and will clearly set forth the circumstances necessitating 8(a) withdrawal. If the contracting officer determines that time does not permit a written request, an oral request will be made. Such an oral request will be confirmed in writing.

819.809-70 Procurement of supplies, services, and research and development.

(a) Contracts for supplies, equipment and services other than construction will be prepared as any other prime contract and in accordance with FAR Subpart 19.8.

(b) The Veterans Administration contracting officer will forward the prime contract to SBA in sufficient numbers to furnish two copies to SBA and one copy to each subcontractor. SBA will return the signed original to the Veterans Administration contracting officer.

819.809-71 Procurement of construction.

Construction projects which have been selected for inclusion in this program will be contracted for as provided in this section and FAR Subpart 19.8.

(a) The contracting officer will submit, for each project so identified, the complete project listing including technical specifications, drawings and wage rates to the proper official of the appropriate SBA regional office. Should SBA select a competent subcontractor capable of performing the work, they will so certify to the Veterans Administration contracting officer. They will furnish him/her the name and complete address of the subcontractor(s), the project involved and the price(s) quoted. If the price quoted is within the range acceptable to the Veterans Administration, the contracting officer will indicate acceptance to SBA.

(b) When the contracting officer receives Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), signed by SBA and the subcontractor, and the performance and payment bonds, the contracting officer will forward a notice to proceed to the subcontractor.

PART 820—LABOR SURPLUS AREA CONCERNS

Subpart 820.1—General

820.104 Specific policies.

Pursuant to FAR Part 20, LSA (labor surplus area) set-aside consideration will only apply to procurements above the small purchase limitation.

(38 U.S.C. 210 and 40 U.S.C. 486(c))

PART 822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 822.3—Contract Work Hours and Safety Standards Act

Sec.

822.304 Variations, tolerances, and exemptions.

Subpart 822.4—Labor Standards for Contracts Involving Construction

822.471 Procedure for requesting determinations.

822.478 Contract terminations.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 822.3—Contract Work Hours and Safety Standards Act

822.304 Variations, tolerances, and exemptions.

When a contract is entered into for nursing home care, the clause prescribed by FAR 22.305 will be modified to reflect the variation contained in 29 CFR 5.15(d)(3) as set forth in 852.222–70.

Subpart 822.4—Labor Standards for Contracts Involving Construction

822.471 Procedure for requesting determinations.

Requests for project area or individual wage determinations will be submitted by the office or installation that will award the contract. In accordance with Department of Labor instructions, such wage determinations will be returned directly to the requesting office.

822.478 Contract terminations.

(a) Prior to terminating any contract because of violations of the labor standards provisions of the contract, contracting officers, other than those in the Office of Construction will, through the Director, Office of Procurement and Supply, present the facts in detail to the General Counsel for review. The contracting officer will be advised by the Director, Office of Procurement and Supply, as to the recommended action to be taken.

(b) Prior to terminating a contract managed by the Office of Construction for labor standards violation, the contracting officer will, through the Director, Office of Construction, present the facts in detail to the General Counsel for review. The contracting officer will be advised by the Director, Office of Construction as to the recommended action.

(c) If the contract is to be terminated, the Director, Office of Procurement and Supply or the Director, Office of Construction, will submit the reports required by 29 CFR 5.7(d).

PART 823—ENVIRONMENTAL, CONSERVATION AND OCCUPATIONAL SAFETY

Subpart 823.3—Hazardous Material Identification and Material Safety Data

823.300 Hazardous material identification and material safety data.

Contracting officers should be governed by the provisions of FAR Subpart 23.3 and MP–2, Subchapter E, Subpart 108–25.53 (Potentially Hazardous Products) in acquisitions of items that involve hazardous material.

(38 U.S.C. 210 and 40 U.S.C. 486(c))

PART 824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 824.1—Protection of Individual Privacy

Sec.
824.102 General.

Subpart 824.2—Freedom of Information Act

824.202 Policy.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 824.1—Protection of Individual Privacy

824.102 General.

(a) The pertinent agency rules regarding the implementation of the Privacy Act of 1974 consist of 38 CFR 1.575 through 1.584.

Subpart 824.2—Freedom of Information Act

824.202 Policy.

Agency rules implementing the Freedom of Information Act are contained in 38 CFR 1.550 through 1.559.

PART 825—FOREIGN ACQUISITION

Subpart 825.1—Buy American Act—Supplies

Sec.
825.102 Policy.
825.102–70 Nonavailability in the United States.
825.105 Evaluating offers.
825.108 Excepted articles, materials and supplies.

Subpart 825.2—Buy American Act—Construction Materials

825.202 Policy.
825.202–70 Nonavailability in the United States.
825.203 Evaluating offers.

Subpart 825.3—Balance of Payments Program

825.302 Policy.
825.302–70 Deviations from the Balance of Payments Program.
825.304 Excess and near-excess foreign currencies.
825.304–70 Determination of feasibility to use excess or near-excess foreign currencies.

Subpart 825.6—Customs and Duties

825.603 Procedures.
825.603–70 Technical assistance.

Subpart 825.7—Restrictions on Certain Foreign Purchases

825.701 Policy.
825.703 Exceptions.

Subpart 825.8—International Agreements and Coordination

825.870 Technical assistance.

Subpart 825.9—Omission of the Examination of Records Clause

825.902 Policy.
825.904 Determination and findings.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 825.1—Buy American Act—Supplies

825.102 Policy.

825.102.70 Nonavailability in the United States.

(a) If articles, materials, and supplies required for a particular procurement are not excepted in FAR 25.108, or when only foreign bids or offers are received, the determination concerning nonavailability required by FAR 25.108(b) will be prepared by the contracting officer for foreign construction materials costing less than $1 million. Each determination will be factually supported in writing and included in the contract file.

(b) Nonavailability determinations for foreign construction materials costing over $1 million must be requested by field station contracting officers from the Director, Office of Procurement and Supply (93). Each request for a determination must be fully justified with all pertinent facts.

(c) A copy of all determinations made in accordance with paragraph (a) of this section shall be forwarded to the Director, Office of Procurement and Supply (93) concurrently with the submissions required by FAR 25.108 (b) and (c).

825.105 Evaluating offers.

When a determination is required under FAR 25.105, the contracting officer will submit the proposed award to the Director, Office of Procurement and Supply (93) for approval by the Administrator. The submission will contain all the facts, including a comparison of all the bids or offers received, and any other pertinent information upon which a determination may be made. If approved, a report of

the transaction will be prepared and submitted by the Director, Office of Procurement and Supply, in accordance with Executive Order 10582, dated December 17, 1954, as amended.

825.108 Excepted articles, materials and supplies.

The following items are added to the list of exceptions contained in FAR 25.108(d):

Lead Glass
Wire Glass

Subpart 825.2—Buy American Act—Construction Materials

825.202 Policy.

825.202-70 Nonavailability in the United States.

(a) If articles, materials, and supplies required for a particular procurement are not excepted in FAR 25.108, or when only foreign bids or offers are received, the determination concerning nonavailability required by FAR 25.202(a)(3) will be made by the contracting officer for foreign construction material costing $100,000 or less. Each determination will be factually supported in writing and included in the contract file.

(b) Field station contracting officers must request approval of nonavailability determinations from the Director, Office of Procurement and Supply (93).

(c) A copy of all determinations made in accordance with paragraph (a) above shall be forwarded to the Director, Office of Construction (08), through the Director, Office of Procurement and Supply (93).

825.203 Evaluating offers.

When a contracting officer believes that the requirement of the "Buy American Act" is impracticable as provided in FAR 25.202(a)(2), or that it would be advantageous to the VA to deviate from the provisions of the Act as authorized by FAR 25.203, authority to consummate the contract will be requested. The request containing all the facts, including a comparison of all the bids or offers received and any other pertinent information upon which a determination may be made, will be submitted through the Director, Office of Procurement and Supply (93), for approval by the Administrator. If approved, a report of the transaction will be prepared and transmitted by the Director, Office of Construction in accordance with Executive Order 10582, dated December 17, 1954, as amended.

Subpart 825.3—Balance of Payments Program

825.302 Policy.

825.302-70 Deviations from the Balance of Payments Program.

When a contracting officer believes that the requirement of the "Balance of Payments Program" is not practicable as set forth in FAR 25.302 (b)(2) or (b)(3), he/she will request authority to consummate the contract through the Director, Office of Procurement and Supply (93) for approval. Each request must be fully justified, containing all pertinent facts.

825.304 Excess and near-excess foreign currencies.

825.304-70 Determination of feasibility to use excess or near-excess foreign currency.

In accordance with FAR 25.304(c), contracting officers will submit requests for determination to utilize excess or near-excess foreign currencies to the Director, Office of Procurement and Supply (93).

Subpart 825.6—Customs and Duties

825.603 Procedures.

825.603-70 Technical assistance.

Should the regulations contained in FAR 25.6 be inadequate to meet particular needs of a contracting officer in clearing items through customs and/or obtaining Duty Free Entry of goods, the nearest Regional Office of the United States Customs Service should be contacted for technical assistance. These offices are located as follows:

Regional Commissioner, U.S. Customs Service, 100 Summer St., Boston, Massachusetts 02110
Regional Commissioner, U.S. Customs Service, 99 S.E. 5th St., Miami, Florida 33131
Regional Commissioner, U.S. Customs Service, 585 Felipe St., Houston, Texas 77057
Regional Commissioner, U.S. Customs Service, 6 World Trade Center, New York, New York 10048
Regional Commissioner, U.S. Customs Service, 423 Canal St., New Orleans, Louisiana 70130
Regional Commissioner, U.S. Customs Service, 300 N. Los Angeles St., Los Angeles, California 90053
Regional Commissioner, U.S. Customs Service, 55 E. Monroe St., Chicago, Illinois 60603

Subpart 825.7—Restrictions on Certain Foreign Purchases

825.701 Policy.

825.703 Exceptions.

When felt to be in the best interest of the Government, the contracting officer may request exceptions to the requirements of FAR 25.7 for purchases in excess of $10,000 from the Administrator through the Director, Office of Procurement and Supply (93). Each such request must be fully justified, containing all pertinent facts.

Subpart 825.8—International Agreements and Coordination

825.870 Technical assistance

Contracting officers may obtain technical information or guidance on international agreements and treaties for procurements outside the United States by contacting the Director, VA Marketing Center.

Subpart 825.9—Omission of the Examination of Records Clause

825.902 Policy.

If the contracting officer determines that the "Examination of Records Clause" should be omitted after all reasonable efforts to include the clause have failed, and providing that omission of the clause is authorized in the instances cited in FAR 25.903, he/she may request, with appropriate documentation, a determination from the Administrator, through the Director, Office of Procurement and Supply (93). The Administrator, should he/she concur in the contracting officer's determination that the clause should be omitted, will then forward an agency request for omission of the clause to the Comptroller general for a final determination as required by FAR 25-903(a)(1), or submit the report required by FAR 25.903(b).

825.904 Determination and findings.

All determinations to omit the "Examination of Records Clause" will be supported by a determination and findings prepared by the contracting officer containing the information set forth in FAR 25.904. The completed determinations and findings will be made a part of the contract file. One copy of the determinations and findings will be forwarded to the Director, Office of Procurement and Supply (93).

PART 828—BONDS AND INSURANCE

Subpart 828.1—Bonds

Sec.
828.101 Bid guarantees.

828.101–3 Contract clause.
828.101–70 Safekeeping and return of bid guarantee.

Subpart 828.2—Sureties

828.203 Options in lieu of sureties.
828.203–1 United States bonds or notes.
828.203–2 Certified or cashier's checks, bank drafts, money orders, or currency.

Subpart 828.3—Insurance

828.306 Insurance under fixed-price contracts.

Subpart 828.70—Performance and Payment Bonds

828.7000 Bond premium adjustment.

Subpart 828.71—Indemnification of Contractors, Medical Research or Development Contracts

828.7100 Scope of subpart.
828.7101 General.
828.7102 Extent of indemnification.
828.7103 Financial protection.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 828.1—Bonds

828.101 Bid guarantees.

828.101–3 Contract clause.

Where a bid bond is required for supplies or services, the phrase "any cost of acquiring the work" in paragraph (e) of the BID GUARANTEE clause in FAR 52.228–1 may be modified to refer to the cost of "supplies," "services," etc.

828.101–70 Safekeeping and return of bid guarantee.

(a) Certified checks or other negotiable security furnished as bid security with the three lowest acceptable bids will be retained in a safe. These will be returned by certified mail or in person upon presentation of proper receipt after contract and bonds have been signed and approved.

(b) Certified checks or other negotiable security furnished in support of other than the three lowest acceptable bids should be returned promptly to the respective bidders by certified mail, or in person upon presentation of proper receipt.

(c) Commercial bid bonds are not returned unless specifically requested by the bidders, and, even if requested by any of the three low bidders, are not returned until contract and bonds have been executed by the successful bidder, or all bids have been rejected.

Subpart 828.2—Sureties

828.203 Options in lieu of sureties.

828.203–1 United States bonds or notes.

Contracting officers, with the exception of those located in the District of Columbia, receiving United States bonds or notes in lieu of corporate or individual sureties will forward such bonds and notes to the agent cashier for safekeeping. Contracting officers in the District of Columbia will deposit such bonds and notes with the Treasurer of the United States.

828.203–2 Certified or cashier's checks, bank drafts, money orders, or currency.

Contracting officers receiving a certified or cashier's check, bank draft, post office money order or currency in lieu of corporate or individual sureties will deposit them with the agent cashier.

Subpart 828.3—Insurance

828.306 Insurance under fixed-price contracts.

(a) Term contracts, or contracts of a continuing nature, for ambulance, automobile and aircraft service, will contain the provision in 852.237–71.

(b) *Exceptions.* The provisions of this 828.306 do not apply to emergency or sporadic ambulance service authorized by VA Manual MP–1, part II, chapter 3; or other emergency or sporadic vehicle or aircraft services. *Provided,* That such service is not used solely for the purpose of avoiding entering into a continuing contract. *Provided further,* That such services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

Subpart 828.70—Performance and Payment Bonds

828.7000 Bond premium adjustment.

When performance and payment bonds are required, the contract will contain the clause prescribed in 852.228–70.

Subpart 828.71—Indemnification of Contractors, Medical Research or Development Contracts

828.7100 Scope of subpart.

(a) This subpart sets forth the policies and procedures concerning indemnification of contractors performing contracts which involve a risk of an unusually hazardous nature, covering medical research or development as authorized by 38 U.S.C. 4101.

(b) The authority to indemnify the contractor under this subpart does not create any rights to third parties which would not otherwise exist by law.

(c) As used in this subpart the term "contractor" includes subcontractors of any tier under a contract containing an indemnification provision pursuant to 38 U.S.C. 4101(c)(3)(A).

828.7101 General.

(a) The approval for the indemnification of contractors will be made by the Administrator of Veterans Affairs.

(b) Contracting Officers shall submit requests for approval, together with all available information, to the Director, Office of Procurement and Supply (93) for transmittal to the Administrator.

828.7102 Extent of indemnification.

(a) Any contract for medical research or development authorized by 38 U.S.C. 4101, the performance of which involves a risk of an unusually hazardous nature, may provide that the Government will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not covered by the financial protection required under 828.7103.

(1) Liability (including reasonable expenses of litigation or settlement) to third persons, except liability under State or Federal Workmen's Compensation Acts to employees of the contractor employed at the site of and in connection with the contract for which indemnification is granted, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract that provides for indemnification in accordance with this subpart will also provide for:

(1) Notice to the contracting officer of any claim or suit against the contractor for death, bodily injury, or loss of or damage to property; and

(2) Control of or assistance in the defense by the Government, at its election, of such suit or claim for which indemnification is provided in the contract.

828.7103 Financial protection.

(a) The financial protection to cover liability to third persons and loss of or damage to the contractor's property which the contractor is required to have and maintain shall be the maximum amount of insurance available from private sources; however, the Administrator may establish a lesser amount after taking into consideration the cost and terms of private insurance.

(b) The financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such forms to provide the maximum amount required. When the contractor elects to utilize self

insurance, proof of such financial responsibility up to the maximum amount required will be furnished the contracting officer prior to award.

PART 829—TAXES

Sec.

829.000 Scope of part.

Subpart 829.1—General

829.101 Resolving tax problems.

Subpart 829.2—Federal Excise Taxes

829.202 General exemptions.
829.202–70 Tax exemptions for alcohol products.
829.270 Tax exempt tobacco products for State institutions.
829.270–1 Institution responsibilities and procedures.
829.270–2 Processing of order by Veterans Administration.

Subpart 829.3—State and Local Taxes

829.302 Application of State and local taxes to the Government.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

829.000 Scope of part.

This part prescribes policies and procedures for exemptions from Federal excise taxes imposed on tobacco and alcohol products for such items purchased for use in the Veterans Administration medical care program and specifies refund procedures for State and local taxes.

Subpart 829.1—General

829.101 Resolving tax problems.

Contracting officers will submit requests for legal advice through channels to the General Counsel.

Subpart 829.2—Federal Excise Taxes

829.202 General exemptions.

829.202–70 Tax exemptions for alcohol products.

(a) General.

(1) The procurement of spirits free of tax for nonbeverage purposes is permitted to Government agencies by regulations of the Bureau of Alcohol, Tobacco, and Firearms (ATF) (see 27 CFR 211.231–237, 213.141–146 and 240.720–722). The use of tax-free alcohol, whiskey, beer, wine and denatured spirits for nonbeverage purposes shall include but not be limited to medicinal and scientific purposes and in the treatment of patients.

(2) Authority is hereby delegated to the Chief, Marketing Center, Hines, Illinois, and to the Chief, Supply Service, Veterans Administration medical facilities to sign application permits on Bureau of Alcohol, Tobacco, and Firearms (ATF) prescribed forms. This authority is not to be redelegated.

(b) Whiskey, alcohol, and denatured alcohol.

(1) Application forms for tax-free purchases are to be obtained from and submitted to the Director, Bureau of Alcohol, Tobacco, and Firearms, Washington, D.C. 20226.

(2) ATF Form 1486, Specially Denatured Spirits for Use of United States, is the application/permit required for denatured spirits, and ATF Form 1444, Tax-Free Spirits for Use of United States, is required for distilled spirits (whiskey and alcohol). These are continuing permits to procure items tax free. Copies must be made available to the supplier in support of each procurement.

(3) Purchases for excise tax-free whiskey and alcohol, not available through the depot can only be made from a distillery or a bonded premises. In accordance with 27 CFR 213.144, the vendor will also support each shipment with ATF 1473, Shipment and Receipt Specifically Denatured Tax-Free, or Recovered Spirits. The ATF 1473 will be completed by the accountable officer and the original copy will be forwarded to the Regional Regulatory Administrator whose address is shown in item 12 of the form. A copy of ATF 1473 will be retained in the purchase order file.

(c) *Wine.* No tax exemption form or ATF permit is required for the tax-free procurement of wine. An extra copy of a properly executed purchase order or requisition document may be furnished to the supplier (retailer, wholesaler or winery) to facilitate record keeping.

(d) *Beer.* Tax-free beer may be procured only from licensed breweries and only when such product is prescribed for therapeutic use of patients. The application for an ATF permit is to be submitted in letter form to the Director, Bureau of Alcohol, Tobacco, and Firearms, Washington, D.C. 20226. The following information is required.

(1) Name and address of facility;

(2) Specific purpose for which beer will be used;

(3) Quantity proposed to buy each month, year, etc.;

(4) Name and address of brewery; and

(5) Copy of document authorizing contracting officer to sign request.

A new permit is needed only when beer is to be purchased from a different brewery than the one for which the original permit was requested.

829.270 Tax exempt tobacco products for State institutions.

(a) Bureau of Alcohol, Tobacco, and Firearms regulations permit the withdrawal of tax-free tobacco products by facilities and institutions owned or controlled by State Governments, territories, and the District of Columbia for gratuitous distribution to present and former members of the Armed Forces of the United States who are patients in such institutions (27 CFR 295.31–37). These arrangements will be effective only with institutions where the official-in-charge abides by the procedures and controls prescribed by the Veterans Administration. The unauthorized or illegal use of these products may result in the withdrawal of this privilege by the Veterans Administration.

(b) No tax exemption form or certificate is required for the tax-free purchase of tobacco products. An extra copy of the purchase order will be provided the manufacturer to facilitate record keeping required by the Bureau of Alcohol, Tobacco, and Firearms.

829.270–1 Institution responsibilities and procedures.

(a) The official-in-charge of the institution will act as a representative of the Veterans Administration in the purchase, storage, and distribution of these products and in ensuring the product is distributed on a gratuitous and equitable basis to all eligible recipients. Under no circumstances will these items be offered for sale.

(b) The Veterans Administration will neither accept nor handle donations or funds for institutions.

(c) Payment or nonpayment of State taxes on tobacco products is a matter between the concerned State and the ordering institution.

(d) Orders will be on the institution's regular order form made out to the manufacturer of the desired product. The original and two copies of the order, each signed, will be forwarded to the nearest Veterans Administration medical center. Orders shall also be issued to cover receipt of unsolicited shipments of these products intended for use of veteran-patients. All copies of these orders will be marked CONFIRMATION—DO NOT RESHIP. All orders shall bear a certificate as follows:

> Tobacco products for free distribution to present and former members of the Armed Forces of the United States who are hospitalized or domiciled in this institution.

(e) Copies of all orders and other pertinent documents will be retained and be available to the Veterans Administration and the Bureau of

Alcohol, Tobacco, and Firearms for inspection purposes.

829.270–2 Processing of order by Veterans Administration.

(a) Full cooperation will be given institution representatives in implementing these procedures.

(b) The station head or designee will approve the institution order by signing the original and one copy in ink over his/her printed name and title. The approved orginal and copy shall be forwarded to the vendor as noted in 829.270. The additional copy shall be retained in the medical center's files.

Subpart 829.3—State and Local Taxes

829.302 Application of State and local taxes to the Government.

(a) Standard Form 1094, U.S. Tax Exemption Certificate, will be used as a basis for billing taxing authorities for a refund of taxes paid, if a vendor refuses to sell at a price exclusive of the State and local tax.

(b) SF 1094 will not be furnished to a vendor or used to claim reimbursement from the taxing authority, where the total amount of State and local tax on any one purchase is $10 or less.

PART 831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 831.70—Contract Cost Principles and Procedures

Sec.

831.7000 Scope of subpart.
831.7001 Allowable costs under cost reimbursement vocational rehabilitation and education contracts or agreements.
831.7001–1 Tuition.
831.7001–2 Special services or courses.
831.7001–3 Books, supplies and equipment required to be personally owned.
831.7001–4 Medical services and hospital care.
831.7001–5 Administrator's Decision No. 557.
831.7001–6 Consumable instructional supplies.
831.7001–7 Reimbursement for other supplies and services.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 831.70—Contract Cost Principles and Procedures

831.7000 Scope of subpart.

This subpart contains general cost principles and procedures for the determination and allowance of costs in connection with the negotiation and administration of cost reimbursement type contracts pertaining to the furnishing of vocational rehabilitation, education, and training to eligible veterans under chapter 31 of Title 38, United States Code.

831.7001 Allowable costs under cost reimbursement vocational rehabilitation and education contracts or agreements.

831.7001–1 Tuition.

(a) Except as provided in this section, when the contractor has a customary cost of tuition the charge to the Veterans Administration may not exceed that charged to similarly circumstanced nonveteran students; provided that where the contractor has more than one standard charge for the same service, the charge to the Veterans Administration will be the lowest price for the entire course, semester, quarter, or term which is offered or published.

(b) The VA will not normally pay tuition or incidental fees to institutions or establishments furnishing apprentice or other training on-the-job. The VA may pay:

(1) For such charges customarily made by nonprofit workshop or similar establishment for providing work adjustment training to similarly circumstanced nonveterans even though an incentive wage is paid the trainee as part of the training; or

(2) For certain training expenses incurred by an employer providing on-the-job training following rehabilitation to the point of employability when such additional training is determined to be necessary by the VA.

(c) When the total cost of instruction is paid from Federal funds or a portion of the cost is covered by grants from the Federal Government, i.e., Smith-Hughes or other laws, excluding Federal Land Grant Funds, such subsidy will be taken into consideration in determining the charge to the Veterans Administration. The term, Federal Land Grant Funds, refers to those received under the Morrill-Nelson Act (Morrill Acts of 1862 and 1890 and the Nelson amendment of 1907) and section 22 of the Bankhead-Jones Act of 1935.

(d) Payments on behalf of a veteran who receives a fellowship, scholarship, grant-in-aid, assistantship, or similar award in complete or partial payment of tuition or fees or both will be made in accordance with the following:

(1) The award will reduce, to the extent of the award, the amount of tuition or fee or both that is payable by the Veterans Administation.

(2) Awards which are not paid in cash, except those which are made specifically for the purpose of defraying the cost of room and board in dormitories which will be disregarded, will reduce to the extent of the award the charges for which the Veterans Administration is responsible.

(3) Cash awards may be retained by the veterans and will not be deducted from charges ordinarily paid by the Veterans Administration.

(4) Waivers of tuition and fees provided under law by States or other Government authority will be utilized to reduce the charges payable by Veterans Administration in accordance with such waivers.

(e) Enrollment fees in an amount sufficient to cover the cost of registration may be paid, provided the institution or training establishment usually makes such a charge, and it does not exceed that charge made to other students or trainees.

831.7001–2 Special services or courses.

Special services or courses are those services requested by the Veterans Administration which are over and above those customarily required by the institution for similarly circumstanced nonveterans and are considered by the contracting officer to be necessary for the rehabilitation of the trainee. The costs of such special services or courses will be negotiated prior to being requested by the Veterans Administration.

831.7001–3 Books, supplies and equipment required to be personally owned.

(a) Reimbursement for books, supplies, or equipment and referred to as supplies, will be made as provided in this section.

(1) Reimbursement will be made for those supplies customarily required to be owned personally by all students taking the same course or courses except that reimbursement may be made for items which are not specifically required by the school for pursuit of the course, but are determined to be needed by the VA because of the demands of the course, general possession by other students, and the disadvantage imposed on the veterans by not having the item. In no instance will the supplies be in a greater variety, quality, or amount than required of nonveteran students. In this instance required is in contradistinction to requested or desirable to have or necessary for a future profession or job but not required by the institution of all students in the course.

(2) When supplies are available in several prices, grades, or qualities, reimbursement may be made only for such quality or grade that will meet the requirements.

(3) Partial payment agreements in which the Veterans Administration shares payment with the veterans is not allowable.

(4) The costs incurred by the institution in connection with the

veteran's thesis such as typing, printing, microfilming, or otherwise reproducing the required number of copies; research expenses when certified by the veterans committee chairman, major professor, department head, or appropriate dean that such expenses are required in order to complete the course requiring the preparation of a thesis are considered as supplies and are authorized for reimbursement.

(5) When the institution operates a bookstore or supply store for all students the reimbursement for supplies issued to trainees will be no greater than charges made to nonveteran students.

(6) Where the institution, training establishment, or employer arranges for issuance of supplies to all students by stores or establishments not institutionally owned and to pay such store or establishment for supplies issued to trainees, reimbursement is allowable provided the charges are no greater than those paid by nonveterans or to the institutions whichever is the lesser.

(7) Supplies purchased by the institution specifically for trainees will be reimbursed at the net cost to the institution.

(8) Where the institution does not provide or arrange for issuance of generally required books, tools and supplies for students attending the facility, the institution, in cooperation with the VA, may designate certain stores and establishments to provide generally required books, tools and supplies for veterans pursuing a vocational rehabilitation program. The vendor will be reimbursed in the same manner as for supplies provided or arranged for by the institutions.

(9) Where it is customary in a survey subject to permit each student to obtain the aggregate of books for the subject on a rental basis (commonly referred to as a rental set) and the ownership or permanent possession by the student is not required, reimbursement is authorized for the rental charge provided it does not exceed the charge made to nonveteran students.

(10) Educational and training institutions furnishing supplies to trainees which are required to be owned personally or on a rental basis by all students pursuing the same or similar course may be compensated for such services in an amount not exceeding 10 percent of the allowable charge for the supplies furnished or rented except:

(i) Where the tuition covers the charges for supplies or rentals or a stipulated fee is assessed all students, handling charges are not allowable.

(ii) The handling charge is not allowable for Government-owned books procured by the institution from the Library of Congress.

(iii) In cases where an item of equipment will exceed $50 in cost, effort will be made to secure a lower handling charge than for those costing a lesser amount. The agreed percent for such handling charges will be included in the contract or added as an addendum.

831.7001-4 Medical services and hospital care.

(a) The VA may pay the customary student health fee when payment of the fee is required for similarly circumstanced nonveterans. If payment of the fee is not required for similarly circumstanced nonveterans payment, payment may be made if it is determined by the Department of Medicine and Surgery that such payment is in the best interest of the veteran and the government.

(b) Where medical services or hospital care not covered by the customary students health fee are available in the school operated facilities or arrangements have been made by the institution with doctors and hospitals in the immediate area, reimbursement by the Department of Veterans Benefits for such services may be made in a contract for such services provided that the Director, VA Medical Center, determines:

(1) That such arrangements are necessary to provide timely medical care for veterans attending the facility under provisions of chapter 31; and

(2) The general rates established for such services do not exceed the rates established by the Chief Medical Director.

(c) The VA may reimburse a rehabilitation facility for incidental medical services provided during a veteran's program at the facility.

831.7001-5 Administrator's Decision No. 557.

(a) Fees and expenses authorized under Administrator's Decision No. 557 may be authorized for payment when the educational institution or training establishment makes such payments on behalf of the veteran.

(b) Payment for fees and expenses not made by the educational institution or training establishment will be made in accordance with Part 813 of this chapter or FAR 15-210(a)(1).

831.7001-6 Consumable instructional supplies.

(a) Reimbursement for consumable instructional supplies which institutions require for the instruction of all students, veteran or nonveteran pursuing the same or comparable course or courses will be made when:

(1) The supplies are entirely consumed in the fabrication of a required project.

(2) The supplies are not consumed but are of such a nature that they cannot be salvaged from the end product for reuse for further instructions by disassembling or dismantling the end product.

(b) Reimbursement for consumable instructional supplies is not allowable when:

(1) The supplies can be salvaged for reuse.

(2) The supplies used in a project which has been elected by the student as an alternate class project in order to produce an end product of greater value than that which is normally required to learn the skills of the occupation and which will become his property upon completion.

(3) The supplies used in a project which has been selected by the institution to provide the student with a more elaborate end product than is required to provide adequate instruction as an inducement to the veteran to elect a particular course of study.

(4) The salable value of the end product is equal to or greater than the cost of the supplies used in its fabrication or assembly and a reasonable use has not been made of such supplies so that they are not readily salvaged from the end product to be reused for instructional purposes.

(5) The end product is of premanent value and retained by the institution.

(6) A third party provides the articles or equipment for repair or improvement and for which he or she would otherwise pay a commercial price.

(7) The number of projects resulting in end products in excess of the numbers normally required to teach the recognized job operations and processes of the occupation stipulated in the approved course of study.

(8) The cost of supplies are included in the charge for tuition or as a fee designated for such purpose.

831.7001-7 Reimbursement for other supplies and services.

Reimbursement shall be made for other services and assistance which may be authorized under provisions of applicable chapter 31 regulations including but not limited to employment and self-employment, initial and extended evaluation, and independent living services.

PART 832—CONTRACT FINANCING

Subpart 832.4—Advance Payments

Sec.

832.402 General.
832.404 Exclusions.

Subpart 832.5—Progress Payments Based on Costs

832.502 Preaward matters.
832.502–2 Contract finance office clearance.

Subpart 832.8—Assignment of Claims

832.805 Procedure.
832.805–70 Distribution/notification of assignment of claims.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 832.4—Advance Payments

832.402 General.

The determination required by FAR 32.402(c)(1)(iii) will be made by the Director, Office of Procurement and Supply. Prior to award, contracting officers will submit, through channels, the information required by FAR 32.409–1 for such determinations.

832.404 Exclusions.

(a) Under the provisions of 31 U.S.C. 3324(d)(2), as amended, advance payment is authorized for subscriptions or other charges for newspapers, magazines, periodicals and other publications for official use of any office under the Government from appropriations available therefore, notwithstanding the provisions of 31 U.S.C. 3324(a). The term "other publications" includes any publication printed, microfilmed, photocopied or magnetically or otherwise recorded for auditory or visual usage.

(b) Under the provisions of 31 U.S.C. 1535, advance payment may be made for services and supplies obtained from another Government agency. This includes items such as coupons from the Government Printing Office and Operator Permits, Civilian Defense Radio System, and from the Federal Communications Commission.

(c) Under the provisions of 5 U.S.C. 4109, advance payment may be made for all or any part of the necessary expenses for training Government employees in Government or non-Government facilities. This includes the purchase or rental of books, materials and supplies or services directly related to the training of a Government employee.

Subpart 832.5—Progress Payments Based on Costs

832.502 Preaward matters.

832.502–2 Contract finance office clearance.

Prior approval of actions listed in FAR 32.502–2 will be obtained from the Director, Office of Procurement and Supply (93). Requests for approval shall be accompanied by full justification together with the recommendations of the contracting officer.

Subpart 832.8—Assignment of Claims

832.805 Procedure.

832.805–70 Distribution/notification of assignment of claims.

(a) The Contracting officer will file the retained copy of the notice of assignment and the certified copy of the original instrument of assignment with the General Accounting Office copy of the contract.

(b) Contracting officers will notify field stations of any recognized assignment of payments under contracts executed in Central Office or by the Marketing Divisions in all cases where payment for articles and services under such contracts are certified and approved for payment in the field.

PART 833—DISPUTES AND APPEALS

Sec.
833.009 Suspected fraudulent claims.
833.011 Contracting officer's decision.
833.012 Contracting officer's duties upon appeal.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

833.009 Suspected fraudulent claims.

Matters relating to suspected fraudulent claims will be referred to the Assistant Inspector General, Office of Investigations (51) for investigation and referral to the Department of Justice. No collection, recovery or other settlement action will be initiated while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Inspector General.

833.011 Contracting officer's decision.

(a) When a dispute cannot be settled by agreement and a final decision under the Disputes clause of the contract is necessary, the contracting officer shall furnish the contractor his/her final decision in the matter.

(b) The decision must be identified as a final decision, be in writing, and include a statement of facts in sufficient detail to enable the contractor to fully understand the decision and the basis on which it was made. It will normally be in the form of a statement of the claim or other description of the dispute with necessary references to the pertinent contract provisions. It will set forth those facts relevant to the dispute, with which the contractor and the contracting officer are in agreement, and as clearly as possible, the area of disagreement.

(c) Except as provided in paragraph (d), the decision shall, in addition to the material required by FAR 33.011(a)(4), contain the following:

The Veterans Administration Board of Contract Appeals (VABCA) is the authorized representative of the Administrator for hearing and determining such disputes. The rules of the VABCA are published in § 1.783, of Title 38, Code of Federal Regulations.

(d) If the decision involves a contract entered into prior to the effective date of the Contracts Disputes Act of 1978, i.e. March 1, 1979, and the decision is on a claim which was pending before the contracting officer, or initiated thereafter, the decision shall contain the following:

The Veterans Administration Contract Appeals Board (VACAB) is the authorized representative for hearing such disputes. The rules of the VACAB are published in § 1.774, of Title 38, Code of Federal Regulations.

The appeal must be filed within 30 days of receipt of the final decision. Any request for an extension of the 30-day appeal period will be denied by the contracting officer. In the alternative, the contractor may elect to proceed under the Contract Disputes Act of 1978, 41 U.S.C. 601–613, in which case, you must within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the Board of Contract Appeals and provide a copy to the contracting officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. Instead of appealing to the Board of Contract Appeals, you may bring an action directly in the U.S. Claims Court (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603, regarding Maritime Contracts) within 12 months of the date you receive this decision. If you appeal to the Board of Contract Appeals, you may, solely at your election, proceed under the Board's small claims procedure for claims of $10,000 or less or its accelerated procedure for claims of $50,000 or less.

(e) The contracting officer's final decision will be forwarded to the contractor by certified mail, return receipt requested.

833.012 Contracting officer's duties upon appeal.

(a) When a notice of appeal in any form has been received by the contracting officer, that officer will endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days, will forward said original notice of appeal and a copy of the contracting officer's final decision letter to the Veterans Administration Board of Contract Appeals (VABCA). Copies of the notice of appeal and the final decision letter will be transmitted

concurrently to the Director, Office of Procurement and Supply (93) and the Assistant General Counsel (025). (In cases of construction contracts administered by the Office of Construction, copies of appeal and final decision letter need not be transmitted to the Director, Office of Procurement and Supply (93).)

(b) Within 20 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer will assemble and transmit to the VABCA, through the Office of General Counsel (025), an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the VABCA; and

(5) Any additional information considered pertinent.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 834—MAJOR SYSTEMS ACQUISITION

834.002 Policy.

VA policy regarding major system acquisition is contained in Central Office Operating Instructions OI-1, Part VI, Chapter 11, "Major System Acquisitions." Normally, VA major system acquisitions involve a minimum of $50 million one time costs or $150 million life cycle costs. Persons wishing to review these procedures may obtain copies by writing the Associate Deputy Administrator for Information Resources Management (004), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

(38 U.S.C. 210 and 40 U.S.C. 486(c))

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 836.2—Special Aspects of Contracting for Construction

Sec.

836.202 Specifications.
836.206 Liquidated damages.
836.208 Concurrent performance of firm fixed-price and other types of construction contracts.
836.209 Construction contracts with architect-engineer firms.
836.211 Distribution of advance notices and solicitations.

Subpart 836.3—Special Aspects of Formal Advertising in Construction Contracting

836.302 Presolicitation notices.
836.371 Notice to proceed.

Subpart 836.6—Architect-Engineer Services

836.601 Policy.
836.602 Selection of firms for achitect-engineer contracts.
836.602-1 Selection criteria.
836.602-2 Evaluation boards.
836.602-3 Evaluation board functions.
836.602-4 Selection authority.
836.602-5 Procedure for procurements estimated not to exceed $10,000.
836.606-70 General.
836.606-71 Architect-engineer's proposal.
836.606-72 Contract price.
836.606-73 Application of 6-percent architect-engineer fee limitation.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 836.2—Special Aspects of Contracting for Construction

836.202 Specifications [Reserved].

836.206 Liquidated damages.

Liquidated damage provisions may be included in construction contracts when the criteria of 812.202 is met. If partial performance may be accepted and utilized to the advantage of the Government, the clause substantially as set forth in 852.212-70 will be included in addition to the clause set forth in FAR 52.212-5.

836.208 Concurrent performance of firm fixed-price and other types of construction contracts.

When concurrent contracts of the type specified in FAR 36.208 are considered necessary or advantageous, prior approval will be requested of the Chief Medical Director for contracts involving M&R (Maintenance and Repair) funds or of the Director, Office of Construction for contracts involving construction (major and minor) funds. Complete justification will be furnished in the request.

836.209 Construction contracts with architect-engineer firms.

When it is considered necessary or advantageous to award a contract for construction of a project to a firm or person that designed the project, prior approval will be requested of the Chief Medical Director for contracts involving M&R funds or of the Director, Office of Construction for contracts involving construction funds. Complete justification will be furnished in the request.

836.211 Distribution of advance notices and solicitations.

(a) On the issue date shown on SF 1442, Solicitation, Offer and Award, specifications, drawings, and all other material necessary to prepare a bid will be issued to each eligible prospective bidder and other agencies who request them in writing and who meet the qualifications stated in the solicitation.

(b) On the issue date, two copies of the drawings and specifications for station level projects funded from construction appropriations will be furnished to the Director, Office of Construction.

(c) Distribution of specifications and drawings on Central Office projects will be in accordance with that established by the Project Director.

(d) Advance (presolicitation) notices should also be sent to Chambers of Commerce, Builders Exchanges, various trade journals, and other organizations which make a practice of publishing such information for the benefit of the construction industry. Drawings and specifications should be sent to Chambers of Commerce and Builders Exchanges when requested. These organizations frequently make drawings and specifications available for review and inspection to suppliers and subcontractors who cannot receive drawings and specifications from the Government.

Subpart 836.3—Special Aspects of Formal Advertising in Construction Contracting

836.302 Pre-solicitation notices

An SF 1417, Pre-Solicitation Notice (Construction Contract), shall be used as a pre-solicitation notice on proposed contracts expected to equal or exceed $100,000. When so used, it will be submitted to prospective bidders at least 15 days prior to the date on which the drawings and specifications will be issued. When pre-solicitation notices are not used, see 836.211.

836.371 Notice of proceed.

(a) Construction contractors will be given a written "Notice to Proceed" with the work. SF 1442 serves that purpose of contracts not in excess of $25,000 when completed by the contracting officer and returned to the contractor. For contracts exceeding $25,000, a letter will be used. A letter notice to proceed will normally be sent only after performance and payment bonds and the completed contract forms, where applicable, have been returned by the contractor and are accepted by the contracting officer. If the urgency of the work or other proper

reason requires the contractor to begin work immediately, the award letter may include the "Notice to Proceed" with the reservation that payments are contingent upon receipt and approval of the required bonds.

(b) If the contract provides for liquidated damages, the notice to proceed will be sent by certified mail, return receipt requested. It will advise the contractor that the work will be completed within —— (insert contract time for completion) calendar days from the date of receipt shown on the certified mail receipt card returned by the post office.

(c) If the contract does not provide for liquidated damages, certified mail is not required. Notices to proceed for these contracts will establish a date for completion taking into consideration the time required for the notice to arrive by regular mail.

(d) At the time the notice to proceed is sent to the contractor, a copy will be furnished to the resident engineer or the Chief, Engineering Service. A copy of the notice to proceed will be filed with copy A of the contract. When certified mail is used, the certified mail receipt card returned by the post office will be attached to the copy of the notice to proceed. Copies of the notice to proceed will be filed with copies C and D of the contract after the date of receipt has been established and indicated thereon.

Subpart 836.6—Architect-Engineer Services

836.601 Policy.

The provisions of this subpart pertain to the general policies and procedures for the procurement of professional architect-engineer services as set forth in FAR subpart 36.6 and are not applicable to contracts entered into pursuant to the authority of 38 U.S.C. 1820. The provisions of the Small Business Act are applicable to the procurement of architect-engineering services. Consequently, consideration of procurement set-asides for small business concerns will be made in accordance with FAR subpart 19.5.

836.602 Selection of firms for architect-engineer contracts.

836.602-1 Selection criteria.

In addition to the evaluation criteria set forth in FAR 36.602-1, the board will consider the factors set forth in this section as they apply to the project or purpose of the selection. Values will be assigned to each factor in determining the relative qualifications of the firms identified as qualified through the preselection process. The values may be confirmed or adjustments may be made as a result of the discussions.

(a) Reputation and standing of the firm and its principal officials with respect to professional performance, general management, and cooperativeness.

(b) Record of significant claims against the client because of improper or incomplete architectural and engineering services.

(c) Geographic location and facilities of the working office which would provide the professional services.

(d) Specific experience and qualifications of personnel proposed for assignment to the project, and record of working together as a team.

836.602-2 Evaluation boards.

Central Office architect-engineer contractors will be selected by the board appointed by the Director, Office of Construction. Field station architect-engineer contractors will be selected by the board appointed by the station director.

(a) The evaluation board will be chaired by either the Chairman or Vice Chairman of the Architect-Engineer Evaluation Board, or the Project Director (or Deputy Project Director) will be designated to act when necessary. The board's members, as appointed by the Director, Office of Construction, will include the appropriate Project Director or designated Project Supervisor and as many qualified professional architects or engineers from the Office of Construction technical services as may be considered for appropriate for the particular project. Additional members from the Office of Construction or from the other VA departments and staff offices will be designated for special type projects when appropriate.

(b) The evaluation board for a Veterans Administration field station will consist of no less than two members, one of whom will be the senior contracting officer, and the other the Engineer Officer. Where a station has two or more engineers on its staff, an additional engineer will be appointed to the board. The chairman of the board will be the senior engineer.

836.602-3 Evaluation board functions.

(a) The evaluation board will review the data submitted by the firms and from that file will preselect the firms which possess the basic qualifications for performing the services needed. The factors stated in the announcement publicizing the proposed procurement (see FAR 5.207) will be used in determining whether a firm is qualified for inclusion in the preselection list.

(b) In the evaluation of the qualifications of the firms on the preselection list, the board will perform the functions as outlined in FAR 36.602-3, applying the evaluation criteria set forth in FAR 36.602-1 and that established in 836.602-1. The board will recommend at least three firms for interviews to the Director, Office of Construction in the case of Central Office contracts, and to the field station director in the case of station contracts.

(c) After approval of the list of selected firms recommended for interviews by the Director, Office of Construction or by the station director, the board will arrange discussions with each firm to obtain information, supplementing that which is already available. The board will select in order of preference, at least three firms considered the most highly qualified. This recommended listing will be submitted to the Director, Office of Construction or to the station director, as appropriate, for consideration and approval before the contracting officer enters into negotiations with the top-rated firm.

836.602-4 Selection authority.

The Director, Office of Construction (for Central Office contracts) and the station director (for field station contracts), or persons acting in those capacities, are designated as the approving officials for the recommendations of the evaluation boards.

836.602-5 Procedure for procurements estimated not to exceed $10,000.

Either of the procedures provided in FAR 36.602-5 may be used when authorized by the Director, Office of Construction or the station director.

836.606-70 General.

Negotiations shall be conducted in accordance with FAR Part 15 and VAAR Part 815, beginning with the most preferred firm in the final selection. Application of the 6-percent fee limitation cited in FAR 15.903(d)(1)(ii) is set forth in 836.606-73. The policy set forth in that section and the provisions of FAR Part 15 provide all the available latitude in the negotiation of the contract price. The VAAR policy does not, however, relieve the contracting officer of the responsibility to determine that the fee negotiated is consistent with the services to be performed and the nature of the project. The contract ordinarily will cover all services to be rendered by the firm. To assure that the fee limitation is not violated, the contracting officer will maintain suitable

records to be able to isolate the amount in the total fee to which the 6-percent limitation applies.

836.606-71 Architect-engineer's proposal.

The use of VA Form 08-6298, Architect-Engineer Fee Proposal, is mandatory for obtaining the proposal and supporting cost or pricing data from the contractor and subcontractor in the negotiation of all architect-engineer contracts for design services when the contract price is estimated to be $50,000 or over. The use of VA Form 08-6298 for design contracts less than $50,000 is at the discretion of the contracting officer. In obtaining architect-engineer services for research study, seismic study, master planning study, construction management and other related services contracts, VA Form 08-6298 shall also be used but supplemented or modified as needed for the particular project type. The contracting officer shall require the contractor or prospective contractor to submit (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) certified cost or pricing data when required by FAR Subpart 15.804.

836.606-72 Contract price.

Where negotiations with the top-rated firm are unsuccessful, the contracting officer will terminate the negotiations and undertake negotiations with the firm next in order of preference after authorization by the Director, Office of Construction or by the station director to do so. Recommendation for award of the contract at the negotiated fee, with a copy of the negotiation memorandum prepared in accordance with FAR 15.808 and, will be submitted whenever a field pricing report has been received (see MP-1, Part II, Chapter 23), to the Director, Office of Construction or the station director, as appropriate.

836.606-73 Application of 6-percent architect-engineer fee limitation.

(a) The 6-percent fee limitation on architect or engineer services set forth in section 304(b) of the Federal Property and Administrative Services Act of 1949, as amended, and referred to in FAR 15.903(d)(1)(ii), applies to those services generally required in preparing working drawings and specifications which form the basis for bidding and for the award of construction contract. The fixed fee limitation does not apply to the following architect or engineer services:

(1) Investigative services including but not limited to:

(i) Determination of program requirements including schematic or preliminary plans and estimates.

(ii) Determination of feasibility of proposed project.

(iii) Preparation of measured drawings of existing facility.

(iv) Subsurface investigation.

(v) Structural, electrical, and mechanical investigation of existing facility.

(vi) Surveys: Topographic, boundary, utilities, etc.

(2) Special consultant services not normally available in organizations of architects or engineers not specifically applied to the actual preparation of working drawings or specifications of the project for which the services are required.

(3) Other:

(i) Reproduction of approved designs through models, color renderings, photographs, or other presentation media.

(ii) Travel and per diem allowances other than those required for the development and review of working drawings and specifications.

(iii) Supervision or inspection of construction, review of shop drawings or samples and other services performed during the construction phase.

(iv) All other services that are not integrally a part of the production and delivery of plans, designs, and specifications.

(4) The cost of reproducing drawings and specifications for bidding and their distribution to prospective bidders and plan file rooms.

(b) The total cost of the architect or engineer services contracted for may not exceed 6 percent of the estimated cost of the construction project plus the estimated cost of related services and activities such as those shown in paragraph (a) of this section. To support project submissions, VA Form 10-1193, Application for Health Care Facility Project, and VA Form 10-6238, EMIS Construction Program-Estimate Worksheet, will be used and the proposed technical services shown where necessary and applicable.

PART 837—SERVICE CONTRACTING

Subpart 837.1—Service Contracting—General

Sec.

837.103 Contracting officer responsibility.
837.104 Personal services contracts.

Subpart 837.2—Consulting Services

837.200 Scope of subpart.
837.203 Types of consulting services.
837.204 Policy.
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837.271 Management and professional services.
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Appendix A Information to be Included in Requests for Contractual Services.
Appendix B Management and Professional Services and Special Studies and Analyses.

Subpart 837.3—Dismantling, Demolition, or Removal of Improvements

837.300 Scope of subpart.

Subpart 837.70—Mortuary Services

837.7001 General.
837.7002 List of qualified funeral directors.
837.7003 Funeral authorization.
837.7004 Administrative necessity.
837.7005 Unclaimed remains—all other cases.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 837.1—Service Contracts—General

837.103 Contracting officer responsibility.

When the contracting officer determines that legal assistance is necessary in determining whether a proposed service contract is for personal or nonpersonal services, he/she shall gather all the pertinent facts and request the opinion of District Counsel responsible for servicing the VA facility involved.

837.104 Personal services contracts.

(a) Personal service contracts having an employer-employee relationship, except to the extent indicated in 815.204 and Subpart 837.2, shall not be awarded but will be consummated in accordance with MP-5, Parts I and II.

(b) In addition to the elements used in assessing whether or not a contract is personal in nature identified in FAR 37.104(d), the following circumstances may also indicate a possible personal service contract.

(1) The contract does not call for an end product which is adequately described in the contract.

(2) The contract price or fee is based on the time actually worked rather than the results to be accomplished.

(3) Office space, equipment and supplies for contract performance are to be furnished by the Veterans Administration.

(4) Contractor personnel are to be used interchangeably with Veterans Administration personnel to perform the same function.

(5) The Veterans Administration retains the right to control and direct the

means and methods by which contractor personnel accomplish the work.

Subpart 837.2—Consulting Services

837.200 Scope of subpart.

This subpart implements FAR Subpart 37.2 and supplements it with the agency control procedures established pursuant to OMB guidance. This subpart also applies to the procurement of management and professional services, special studies and analysis, and the management and support services for research and development activities as indicated in 837.271.

837.203 Types of consulting services.

For the purpose of this subpart the definition of consulting services shall, in addition to examples listed in FAR 37.203, include peer review of research proposals.

837.204 Policy.

In addition to policy considerations listed in FAR 37.204, contracting officers will be guided by the following additional policy.

(a) Consulting services will normally be obtained only on an intermittent or temporary basis; repeated or extended arrangements are not to be entered into except under extraordinary circumstances.

(b) Grants and cooperative agreements will not be used as legal instruments for consulting service arrangements.

(c) A competitive solicitation is the preferred method of obtaining consulting services and should be used to the maximum extent practicable to insure that costs are reasonable. To that end, requests for approval of the use of consulting services must be made in sufficient time to enable the appropriate procurement action to be taken. A FFP (firm fixed-price) contract is the preferred contract type and will be used to the maximum extent possible. The contracting officer will determine the feasibility of using an FFP contract and may solicit further detail from the requesting official in order to make that determination.

(d) Sponsoring offices will avoid any contact or discussion with prospective contractors that may impinge on the integrity of the procurement process. Final selection of contractors and negotiation of terms, conditions and prices are matters lying solely within the province of the contracting officer.

(e) Requesting official submitting requirements for consulting services will submit work statements which are specific, complete, and which specify fixed periods of service. End products must be specific and unambiguous, and defined in terms which directly relate to the problem at hand.

(f) Sole-source contracts for consulting services resulting from unsolicited proposals are generally not appropriate. Therefore, when a using activity receives an unsolicited proposal for consulting services, and determines it has a need for such services, a contracting officer shall synopsize the requirement for publication in the Commerce Business Daily to determine if there are other qualified contractors interested in submitting a proposal. Qualified contractors shall be solicited.

(g) If program or contracting officials become aware of serious deficiencies in the performance of duties and responsibilities outlined in this subpart, they will report such deficiencies to their respective department head or staff office director for corrective action. These reports, including corrective actions taken, will be forwarded to the Agency Procurement Executive.

837.205 Management controls.

(a) *Contracting officer responsibilities.* (1) The contracting officer is responsible for making the determination that the requirements submitted by the requesting official are in fact consulting services. The contracting officer will be guided by definitions in FAR 37.201. Upon an affirmative determination that consulting services are being requested, the contracting officer will insure that all justifications for approval required by 837.205(c) are prepared and submitted properly.

(2) The contracting officer will require as a condition of the contract that the contractor will submit all reports with covers which display the following information:

(i) Name and business address of the contractor.

(ii) Contract number.

(iii) Dollar amount of award (including modifications).

(iv) Type of award, i.e., competitive or noncompetitive.

(v) Identification of the official who requested the consulting services, including the name of the organization and telephone number.

(vi) The following notation will be included:

Note.—Pub. L. 97–101, section 412, requires that upon the transfer of the contents of this report, or any other Government document, the new document shall appropriately identify the contract and contractor involved in the development of this report.

(3) The contracting officer is responsible for assessing actual and potential organizational conflicts of interest. These determinations will be governed by 809.5. The contracting officer should pay particular attention to proposed contract requirements which call for advice on future agency decisions to contract, particularly when the development of specifications and work statements is involved.

(b) *Technical support.* (1) Contracting officers will designate a representative of the sponsoring officer as the COTR (Contracting Officer's Technical Representative).

(2) The designated COTR will monitor contract performance in accordance with the plan required by Appendix A of this subpart and submit to the contracting officer all resulting documentation for inclusion in the contract file.

(3) No consulting contract file will be closed out until the sponsoring official has provided for the file a written evaluation of the performance of each consulting contractor as well as a statement of the extent to which the contractor's report (or other end product) has been used or is expected to be used. Also, the contracting officer should, in conjunction with the responsible program official, compare the original contract cost with the final cost and determine the nature of any other deviations from the original contract specifications. Any irregularities should be reported to the Inspector General. Final evaluations should also specify reasons for rejecting any of the contractor's recommendations.

(4) Copies of all final evaluations should be sent to the Director, Procurement and Supply (93).

(c) *Approval procedures.* (1) Contracts for consulting services will be approved by the Administrator regardless of amount, except as provided for in 837.205–70. The methodology for obtaining the approvals required by this paragraph are set forth in paragraph (c)(3) of this section. However, no request for approval of procurement shall be initiated by a contracting officer without the requirement for consulting services first having received the review required in paragraph (c)(2) of this section.

(2) Prior to the submission of an approval request to a contracting officer as required by paragraph (c)(3) of this section, the activity requesting the consulting services will have such requirements reviewed and approved at one level above the activity and, if occurring during the fourth quarter, two levels above. At field facilities this initial review need not exceed the facility head. In Central Office this

review need not exceed department heads, Associate Deputy Administrators, or staff office directors for requirements emanating within their respective jurisdictions. The purpose of this initial review will be to notify management in the chain of command of all consulting services requirements, and to insure that departmental policy pertaining to such services has been adhered to, including any budget restrictions imposed by the Office of Management and Budget.

(3) The approval of the Administrator will be requested by means of a notification of intent prepared by the contracting officer in the form of a letter or memorandum and submitted through channels to the Director, Office of Procurement and Supply. The Director, Office of Procurement and Supply will review the submission for consistency of application of agency policy, and will be responsible for maintaining a consolidated record of requests submitted to the Administrator and the results of those submissions. Subsequent to that review, the notices will be forwarded for the approval of the department heads, Associate Deputy Administrators or staff office directors having jurisdiction over the requesting activity. The General Counsel and the Director, Office of Budget and Finance will also review and concur in the requests.

(4) The notification of intent will cite the pertinent authority warranting negotiation and, in addition to any required determination and findings, will contain the information indicated in Appendix A to this subpart as applicable to the proposed procurement. Where a specific individual or concern is proposed, the notification of intent will also include a statement as to any previous or current contracts with that individual or concern, and as to the consideration given to organizational conflicts of interest.

(5) The approval of the Administrator is in addition to and does not replace technical and legal reviews of contract documents prior to award prescribed elsewhere in these regulations.

(d) *Contract data reporting.* (1) The contracting officer will take care to report correctly a contract award for consulting services in the Federal Procurement Data System.

(2) A separate log (in addition to any station contract register) for all consulting services contracts, regardless of dollar value, will be maintained at the procuring activity for management control purposes. Log entries will be made on separate sheets of paper for each contract award and in the following format:

(i) Contract/obligation number.
(ii) Date of award.
(iii) Reqeusting service.
(iv) Type of award, i.e., competitive or noncompetitive.
(v) Name and address of awardee.
(vi) Contract price.
(vii) A short narrative description of the work to be performed.

(3) The contracting officer will forward a copy of each log entry on standard size plain white bond paper to the Director, Office of Procurement and Supply (93) on a quarterly basis. Log entries should be received in Central Office no later than 15 days after the end of each quarter. Upon receipt of log entries, the Office of Procurement and Supply (93) will immediately enter all submissions into the consolidated listing. Negative responses, if applicable, are required on an annual basis and should be received in Central Office no later than 15 days after the end of the fiscal year. Reports Control Symbol 91–4 has been assigned to this report.

(4) Upon a change in status of a consultant contract, i.e., termination, modification, extension or completion, the contracting officer wil annotate the log entry and resubmit a copy of the entry to the Director, Office of Procurement and Supply (93).

837.270 Special controls for letters of agreement.

(a) Letters of agreement may be used to procure consulting services and advisory board memberships only by those individuals designated in 801.670–14(a) and individuals delegated authority under the conditions specified in paragraph (b) of that section, and will be limited to a value of $500 per letter and to an accumulated annual total of $2,500 to any individual or firm. Letters of agreement should only be used where normal procurement channels are not feasible and only for obtaining the following services:

(1) Consultant services including peer review of research proposals and advisory board memberships.

(2) Management and professional services (837.271)

(3) Instructors and training obtained pursuant to section 4122 of Title 38, United States Code.

(b) The delegated official will perform or have performed for each letter of agreement all those duties and requirements prescribed-in this subpart, as modified by paragraphs (c) and (d) of this section. That official will also insure that all reporting requirements are completed for each action.

(c) The department head or staff office director will be the highest level approving official for each procurement action which does not exceed $500 in consulting fees (excluding travel, per diem and other travel-related costs) and which does not award more than an accumulated total of $2,500 per year in consulting fees to any individual or firm. (Consulting services anticipated to exceed these dollar limitations will not be obtained through letters of agreement.)

(d) In lieu of the requirements outlined in Appendix A of subpart 837.2, justifications for letters of agreement will provide a statement of need and will certify that such services do not unnecessarily duplicate any previously performed work or services. The justification will also certify that the procurement action will not violate post-employment restrictions prescribed in the Ethics in Government Act and 803.101–3.

(e) All procurements for consulting services accomplished through letters of agreement will be entered into the agency consolidated listing of consultant contracts in the format prescribed by 837.205(d). All such log entries applicable to Central Office activities shall be forwarded to the Director, Office of Procurement and Supply (93). The office shall also be responsible for entering such information pertaining to Central Office letters of agreement into the Federal Procurement Data System.

837.271 Management and professional services.

837.271–1 Scope.

(a) The controls in this section are applicable to management and professional services, special studies and analyses and management and support services for research and development. Specific types of services to be controlled are listed in Appendix B of this subpart. Management and support services for research and development are the same services listed in Appendix B when procured with Research and Development funds. However, the controls do not apply to the conduct of research and development.

(b) Services in other than the categories listed in Appendix B are also controlled if covered by the definition in 837.271–2 and either represent unusual, nonroutine requirements or requirements having significant impact on agency operations. Contracting officers will be responsible for making such determinations.

(c) This section does not apply to contracts for the medical, dental and ancillary care of beneficiaries or to contracts for the provision of other

services directly to beneficiaries, such as educational services.

837.271-2 Definition.

The term "management and professional services" means those services related to the performance of operating functions of an agency, involving knowledge of an advanced type, and requiring the use of discretion and judgment. Management and professional services differ from consulting services in that the latter term refers to services of a purely advisory nature. Both categories of services involve selection of the contractor on the basis of qualifications, rather than price alone, and are therefore normally procured by negotiation.

837.271-3 Guidelines for use of contracts for management and professional services.

(a) Contracts are appropriate when:

(1) Unusual or peak workloads occur that cannot be accomplished by Government personnel.

(2) Work involved is of of an intermittent, occasional, or one-time nature for which the hiring of Government personnel is not feasible.

(3) They result in a more economical method of performing the work (see OMB Circular No. A-76, revised.)

(b) Contracts are inappropriate (improper or illegal) when:

(1) The service involves exercising a Governmental judgment; i.e., managing programs requiring value judgments; selection of priorities; direction of Federal employees; and all regulatory responsibilities.

(2) An employer-employee relationship would be established or involved.

(3) They circumvent personnel salary or ceiling limitations.

837.271-4 Approval for use of contractual services.

(a) All contracts controlled by this section require the approval of the Administrator except as provided in paragraph (b) of this section. The procedure to be used in obtaining approval is the same as that required for consulting service as prescribed in 837.205(c). The format and content of the supporting justification will be the same as that in Appendix A.

(b) Contracts not exceeding $500 may be approved by the heads of facilities, without higher level review, for requirements emanating at the local level. In Central Office, contracts not exceeding $500 may be approved at one level above the requesting activity, without higher level review. Supporting justifications will be the same as required in paragraph (a) of this section.

(c) The approvals of officials designated in paragraphs (a) and (b) of this section are in addition to and do not replace the technical and legal reviews of contract documents prior to award prescribed elsewhere in these regulations.

837.271-5 Contract administration.

(a) All the basic policy considerations contained in 837.204 are applicable to services controlled herein, including the development of work statements which are specific, complete and which specify fixed periods of service and the solicitation of other qualified sources for proposed sole-source awards emanating from unsolicited proposals.

(b) All responsibilities of contracting officers and their technical representatives as prescribed in 837.205, Contracting requirements, will apply to services controlled by this section, including the monitoring of contractor performance and the final evaluation of end products.

(c) All reporting requirements contained in 837.205(d) are applicable to services controlled by this section.

Appendix A—Information to be Included in Requests for Contractual Services

Requests for approval to procure contractual services, whether with individuals or firms, must contain statements on the following items where applicable. Items other than those listed may be added to clarify or justify the request.

Problem or Project

1. Description of the problem or project.
2. Length of time this problem or condition has existed.
3. Effect on the mission should the problem continue to exist.
4. Specific examples of losses or excessive costs caused by the problem.
5. Whether the proposed study or project is a small segment of a much greater project. If so, elaborate on the complete study or project and state what action will be taken concerning the overall project when this segment is completed.
6. Alternative approaches available to perform this work, and reasons for eliminating each approach.
7. Previous attempts to solve the problem or perform the work and their results, with an explanation why they were unsuccessful if that was the case.
8. Results or end products sought. End products can be as simple as a report containing recommendations, or as lengthy and detailed as a completely installed system for management.
9. Efforts made to determine if similar studies or other sources of information already exist, and whether this proposed effort duplicates other efforts known to have taken place or which are ongoing.
10. Whether a lack of equipment has a bearing on this problem. If so, what attempts were made to remedy the situation?
11. Type of skills required to solve problem or accomplish the project.

Personnel

12. Whether a shortage of qualified personnel has a bearing on the problem. If so, what attempts were made to remedy the situation?
13. Number of in-service personnel by descriptive title to be made available to work with the contractor.
14. If the services of a specific individual are requested, specific reasons why this individual or another equally competent individual cannot be temporarily employed as authorized by personnel regulations.
15. If a request is for a specific individual, reasons for selecting that person over other suitable persons. List of other suitable persons, or explanation if there are none.

Firms

16. If a specific firm is recommended, reasons for selecting it over other suitable firms, or explanation if there are none.

Cost of Contract and Funds

17. Estimated cost of contract.
18. Identification of funds to be used to pay for contract.

Attachments

19. Copies of staff studies and papers bearing on the problem.
20. Copy of proposed contract work statement.

Automated Data Processing

21. If the request includes a requirement for services related to ADP, a copy of any reports or requests submitted to GSA pursuant to FPMR Subpart 101-36.47.

Evaluation

22. The methodology by which contractor performance will be monitored including how departures from the original contract specifications will be documented and approved.
23. The methodology by which the final product will be evaluated and by whom.

Advance Procurement Planning

24. Does the requirement fall within the activity's advance procurement plan, and if not, why?

Appendix B—Management and Professional Services and Special Studies and Analyses

Federal procurement data system service code	Category
	Professional Services
R402	Management Data Collection Services.
R405	Operations Research Services.
R406	Policy Review/Development Services.
R407	Program Evaluation Services.
R408	Program Management/Support Services.
R409	Program Review/Development Services.
R410	Public Relations Services.
R412	Simulations.
R413	Specifications Development Services (Nonconstruction).
R498	Other Professional Services.

Federal procurement data system service code	Category
	Special Studies and Analyses
R505	Cost Benefit Analyses.
R507	Economic/Socio-Economic and Labor Studies.
R513	Feasibility Studies (Nonconstruction).
R521	Historical Studies.
R524	Mathematical/Statistical Analyses.
R527	Recreation Studies.
R528	Regulatory Studies.
R529	Scientific Data Studies (Nonmedical).
R537	General Health Studies.
R599	Other Special Studies and Analyses.

Subpart 837.3—Dismantling, Demolition, or Removal of Improvements

837.300 Scope of subpart.

Contracting officers should be cognizant of the requirements contained in VA Manual MP–3, Part II, Chapter 6, for approval necessary prior to entering into a contract for disposal of VA real property. Such approval(s) shall be included in the contract file.

Subpart 837.70—Mortuary Services

837.7001 General.

This subpart establishes the policies and procedures governing the procurement of funeral and burial services for deceased beneficiaries of the Veterans Administration, as provided in 38 U.S.C. 903.

837.7002 List of qualified funeral directors.

Contracting officers will establish, in coordination with cognizant Medical Administration Service personnel, a list of funeral directors capable of performing the burial services specified in 837.7003. The contracting officer will attempt to establish a commitment to perform these services within the statutory limitation of $300. Each funeral director must be fully licensed in the jurisdiction in which the business operates. If there has been no prior experience with the funeral director which would ensure the adequacy of the funeral director's services and casket, arrangements will be made prior to contract negotiation to inspect the premises and the casket to be provided, and to check with the local business bureau and/or Chamber of Commerce. Certification of the funeral director's adequacy will be added to the list prescribed in this section.

837.7003 Funeral authorization.

(a) When a veteran dies while receiving care in a Veterans Administration health care facility or in a non-Veterans Administration institution at Veterans Administration expense, and the decedent's remains are unclaimed, the Chief, Medical Administration Service, will forward to the Chief, Supply Service, a properly executed VA Form 10–2065, Funeral Arrangements, requesting that funeral and burial services for the deceased be procured. Burial will be made in the nearest National Cemetery having available grave space.

(b) The contracting officer will enter into negotiations with local funeral directors to procure a complete funeral and burial service within the statutory allowance of $300. This service will consist of and will be specified on the purchase order, VA Form 90–2138, Order for Supplies or Services, as follows:

(1) Preparation of the body, embalming.

(2) Clothing.

(3) Casket. (The casket, as a minimum, will be constructed from thick, strong particle board and must be of sufficient strength to support the weight of an adult human body. Cardboard or press paper or similar materials are not acceptable).

(4) Securing all necessary permits.

(5) Ensuring that a United States Flag (provided the funeral director in accordance with M–1, Part I, paragraph 14.40) accompanies the casket to place of burial.

(c) An additional allowance for transportation of the body to the place of burial is provided in 38 U.S.C. 903(a)(2). This allowance will cover the transportation cost of shipment of the body by common carrier or by hearse from the VA facility to the funeral home and to the place of burial, any charges for an outside (shipment) box, and the charges for securing all necessary permits for removal or shipment of the body. These costs are not chargeable against the $300 allowance.

(d) In accordance with M–1, Part I, paragraph 14.37, the contracting officer will designate the Chief, Medical Administration Service, or representative, to be responsible for the medical inspection of the mortuary services performed and inspection of the merchandise furnished. This designee will also be responsible for certifying receipt on the receiving report.

(e) The Chief, Supply Services will assist the Chief, Medical Administration Service in developing the local procedures specified in M–1, Part I, paragraph 14.37c.

837.7004 Administrative necessity.

(a) When persons die under Veterans Administration care who are not legally entitled to such care at Veterans Administration expense, and no relatives or friends will claim the remains, and the municipal, county or State officials refuse to provide for final disposition, arrangements will be made and expenses assumed for burial locally under separate contractual agreement.

(b) When a full and complete funeral and burial service as prescribed in 837.7003 cannot be obtained by the contracting officer within the statutory allowance, he/she will, prior to taking any further action, secure from the head of the station a written determination that the disposition of the remains must be accomplished by the Veterans Administration as an administrative necessity. The head of the station will also authorize in writing the expenditure of such additional funds as may be necessary for this purpose. The amount of these additional funds will be held to the minimum, keeping in mind, however, that the deceased must be given a proper and fitting interment.

(c) The determination and authorization by the head of the station will be made a part of the contract file.

837.7005 Unclaimed remains—all other cases.

Requests for information on the disposition of the unclaimed remains of a veteran whose death occurs while not under the direct care of treatment of the Veterans Administration will be referred to the Veterans Services Officer for processing in accordance with Manual M27–1, Part II. This manual is available at any Veterans Administration regional office, medical center or VA office.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 842—CONTRACT ADMINISTRATION

Sec.

842.000 Scope of part.
842.070 Definition.

Subpart 842.1—Interagency Contract Administration and Audit Services

842.101 Policy.
842.102 Procedures.

Subpart 842.2—Assignment of Contract Administration

842.202 Assignment of contract administration.

Subpart 842.7—Indirect Cost Rates

842.705 Final indirect cost rates.

Subpart 842.8—Disallowance of Costs

842.801–70 Audit assistance prior to disallowing costs.
842.803 Disallowing cost after incurrence.

Subpart 842.12—Novation and Change-of-Name Agreements

842.1203 Processing agreements.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

842.000 Scope of part.

This part applies to all contracts, whether formally advertised or negotiated. (See paragraph 801.602–70 for requirements for legal review of certain contract administration actions.)

842.070 Definition.

Contract Administration is the coordination of actions required for the performance of a contract including the guidance and supervision necessary to assure that all contractural obligations are fulfilled.

Subpart 842.1—Interagency Contract Administration and Audit Services

842.101 Policy.

(a) Pursuant to FAR policy encouraging interagency cross-servicing in field contract support services, contracting officers of the Veterans Administration will utilize the support services of other agencies to the extent feasible. Examples of such services are: preaward surveys; quality assurance and technical inspection of contract items; and review of contractors' procurement systems. Requirements for support services available from any other Government department or agency will be obtained on the basis of an approved negotiated interagency support agreement.

(b) An interagency support agreement is a written instrument of understanding executed between the parties to the agreement. The agreement should state clearly the accord which has been reached between the two parties involved, especially the obligations assumed by the rights granted each. The agreement will be specific with respect to resources to be provided by both the supplying and receiving activities. It will also provide for funding and reimbursement arrangements, and clauses permitting revisions, modifications thereto, or cancellation thereof, will be included.

842.102 Procedures.

(a) The Department of Defense Directory of Contract Administration Services Components and the Directory of Federal Contract Audit Offices are available through the Veterans Administration Forms and Publications Depot.

(b) Proposed interagency support agreements with any other Government department or agency involving the expenditures of Veterans Administration funds of $5,000 of more will be forwarded by the facility head (or Central Office official) to the Director, Office of Procurement and Supply (91), who will transmit with recommendation to the General Counsel for legal review and approval, as required by 801.602–72(a)(3).

(1) Proposed agreements, both new and renewal, will be submitted in an original and four copies so as to reach Central Office 60 days prior to the effective date of the agreement.

(2) Complete justification for all proposed agreements will be submitted, as approval depends on the adequacy of the justification.

Subpart 842.2—Assignment of Contract Administration

842.202 Assignment of contract administration.

Proposed assignments of contract administration responsibility outside of the procuring activity will be forwarded by the facility head to the Director, Office of Procurement and Supply (91), who will transmit the proposal to the General Counsel for legal review and approval, as required by 801.602–70(a)(5) and 801.602–71. Complete justification will be provided, specifically addressing the need for and benefits to be provided by assignment of contract administration. (See 801.603–70 for policy on designating representatives of contracting officers, and FAR 30–401 for contracts involving Cost Accounting Standards.)

Subpart 842.7—Indirect Cost Rates

842.705 Final indirect cost rates.

(a) Contracting officers will request audits on proposed final indirect cost rates and billing rates for use in cost reimbursement, fixed price incentive and fixed price redeterminable contracts as described in FAR Subpart 42.7 unless the quick-closeout procedures described in FAR 42.708 are used. In this case, the contracting officers will perform a review and validation of the contractor's data submitted for accuracy and reasonableness of the proposed rates for negotiating the settlement of indirect costs for a specific contract.

(b) Contracting officers in the Office of Procurement and Supply and Office of Construction who are located in the VA Central Office have the option to request audits directly from the cognizant audit agencies or requesting audits through the Assistant Inspector General for Policy, Planning and Resources (53C). All other contracting officers located in the VA Central Office and the Office of the General Counsel will send requests for audit to the Assistant Inspector General for Policy, Planning and Resources (53C). Contracting officers located at field stations, Marketing Center and supply depots are required to arrange for the audits through the Director, Office of Procurement and Supply or the Director, Office of Construction. The Assistant Inspector General for Policy, Planning and Resources (53C) will provide such accounting assistance or technical advice as is deemed desirable by the contracting officers.

Subpart 842.8—Disallowance of Costs

842.801–70 Audit assistance prior to disallowing costs.

When a contracting officer determines during the performance of a cost reimbursement, fixed price incentive or fixed price redetermination contract exceeding the thresholds specified in FAR 15.804–2, that costs should be disallowed, audit assistance will be requested. Such requests submitted by field facility contracting officers will be directed to the Director, Office of Procurement and Supply (93) for review and forwarding to the Assistant Inspector General for Auditing (52), or other recognized audit agency, e.g., the Defense Contract Audit Agency.

842.803 Disallowing cost after incurrence.

Contracting officers may approve contractors' vouchers for payment and process them to the servicing fiscal office. Such approval must be within the limitations of the contracting officer and the contract for which the voucher is submitted must be within the contracting officers delegation of contracting authority. (Note 842.801–70 regarding disallowing costs).

Subpart 842.12—Novation and Change-of-Name Agreements

842.1203 Processing agreements.

Prior to execution of novation and change-of-name agreements by a Veterans Administration contracting officer, he/she will forward the agreement and related documents to the Office of General Counsel for review as to legal sufficiency. The documents will be submitted through the same channels as those prescribed for legal review of contracts in 801.602–72.

PART 846—QUALITY ASSURANCE

Subpart 846.3—Contract Clauses

Sec.

846.302 Fixed price supply contracts.

846.302–70 Inspection.

Subpart 846.4—Government Contract Quality Assurance

846.403 Inspection at destination.
846.408–70 Inspection of subsistence.
846.408–71 Waiver of USDA inspection and specifications.
846.408–72 Supply Depot selection of samples for test.
846.470 Use of commercial organizations for inspections and grading services.
846.471 Determination authority.
846.472 Inspection of repairs for properties under the Loan Guaranty and Direct Loan Programs.
846.472–1 Repairs of $1,000 or less.
846.472–2 Repairs in excess of $1,000.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 846.3—Contract Clauses

846.302 Fixed price supply contracts.

846.302-70 Inspection.

Contracts for property will include the clause 852.210–72(a), "Rejected Goods," except that contracts for packinghouse, dairy products, bread and bakery products, and fresh and frozen fruits and vegetables will include the clause prescribed in 852.210–72(b), "Rejected Goods."

Subpart 846.4—Government Contract Quality Assurance

846.403 Inspection at destination.

(a) When inspection upon delivery indicates the items received are not in compliance with contract requirements, a report will be made to the contracting officer.

(b) VA supply depots will report all instances of noncompliance to the contracting officer on VA Form 10–2055, Sample Transmittal Sheet and Inspection Report. The supply depots are authorized to correct packaging, packing, or marketing not in accordance with contract requirements when the cost of correcting a partial receipt or projected cost of correcting total receipt does not exceed $100. When projected costs exceed $100, authorization will be obtained from the contracting officer prior to taking corrective action. The corrections made and the actual amount to be charged to the vendor will be shown on the reverse of VA Form 10–2055.

846.408-70 Inspection of subsistence.

(a) The contracting officer will determine at the time of issuance of the solicitation whether inspection for specification compliance will be made: (1) Prior to shipment by representatives of the Department of Agriculture or the Department of Commerce, or (2) at the time of delivery by personnel of the purchasing activity. The place of inspection will be indicated in the solicitation.

(b) When either the Department of Agriculture or the Department of Commerce is indicated as the inspection activity, the solicitation will also provide that the contractor is responsible for:

(1) Arranging and paying for inspection services.

(2) Obtaining from the inspection activity a certificate indicating the product complies with specifications. Such certificate, or copy, should accompany the shipment or be furnished to the receiving installation prior to shipment. The contractor shall notify the installation when the certificate is not immediately available.

(3) Seeing that acceptable products are covered by an inspection agency checkloading certificate or stamped by the inspector as prescribed by the contracting officer. Products not so identified shall be rejected.

(4) Furnishing samples for inspection at his/her expense.

(5) Indicating the address where inspection will be made.

(c) The contracting officer will furnish a copy of the purchase document to the inspecting activity.

846.408-71 Waiver of USDA inspection and specifications.

(a) Contracting officers may purchase butter; cheese (except cottage cheese); sausage; meat food products;[1] bacon, smoked; and bacon, Canadian style, without reference to the specifications in VAAR Program Guide G–1, and the U.S. Department of Agriculture (USDA) inspection requirements, when the amount of an item to be purchased will not exceed 500 pounds per delivery. When these items are procured together with items that are not exempt, the solicitation shall include the following:

Items * * * are not required to be in accordance with the specifications contained in VAAR Program Guide G–1, and the special USDA inspection is not required. Inspection for quality and condition will be made by VA upon delivery at destination. These items are, however, subject to the quality controls stated herein.

(b) As appropriate, the following statements shall be included in each invitation for bid, request for proposal or purchase order:

(1) Butter. This product must be graded by the USDA and labeled "Grade A" or the grade specified herein.

(2) Sausage and meat food products:

(i) This product must be a high commercial product and shall have been prepared in a federally inspected plant and bear the USDA establishment number stamp which evidences that it is sound, healthful, wholesome and fit for human consumption; and

(ii) This product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(3) Bacon, smoked; and bacon, Canadian style. This product must be a high commercial product and shall have been prepared in a federally inspected plant and bear the USDA establishment number stamp which evidences that it is sound, healthful, wholesome, and fit for human consumption.

(c) When using a "brand name or equal" purchase description every brand name item that is known to be acceptable and available in the area will be listed.

846.408-72 Supply depot selection of samples for test.

(a) The number of samples to be selected will be as stated in the item specifications or as specified by the contracting officer for items without lot numbers.

(b) On items bearing lot numbers, one unit will be selected from each lot to be tested, unless otherwise specified. Contracts will require that the contractor's shipping document or packing list indicate the lot numbers of items shipped to each depot on the contract. To reduce handling and transportation costs, samples of lots received at more than one location will be submitted as follows:

(1) The VA Supply Depot, Hines, Illinois, will submit samples from all lots received.

(2) The VA Supply Depot, Somerville, New Jersey, will submit samples from lots not received at Hines.

(3) The VA Supply Depot, Bell, California, will submit samples from lot not received at Hines or Somerville.

(c) On drug items, when there is only one unit in the lot to be tested or when five or more lots on the same order require sampling, the contracting officer will be notified and requested to furnish instructions. Such notification will be transmitted by teletype.

(d) To facilitate handling and packing, samples may be consolidated into one package. However, under no circumstances will shipment of samples be held more than 48 hours from time of receipt.

[1] Meat food products shall mean processed foods containing meat in substantial proportion and other listed ingredients including seasoning, e.g., frankfurters, coldcuts. Whole or prefabricated meats, e.g., pork chops, hamburger, are considered meats, not meat food products.

846.470 Use of commercial organizations for inspections and grading services.

Commercial organizations may be used for inspection and grading services when it is determined that the results of a technical inspection or grading are dependent upon the application of scientific principles or specialized techniques, and it is further determined that:

(a) The Veterans Administration is unable to employ the personnel qualified to properly perform the services and is unable to locate another Federal Agency capable of providing the service.

(b) The inspection or grading results issued by a private organization are essential to verify the acceptance or rejection of a special commodity.

(c) The services may be performed without direct Government supervision.

846-471 Determination authority.

The determinations required in 846.470 will be made by:

(a) The Director, Office of Construction, for those items and services for which purchase authority has been assigned to him/her.

(b) The Director, Veterans Canteen Service, DM&S, for those items and services purchased, or contracted for, by the Veterans Canteen Service (except those items purchased from Veterans Administration supply sources).

(c) The Director, Office of Procurement and Supply for all other supplies, equipment and services.

846-472 Inspection of repairs for properties under the Loan Guaranty and Direct Loan Programs.

Final inspection will be made of all repair programs upon completion. In addition such intermediate or progress inspections will be made on extensive or technical jobs as specified in the contract.

846.472-1 Repairs of $1,000 or less.

(a) Generally, inspections required will be made by the management broker. If the property has not been assigned to a management broker or if it has been determined that the nature of the repairs requires supervision by a technician, the inspection will be made by a qualified fee or staff inspector.

(b) There is no form prescribed for this inspection but VA Form 26-1839, Compliance Inspection Report, may be used if desired. Regardless of the form in which the report is submitted, it will be in sufficient detail to identify the contractor, property, and the repair program and to enable the contracting officer to make a determination that the work is being performed satisfactorily or completed in accordance with the terms of the contract.

846.472-2 Repairs in excess of $1,000.

(a) The final inspection and any intermediate or progress inspections on repairs exceeding $1,000 will be made by a qualified fee or staff inspector. If a management broker is qualified to supervise major repairs, he/she may be authorized to conduct the inspections.

(b) Report of inspections will be made on VA Form 26-1839, Compliance Inspection Report. The form will be completed to identify the property, contractor, and repair program and will also include such detailed information to enable the contracting officer to make a determination that the work is being performed satisfactorily or that it has been completed in accordance with the contract terms. Any deficiencies noted will be itemized and explained in detail.

PART 847—TRANSPORTATION

Subpart 847.3—Transportation in Supply Contracts

847.303-1 F.o.b. origin.
847.303-70 F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.
847.304 Determination of delivery terms.
847.304-1 General.
847.305-70 Potential destinations known but quantities unknown.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 847.3—Transportation in Supply Contracts

847.303-1 F.o.b. origin.

(a) Normally shipments falling within this category will be shipped on a Government bill of lading, except for those shipments covered by 41 CFR 101-41.304-2.

(b) Shipment of flat bronze markers by the vendor, as directed by the Director, Monument Service, or his/her designee, will be made by parcel post. VA Form 40-4951, Order for Flat Bronze Marker, will be used for this purpose.

847.303-70 F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.

(a) The delivery terms will be stated as "f.o.b. origin, transportation prepaid, with transportation charges to be included on the invoice," under each of the following circumstances:

(1) when it has been carefully determined that an f.o.b. origin purchase or delivery order will have transportation charges not in excess of $100 and the occasional exception does not exceed that amount by an unreasonable amount;

(2) single parcel shipments via express, courier, small package, or similar carriers, *regardless of shipping cost*, if the parcel shipped weighs 70 pounds or less and does not exceed 108 inches in length and girth combined;

(3) multi-parcel shipments via express, courier small package, or similar carriers for which transportation charges do not exceed $250 per shipment.

(b) Orders issued on VA Form 90-2138, Orders for Supplies or Services, will direct the vendor's attention to shipping instructions on the reverse of the form. When VA Form 90-2138 is not used, the vendor will be instructed as follows:

(1) Consistent with the terms of the contract, pack, mark and prepare shipment in conformance with carrier requirements to protect the personal property and assure assessment of the lowest applicable transportation charge.

(2) Add transportation charges as a separate item on your invoice. The invoice must bear the following certification: "The invoiced transportation charges have been paid and evidence of such payment will be furnished upon the Government's request."

(3) Do not include charges for insurance or valuation on the invoice unless the order specifically requires that the shipment be insured or the value be declared.

(4) Do not prepay transportation charges on this order if such charges are expected to exceed $100. Ship collect and annotate the commercial bill of lading, "To be converted to Government Bill of Lading."

(c) Each contracting officer is responsible for:

(1) Making a diligent effort to obtain the most accurate estimate possible of transportation charges; and

(2) Utilizing the authority in paragraph (a) of this section only when consistent with the circumstances in that paragraph.

(d) When in accordance with FAR Subpart 28.3 and FAR 47.102 it is determined that a shipment is to be insured or the value declared, the vendor will be specifically instructed to do so on the order, when a written order is used. If the order is an oral order, all copies of the purchase request will be annotated to show that insurance/declared value was specifically requested.

847-304 Determination of delivery terms.

847-304-1 General.

When alternative delivery terms are appropriate but the contracting officer elects to use only one in the invitation for bids, or request for proposals, he shall document the contract file to show his reasons for so doing.

847.305-70 Potential destinations known but quantities unknown.

When the VA Marketing Center contracts for decentralized procured items by all Veterans Administration installations, the evaluation of bids must follow specific procedures. To place each bid on an equal basis, even though specific quantities required by each hospital cannot be predetermined, an anticipated demand factor will be used in proportion to the number of hospital beds or patient workload. The clause prescribed in 852.247-70 shall be used in these instances.

PART 849—TERMINATION OF CONTRACTS

Subpart 849.1—General Principles

Sec.

849.106 Fraud and other criminal conduct.
849.107 Audit of prime contract settlement proposals and subcontract settlements.
849.111 Review and approval of proposed settlements.
849.111-70 Settlement review boards.
849.111-71 Required review and approval.
849.111-72 Submissions of information.

Subpart 849.4—Termination for Default

849.402 Termination of fixed-price contracts for default.
849.402-6 Repurchase against contractor's account.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 849.1—General Principles

849.106 Fraud or other criminal conduct.

When the circumstances set forth in FAR 49.106 are encountered, the contracting officer will immediately discontinue all negotiations. The contracting officer will submit all of the pertinent facts necessary to support his/her reasoning to the Director, Office of Procurement and Supply (93), (or the Director, Office of Construction (08) in the case of contracting officers from the Office of Construction). The Director, Office of Procurement and Supply (93), or the Office of Construction will review the submission and fully develop the facts. If the evidence indicates fraud or other criminal conduct, the Director, Office of Procurement and Supply, will forward the submission with his/her recommendations, through channels (to include the General Counsel, if appropriate), to the Inspector General (51) for referral to the Department of Justice. The contracting officer will be advised by the Director, Office of Procurement and Supply or the Office of Construction as to any further action to be taken. Pending receipt of this advice, the matter will not be discussed with the contractor. No collection, recovery or other settlement action will be initiated while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Inspector General. If inquiry is made by the contractor, he/she will be advised only that the proposal has been forwarded to higher authority.

849.107 Audit of prime contract settlement proposals and subcontract settlements.

Contracting officers will submit settlement proposals for review and audit prior to taking any further action, in accordance with the provisions and claim limitations applicable to prime and subcontractors as set forth in FAR 49.107. Contracting officers in the Office of Procurement and Supply and Office of Construction who are located in the VA Central Office have the option to request audits directly from the cognizant audit agencies or to request audits through the Assistant Inspector General for Policy, Planning and Resources (53C). All other contracting officers located in the VA Central Office and the Office of General Counsel will send requests for audit to the Assistant Inspector General for Policy, Planning and Resources (53C). Contracting officers located at field stations, the Marketing Center and the supply depots are required to arrange for audits through the Director, Office of Procurement and Supply or the Director, Office of Construction.

849.111 Review and approval of proposed settlements.

849.111-70 Settlement review boards.

The Director, Office of Procurement and Supply, and the Director, Office of Construction, will each establish within his/her own organization a settlement review board. The board may be established on a permanent or temporary basis. More than one such board may be established if settlements are to be made at different locations, if personnel with different qualifications are needed for different contracts, or if for other reasons, the establishment of more than one board is considered desirable. Each settlement review board should be composed of at least three qualified and disinterested employees. The membership of each board should include at least one lawyer and one accountant.

849.111-71 Required review and approval.

Prior to executing a settlement agreement, or issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the contracting officer shall submit each such settlement or determination for review and approval by a settlement review board if:

(a) The amount of settlement, by agreement or determination, involves $50,000 or more; or

(b) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract, and:

(1) In the case of a complete termination, the fee, as adjusted, is $50,000 or more; or

(2) In the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $50,000 or more; or

(c) The head of the contracting activity concerned determines that a review of a specific case or class of cases is desirable; or

(d) The contracting officer, in his/her discretion, desires review by the settlement review board.

849.111-72 Submission of information.

(a) The contracting officer shall submit to the appropriate settlement review board a statement of the proposed settlement agreement or determination, supported by such detailed information as is required for an adequate review. This information should normally include copies of:

(1) The contractor's or subcontractor's settlement proposal,

(2) The audit report,

(3) The property disposal report and any required approvals in connection therewith,

(4) The contracting officer's memorandum explaining the settlement, and

(5) Any other relevant material that will assist the board in arriving at a decision to approve or disapprove the proposal. The board may, in its discretion, require the submission of additional information.

(b) When a review of a proposed settlement is required and the contract covers supplies, equipment or services, other than construction chargeable to Construction Appropriations, the contracting officer will submit the proposed settlement or determination to the settlement review board through the

Director, Office of Procurement and Supply.

(c) When the contract covers construction chargeable to Construction Appropriations and review is required, the proposed settlement or determination will be submitted by the contracting officer to the settlement review board through the Director, Office of Construction.

Subpart 849.4—Termination for Default

849.402 Termination of fixed-price contracts for default.

849.402-6 Repurchase against contractor's account.

(a) VA Form 90-2237, Request, Turn-in, and Receipt for Property or Services, or the file copy of the purchase order covering the purchase of supplies, equipment or services against a defaulting contractor shall be annotated to show the name of the defaulted contractor, the contract number, the contract price, the name of the contractor from whom procurement is made, the price paid, the competition secured and the difference in cost, if any, to the Veterans Administration. When reprocurement results in the payment of excess costs and the purchase is made through the Supply Fund, the excess costs, when collected, shall be deposited to the credit of the Supply Fund. In all other instances, the excess costs, when collected, shall be deposited to General Fund Receipts.

(b) Contracting officers, when purchasing against a defaulted contractor, shall procure the items in a manner that will protect the interests of the contractor as well those of the Government.

SUBCHAPTER H—CLAUSES AND FORMS

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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852.270-1 Representatives of contracting officers.
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852.270-4 Commercial advertising.
852.271-70 Services provided eligible beneficiaries.
852.271-71 Visits to Veterans Administration guidance centers.
852.271-72 Time spent by counselee in counseling process.
852.271-73 Use and publication of counseling results.
852.271-74 Inspection.
852.271-75 Extension of contract period.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 852.1—Instructions for Using Provisions and Clauses

852.101 Using Part 852.

Part 852 prescribes supplemental provisions and clauses to the FAR. Clause numbering is as prescribed in FAR 52.101 (i.e., supplementary Architect-Engineer and construction clauses are numbered 852.236-70, 852.236-71, etc.).

Subpart 852.2—Texts of Provisions and Clauses

852.203-70 Ethics in Government Act.

As prescribed by 803.101-3 the following certification will be made a part of all solicitations and requests for proposals anticipated to result in contracts exceeding the small purchase limitation:

Certification for the Ethics in Government Act

The offeror certifies that in developing a proposal in response to the solicitation of this contract, he/she did not utilize the services of any former Veterans Administration employee acting in violation of Title V of the Ethics in Government Act, 18 U.S.C. 207. That law provides that:

(a) A former Veterans Administration employee who, as such an employee, personally and substantially participated in a particular procurement process, is prohibited from appearing before the agency on behalf of an offeror responding to a solicitation resulting from that process and from making any contact with the agency on behalf of the offeror with intent of influencing action related to the solicitation;

(b) A former Veterans Administration employee who, during the last year as such an employee, was officially responsible for a particular procurement process, is prohibited, for two years after leaving the Veterans Administration, from appearing before the agency on behalf of an offeror responding to a solicitation resulting from that process and from making any contact with the agency on behalf of the offeror with the intent of influencing action related to the solicitation;

(c) Any former top-level Veterans Administration employee (i.e., executive-level employee; employee paid at the rate of GS-17 or above if designated pursuant to 5 CFR 737.25(b); and Senior Executive Service employee if designated pursuant to 5 CFR 737.25(b)) who, as such an employee, personally and substantially participated in a particular procurement process, is prohibited, for a period of two years, from representing, aiding, consulting, or assisting an offeror by presence before the Government at any formal or informal appearance related to that procurement process;

(d) For a period of one year, any former top-level employee of the Veterans Administration (as described in the preceding paragraph) is prohibited from appearing before the Veterans Administration on behalf of any offeror responding to a contract solicitation and is prohibited from making any oral or written communications with the Veterans Administration on behalf of such an offeror, with the intent of influencing action related to a contract.

(End of Clause)

852.208-70 Change in rates for public utilities.

When a contract covers services to be rendered by a public service corporation, and the rates charged for such services are regulated by a Federal, State, or municipal commission, the following clause will be included:

Change in Rates

The rates specified herein are not in excess of those charged the general public for similar service and will be increased or decreased when such action is approved by the governing regulatory commission.

(End of Clause)

852.209-70 Organizational conflicts of interest.

The following representation will be used as prescribed in 809.508-2:

Organizational Conflicts of Interest

(a) The offeror represents to the best of his/her knowledge and belief that the award of the contract would not involve organizational conflicts of interest as defined in this representation. The term organizational conflicts of interests shall mean that a relationship exists whereby an offeror or a contractor (including his/her chief executive, directors, proposed consultants and subcontractors) has interests which may: (1) Diminish his/her capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product; or (2) result in an unfair competitive advantage. It does not include the "normal flow of benefits" from the performance of a contract.

(b) Based on this representation and any other information solicited by the contracting officer, it may be determined organizational conflicts of interest exist which would warrant disqualifying the contractor for award of the contract unless the organizational conflicts of interest can be mitigated to the contracting officer's satisfaction by negotiating terms and conditions of the contract to that effect. In the case of a formally advertised solicitation, the apparent successful offeror may enter into a supplemental agreement which mitigates the organizational conflicts of interest.

(c) Nondisclosure or misrepresentations of organizational conflicts of interest at the time of the offer, or arising as a result of a modification to the contract, may result in the termination of the contract at no expense to the Government.

(End of Clause)

852.210-70 Requirements for operating and maintenance manuals.

(a) Solicitations and requests for proposals for technical medical equipment and devices issued by a field station will normally require the contractor to provide operating and maintenance manuals. Unless the station Chief, Engineering Service, indicates that such service manuals are not needed, each invitation for bid or request for proposal for technical medical equipment will include VA Specification No. X-1711, Documentation, Technical Service, for Technical Medical Equipment and Devices as a requirement. The number of such manuals required will be specified in both the solicitation and the resulting purchase order.

(b) Solicitations and requests for proposals for mechanical equipment (other than technical medical equipment and devices) issued by a field station will include the following clause:

Service Data Manual

The contractor agrees to furnish two copies of a manual, handbook or brochure containing operating, installation, and maintenance instructions (including pictures or illustrations, schematics, and complete repair/test guides as necessary). Where applicable, it will include electrical data and connection diagrams for all utilities. The instructions shall also contain a complete list of all replaceable parts showing part number, name, and quantity required.

(End of Clause)

(c) When the bid or proposal will result in the initial purchase (including each make and model) of a centrally procured item, the following clause will be used:

Service Data Manual

The contractor agrees, when requested by the contracting officer, to furnish not more than three copies of the technical documentation required by VA Specification X-1711 to the Service and Reclamation Division, VA Supply Depot, Hines, Ill. In addition, the contractor agrees to furnish two copies of the technical documentation required by VA Specification X-1711 with each piece of equipment sold as a result of the invitation for bid or request for proposal.

(End of Clause)

852.210-71 Guarantee clause.

(a) When the bid or proposal will result in any purchase, the following clause will be used:

Guarantee

The contractor guarantees the equipment against defective material, workmanship and performance for a period of ———,[1] said guarantee to run from date of acceptance of the equipment by the Government. The contractor agrees to furnish, without cost to the Government, replacement of all parts and material which are found to be defective during the guarantee period. Replacement of material and parts will be furnished to the Government at the point of installation, if installation is within the continental United States, or f.o.b. the continental U.S. port to be designated by the contracting officer if installation is outside of the continental United States. Cost of installation of replacement material and parts shall be borne by the contractor.[2]

(End of Clause)

(b) Where it is industry policy to furnish, but not install, replacement material and parts at the contractor's expense, the last sentence will be changed to indicate that cost of installation shall be borne by the Government. Where it is industry policy to: (1) Guarantee components for the life of the equipment (i.e., crystals in transmitters and receivers in radio communications systems); or (2) require that highly technical equipment be returned to the factory (at contractor's or Government's expense) for replacement of defective materials or parts, the clause used will be compatible with such policy.

852.210-72 Inspection.

(a) Contracts for property, other than packing house and dairy products and fresh and frozen fruits and vegetables will contain the following clause:

Rejected Goods

Rejected goods will be held subject to contractor's order for not more than 15 days, after which the rejected merchandise will be returned to the contractor's address at his/her risk and expense. Expenses incident to the examination and testing of materials or supplies which have been rejected will be charged to the contractor's account.

(End of Clause)

(b) Contracts for packinghouse and dairy products, bread and bakery products and for fresh and frozen fruits and vegetables will contain the following clause:

Rejected Goods

The contractor shall remove rejected supplies within 48 hours after notice of rejection. Supplies determined to be unfit for human consumption will not be removed without permission of the local health authorities. Supplies not removed within the allowed time may be destroyed. The Veterans Administration will not be responsible for nor pay for products rejected. The contractor will be liable for costs incident to examination of rejected products.

(End of Clause)

852.210-73 Frozen processed foods.

The following clause will be included in all solicitations for the purchase of frozen processed foods, issued by a field station:

Frozen Processed Foods

The products delivered under this contract shall be in excellent condition, shall not show evidence of defrosting, refreezing, or freezer

[1] Normally, insert one year. If industry policy covers a shorter or longer period, i.e., 90 days or for the life of the equipment, insert such period.

[2] The above clause will be modified to conform to standards of the industry involved.

burn and shall be transported and delivered to the consignee at a temperature of 10 degrees Fahrenheit or lower.

(End of Clause)

852.210-74 Telecommunications equipment.

(a) When a detailed purchase description of formal specification is the basis for solicitations for telecommunications equipment as defined in VA Manual MP-6, Part VIII, (available at any Veterans Administration station), solicitations, including those for construction, will include the following clause:

Special Notice

Descriptive literature. The submission of descriptive literature with offers is not required and voluntarily submitted descriptive literature which qualifies the offer will require rejection of the offer.

However, within 5 days after award of contract, the contractor will submit to the contracting officer literature describing the equipment he/she intends to furnish and indicating strict compliance with the specification requirements.

The contracting officer will, by written notice to the contractor within 20 calendar days after receipt of the literature, approve, conditionally approve, or disapprove the equipment proposed to be furnished. The notice of approval or conditional approval will not relieve the contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval will state any further action required of the contractor. A notice of disapproval will cite reasons therefor.

If the equipment is disapproved by the Government, the contractor will be subject to action under the Default provision of this contract. However, prior to default action the contractor will be permitted a period (at least 10 days) under that clause to submit additional descriptive literature on equipment originally offered or descriptive literature on other equipment.

The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule necessitated by additional descriptive literature evaluations.

(End of Clause)

(b) The descriptive literature to be furnished by the contractor after award in accordance with paragraph (a) of this section is subject to the controls established in 870.112(b).

(c) The time of delivery or performance to be specified in the solicitation will include the time required for submission, receipt, the evaluation and approval required by 870.112(b) of this chapter, and return to the contractor of the descriptive literature.

852.210-75 Technical industry standards.

When items are required to conform to technical industry standards, such as those adopted by Underwriter's Laboratories, Incorporated; Factory Mutual Laboratories; American Gas Association; American Society Mechanical Engineers; National Electrical Manufacturers' Association; American Society Heating, Refrigeration and Air Conditioning Engineers; or similar organizations where such standards are generally recognized and accepted in the industry involved, the invitation for bids, request for proposals or request for quotations will so state. In no instance, where there is a multiple choice of laboratories, shall the invitation for bid, request for proposal or request for quotation indicate that the label or certificate of only one such laboratory is acceptable. The following clause will be used unless comparable provisions are contained in the item specification:

Technical Industry Standards

The supplies or equipment required by this invitation for bid or request for proposal must conform to the standards of the ———[3] and ———[3] as to ———.[4] The successful bidder or offeror will be required to submit proof that the item(s) he furnishes conforms to this requirement. This proof may be in the form of a label or seal affixed to the equipment or supplies, warranting that they have been tested in accordance with and conform to the specified standards. The seal or label of any nationally recognized laboratory such as those listed by the National Fire Protection Association, Boston, Massachusetts, in the current edition of their publication "Research on Fire," is acceptable. Proof may also be furnished in the form of a certificate from one of these laboratories certifying that the item(s) furnished have been tested in accordance with and conform to the specified standards.

(End of Clause)

852.210-76 Noncompliance with packaging, packing, and/or marking requirements.

The following clause will be included in contracts for supplies for delivery to supply distribution warehouses or depots for storage and subsequent issue to a using activity. It may also be included when appropriate when delivery is direct to a using activity.

Noncompliance with Packaging, Packing and/or Marking Requirements

Failure to comply with the packaging, packing, and marking requirements indicated herein, or incorporated herein by reference, may result in rejection of the merchandise and request for replacement, or repackaging, repacking, and/or marking. The Government reserves the right without obtaining authority from the contractor to perform the required repackaging, repacking, and/or marking services and charge the contractor therefor at a rate of $16 per manhour for the first or fractional hour and $10 for any succeeding or fractional hour, or have the required repackaging, repacking, and/or marking services performed commercially under Government orders and charge the contractor therefor at the above rates. In connection with any discount offered, time will be computed from the date of completion of such repackaging, repacking, and/or marking services.

(End of Clause)

[3] Insert name(s) of organization(s), the standards of which are pertinent to the Government's needs.

[4] Insert pertinent standards, i.e. fire and casualty, safety and fire protection, etc.

852.212-70 Liquidated damages.

As prescribed in 812.204 and 836.206, the contracting officer may insert the following clause when appropriate:

Partial Performance and Acceptance

If any unit of the work contracted for is accepted in advance of the whole, the rate of liquidated damages assessed will be in the ratio that the value of the unaccepted work bears to the total amount of the contract. If a separate price for unaccepted work has not been stated in the contractor's bid, determination of the value thereof will be made from schedules of costs furnished by the contractor and approved by the contracting officer, as specified elsewhere in the contract.

(End of Clause)

852.214-70 Caution to bidders—bid envelopes.

As provided in 814.201, the following provision will be prominently placed on all IFB's:

Caution to Bidders—Bid Envelopes

It is the responsibility of each bidder to take all necessary precautions, including the use of a proper mailing cover, to insure that the bid price cannot be ascertained by anyone prior to bid opening. If a bid envelope is furnished with this invitation, the bidder is requested to use this envelope in submitting the bid. The bidder may, however, when it suits a purpose, use any suitable envelope, identified by the invitation number and bid opening time and date. If a bid envelope is not furnished, the bidder will complete and affix the enclosed Optional Form 17, Sealed Bid Label, to the lower left-hand corner of the envelope used in submitting the bid.

(End of Provision)

852.214-71 Alternate items.

As prescribed in 814.201, consideration of alternate items may be appropriate. The following clauses may be used under the specified conditions:

(a) When an alternate item is to be considered only if no bids or insufficient bids are received on the item desired, the following will be included in the invitation:

Alternate Item(s)

Bids on ——— [5] will be considered only if acceptable bids on ——— [6] are not received or do not satisfy the total requirement.

(End of Clause)

(b) When an alternate item will be considered on an equal basis with the item specified, the following will be included in the invitation:

Alternate Item(s)

Bids ——— [5] will be given equal consideration along with the ——— [6] and any such bids received may be accepted if to the advantage of the Government. Tie bids will be decided in favor of.[6]

(End of Clause)

(c) In addition to the clause in paragraph (a) or (b) of this section, the following clause will be included in the invitation when bids will be allowed on different packaging, unit designation, etc.

Alternate Packaging and Packing

The bidder's offer must clearly indicate the quantity, package size, unit, or other different feature upon which the quote is made. Evaluation of the alternate or multiple alternates will be made on a common denominator such as per ounce, per pound, etc., basis.

(End of Clause)

852.214-72 Aggregate award.

As provided in 814.201(f), the following clause is to be used:

Aggregate Award

The Veterans Administration reserves the right to make an award to the responsible bidder quoting the lowest aggregate price for all items, for any group of items, or on an item basis, whichever is more advantageous to the Government. Bids will be evaluated on the basis of additional cost to the Government that might result from making multiple awards. For this purpose, the cost of awarding and administering each additional contract is estimated to be $———.[7]

(End of Clause)

852.214-73 Bid samples.

As provided by and under the circumstances of 814.202-4, the following clause will be inserted in the IFB.

Bid Samples

All samples furnished must be plainly marked with the complete lettering and numbering of the item or subitems to which it relates, the name of the commodity, the Invitation for Bids number, and the name of the bidder. Cases or packages containing samples must be plainly marked "Samples" and all charges incident to the preparation and transportation of samples must be prepaid by the bidder. Bids must not be enclosed with samples.

(End of Clause)

852.216-70 Estimated quantities for requirements contracts.

(a) When definite quantities cannot be determined, solicitations for station-level requirements contracts will contain the applicable clause as set forth below. Solicitations issued by the Marketing Center will contain provisions developed by that Center for particular application to its operations, subject to legal review as prescribed in 801.602-70(c)(1).

(b) The following clause will be used for general equipment, supplies and services:

Estimated Quantities

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles or services that may be ordered during the contract term, except as he/she otherwise indicates in his/her bid and except as otherwise provided herein. Bids will be considered if made with the proviso that the total quantities delivered shall not exceed a certain specified quantity. Bids offering less than 75 percent of the estimated requirement or which provide that the Government shall guarantee any definite quantity, will not be considered. The fact that quantities are estimated shall not relieve the contractor from filling all orders placed under this contract to the extent of his/her obligation. Also, the Veterans Administration shall not be relieved of its obligation to order from the contractor all articles or services that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(End of Clause)

(c) The following clause will be used in local coal-hauling contracts.

Estimated Quantity

The estimated requirements shown in this invitation for bids cover the requirements for the entire contract period. It is understood and agreed that during the period of this contract the Government may order and the contractor will haul such coal as may, in the opinion of the Government, be required, except that in the public exigency procurement may be made without regard to this contract.

(End of Clause)

(d) The following clause will be used for orthopedic, prosthetic, and optical supplies.

Quantities

The supplies and/or services listed in the attached schedule will be furnished at such time and in such quantities as they are required.

(End of Clause)

852.222-70 Contract Work Hours and Safety Standards Act—nursing home care contract supplement.

As prescribed in 822.304, nursing home care contracts will include the following clause.

Contract Workhours and Safety Standard Act—Nursing Home Care Contract Supplement

In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of Section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 8 hours in any calendar day or 40 hours in the workweek to any individual employed by establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1½ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(End of Clause)

852.228-70 Bond premium adjustment.

The following clause will be utilized as prescribed by 828.7000.

Bond Premium Adjustment

When net changes in original contract price affect the premium of a Corporate Surety Bond by $5 or more, the Government in determining basis for final settlement, will provide for bond premium adjustment computed at the rate shown in the bond.

(End of Clause)

852.229-70 Purchases from patient's funds.

When contracts are for items to be purchased solely from personal funds of patients, the following tax clause will be used in lieu of the Federal, State and local tax clause in FAR 52.229-1.

Sales or Use Taxes

The articles listed in this bid invitation will be purchased from personal funds of patients and prices bid herein include any sales or use tax heretofore imposed by any State, or by any duly constituted taxing authority therein,

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[5] Contracting officer will insert an alternate item that is considered acceptable.

[6] Contracting officer will insert the required item and item number.

[7] Insert a dollar amount between $100 and $500, the exact amount to be determined by the contracting officer based upon the anticipated workload that would result from administering an additional contract.

having jurisdiction to levy such a tax, applicable to the material in this bid.

(End of clause)

852.229-71 Purchases for patients using Government funds and/or personal funds of patients.

When contracts are for items to be purchased from both Government funds and personal funds of patients, the following clause will be included as a part of the Federal, State, and local tax clause in FAR 52.229-1:

Sales or Use Taxes

Any article purchased from this contract, payable from personal funds of patients, will be subject to any applicable sales or use tax levied thereon by any State, or by duly constituted taxing authority therein having jurisdiction to levy such a tax; the total amount of the tax applicable to such purchase payable from personal funds of patients will be computed on the total amount of the order and will be shown as a separate item on the purchase order and invoice. The bidder shall identify the applicable taxes and rates in his/her bid.

(End of Clause)

852.236-70 Clauses for fixed-price construction contracts.

(a) The clauses prescribed in this section are set forth for use in fixed-price construction contracts in addition to those in FAR Subpart 52.2.

(b) Additional clauses not inconsistent with those in FAR 36.5 and 52.2 and those prescribed in this subpart are authorized when determined necessary or desirable by the contracting officer, and when approved as provided in Subpart 801.4.

(c) Clauses inconsistent with those contained in FAR Subpart 36.5 and 52.2 and this subpart, but considered essential to the procurement of Veterans Administration requirements, shall not be used unless the deviation procedure set forth in Subpart 801.4 has been complied with.

852.236-71 Specifications and drawings for construction.

The clause entitled "Specifications and Drawings for Construction," in FAR 52.236-21 is supplemented as follows:

Specifications and Drawings for Construction

(a) The contracting officer's interpretation of the drawings and specifications will be final, subject to the disputes clause.

(b) Large scale drawings supersede small scale drawings.

(c) Dimensions govern in all cases. Scaling of drawings may be done only for general location and general size of items.

(d) Dimensions shown of existing work and all dimensions required for work that is to connect with existing work, shall be verified by the contractor by actual measurement of the existing work. Any work at variance with that specified or shown in the drawings shall not be performed by the contractor until approved in writing by the contracting officer.

(End of Clause)

852.236-72 Performance of work by the contractor.

The clause entitled "Performance of Work by the Contractor," in FAR 52.236-1, is supplemented as follows:

Performance of Work by the Contractor

(a) Contract work accomplished on the site by laborers, mechanics, and foremen/forewomen on the contractor's payroll and under his/her direct supervision shall be included in establishing the percent of work to be performed by the contractor. Cost of material and equipment installed by such labor may be included. The work by contractor's executive, supervisory and clerical forces shall be excluded in establishing compliance with the requirements of ths clause.

(b) The contractor shall submit, simultaneously with schedule of costs required by Payments under Fixed-Price Construction Contract provision of the General Conditions of these specifications, a statement designating the branch or branches of contract work to be performed with his/her forces. The approved schedule of costs will be used in determining value of a branch or branches, or portions therof, of the work for the purpose of this article.

(c) If, during the progress of work hereunder, the contractor requests a change in the branch or branches of the work to be performed by his/her forces and the contracting officer determines it to be in the best interests of the Government, the contracting officer may, at his/her discretion, authorize a change in such branch or branches of said work. Nothing contained herein shall permit a reduction in the percentage of work to be performed by the contractor with his/her forces, it being expressly understood that this is a contract requirement without right or privilege of reduction.

(d) In the event the contractor fails or refuses to meet the requirement of paragraph (a) of this section, it is expressly agreed that the contract price will be reduced by 15 percent of the value of that portion of the percentage requirement which is accomplished by others. For the purposes of this provision it is agreed that 15 percent is an acceptable estimate of the contractor's overhead and profit, or mark-up, on that portion of the work which the contractor fails or refuses to perform, with his/her own forces, in accordance with paragraph (a) of this section.

(End of Clause)

852.236-73 Bonds.

Bonds

For contracts in excess of $25,000, the contractor must furnish a Performance Bond (Standard Form 25) for 100 percent of the amount of the contract, and a Payment Bond (Standard Form 25-A) in the penal sums set forth below:

Amount of contract	Penal sum of bond
$25,000 to $1,000,000	Fifty (50) percent of the amount of the contract.
$1,000,000 to $5,000,000	Forty (40) percent of the amount of the contract.
$5,000,000 and over	$2,500,000.

When net changes in original contract price affect the premium of a Corporate Surety Bond by $5 or more, the Government in determining basis for final settlement, will provide for bond premium adjustment computed at the rate shown in the bond.

(End of Clause)

852.236-74 Inspection of construction.

The clause entitled, "Inspection of Construction," in FAR 52.246-12, is supplemented as follows:

Inspection of Construction

(a) Inspection of materials and articles furnished under this contract will be made at the site by the resident engineer, unless otherwise provided for in the specifications.

(b) Final inspection will not be made until the contract work is ready for beneficial use or occupancy. The contractor shall notify the contracting officer, through the resident engineer, fifteen (15) days prior to the date on which the work will be ready for final inspection.

(End of Clause)

852.236-75 Guaranty.

Guaranty

(a) Unless otherwise specifically provided for in the contract or specifications, the contractor, notwithstanding any final inspection, acceptance or payment, guarantees that all work performed and materials and equipment furnished under this contract are in accordance with the contract requirements. The contractor also guarantees that when installed all materials and equipment will be free from defects and will remain so for a period of at least one year from the date of acceptance by the Government.

(b) If defects of any kind should develop during the period such guarantees are in force, the contracting officer shall immediately notify the contractor in writing of such defects. The Government thereupon shall have the right, by a written notice to that effect, to require the contractor to repair or replace all inferior or defective work, material, or equipment or permit it to remain in place and assess the contractor the costs he/she (the contractor) would have incurred had he/she been required to effect repair or replacement.

(c) Any correction or replacement of parts, materials, equipment, supplies or construction made pursuant to the provisions of this clause shall also be subject to the provisions of this clause to the same extent as parts, materials, equipment, supplies or construction originally installed. The warranty with respect to such new or corrected parts, materials, equipment, supplies or construction shall be equal in duration as that set forth in (a) above and

shall run from the date that such parts, materials, equipment, supplies or construction are replaced or corrected and accepted by the Government.

(d) The contractor guarantees to reimburse the Government for, or to repair or replace, any damages to the site, buildings, or contents thereof that are caused by inferior or defective workmanship, or the use of inferior or defective materials or equipment in the performance of this contract. The contracting officer shall immediately notify the contractor in writing when such damage occurs. The Government shall have the right to require the contractor to repair or replace such damaged areas or equipment, or elect to permit such damage to remain as is and assess the contractor the costs he/she would have incurred had he/she been required to effect repair or replacement.

(e) Should the contractor fail to proceed promptly, after notification by the contracting officer, to repair or replace any inferior or defective work, material, or equipment, or damage to the site, buildings, or contents, thereof, caused by inferior or defective work, or the use of inferior or defective materials, or equipment, the Government may have such work, material, equipment or damage repaired or replaced and charge all costs incident thereto to the contractor.

(f) Any special guaranties that may be required under the contract, shall be subject to the elections set forth above unless otherwise provided in such special guaranties.

(g) The decision of the contracting officer as to liability of the contractor under this clause is subject to the appeal procedures provided for in the disputes clause of this contract.

(End of Clause)

852.236-76 Correspondence.

Correspondence

All correspondence relative to this contract shall bear Specification Number, Project Number, Veterans' Administration Contract Number, title of project and name of station.

(End of Clause)

852.236-77 Reference to "standards."

Standards

(a) Any materials, equipment, or workmanship specified by references to number, symbol, or title of any specific Federal, Industry or Government Agency Standard Specification shall comply with all applicable provisions of such standard specifications, except as limited to type, class or grade, or modified in contract specifications. Reference to "Standards" referred to in the contract specifications, except as modified, shall have full force and effect as though printed in detail in specifications.

(b) Federal Specification numbers refer to specifications issued by General Services Administration. Such specifications may be seen at the Office of Construction, Veterans Administration, Washington, D.C. or at the office of the resident engineer for this project.

(End of Clause

852.236-78 Government supervision.

Government Supervision

(a) The work will be under the direction of the Veterans Administration contracting officer, who may designate another VA employee to act as resident engineer at the construction site.

(b) Except as provided below, the resident engineer's directions will not conflict with or change contract requirements.

(c) Within the limits of any specific authority delegated by the contracting officer, the resident engineer may by written direction make changes in the work. The contractor shall be advised of the extent of such authority prior to execution of any work under the contract.

(End of Clause)

852.236-79 Daily report of workers and materials.

Daily Report of Workers and Material

The contractor shall furnish to the resident engineer each day a consolidated report for the preceding work day in which is shown the number of laborers, mechanics, foremen/forewomen and pieces of heavy equipment used or employed by the contractor and subcontractors. The report shall bear the name of the firm, the branch of work which they perform such as concrete, plastering, masonry, plumbing, sheet metal work, etc. The report shall give a breakdown of employees by crafts, location where employed, and work performed. The report shall also list materials delivered to the site on the date covered by the report.

(End of Clause)

852.236-80 Subcontracts and work coordination.

The following clause is for use except as provided in 852.236-81:

Subcontracts and Work Coordination

(a) Nothing contained in this contract shall be construed as creating any contractual relationship between any subcontractor and the Government. Divisions or sections of specifications are not intended to control the contractor in dividing work among subcontractors, or to limit work performed by any trade.

(b) The contractor shall be responsible to the Government for acts and omissions of his/her own employees, and of the subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers.

(c) The Government or its representatives will not undertake to settle any differences between the contractor and subcontractors or between subcontractors.

(d) The Government reserves the right to refuse to permit employment on the work or require dismissal from the work of any subcontractor who, by reason of previous unsatisfactory work on Veterans Administration projects or for any other reason, is considered by the contracting officer to be incompetent or otherwise objectionable.

(End of Clause)

852.236-81 Work coordination (alternate provision).

For new construction work with complex mechanical-electrical work, the following provision relating to work coordination may be substituted for paragraph (b) of the clause set forth in 852.236-80:

Work Coordination

The contractor shall be responsible to the Government for acts and omissions of his/her own employees, and subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers. The contractor shall, in advance of the work, prepare coordination drawings showing the location of openings through slabs, the pipe sleeves and hanger inserts, as well as the location and elevation of utility lines, including, but not limited to, conveyor systems, pneumatic tubes, ducts, and conduits and pipes 2 inches and larger in diameter. These drawings, including plans, elevations, and sections as appropriate shall clearly show the manner in which the utilities fit into the available space and relate to each other and to existing building elements. Drawings shall be of appropriate scale to satisfy the previously stated purposes, but not smaller than ⅜-inch scale. Drawings may be composite (with distinctive colors for the various trades) or may be separate but fully coordinated drawings (such as sepias or photographic paper reproducibles) of the same scale. Separate drawings shall depict identical building areas or sections and shall be capable of being overlaid in any combination. The submitted drawings for a given area of the project shall show the work of all trades which will be involved in that particular area. Six complete composite drawings or six complete sets of separate reproducible drawings shall be received by the Government not less than 20 days prior to the scheduled start of the work in the area illustrated by the drawings, for the purpose of showing the contractor's planned methods of installation. The objectives of such drawings are to promote carefully planned work sequence and proper trade coordination, in order to assure the expeditious solutions of problems and the installation of lines and equipment as contemplated by the contract documents while avoiding or minimizing additional costs to the contractor and to the Government. In the event the contractor, in coordinating the various installations and in planning the method of installation, finds a conflict in location or elevation of any of the utilities with themselves, with structural items or with other construction items, he/she shall bring this conflict to the attention of the contracting officer immediately. In doing so, the contractor shall explain the proposed method of solving the problem or shall request instructions as to how to proceed if adjustments beyond those of usual trades coordination are necessary. Utilities installation work will not proceed in any area prior to the submission and completion of the Government review of the coordinated drawings for that area, nor in any area in which conflicts are disclosed by the

coordination drawings until the conflicts have been corrected to the satisfaction of the contracting officer. It is the responsibility of the contractor to submit the required drawings in a timely manner consistent with the requirements to complete the work covered by this contract within the prescribed contract time.

(End of Clause)

852.236-82 Payments under fixed-price construction contracts (without NAS).

For contracts that do not contain a section entitled "Network Analysis System (NAS)," the clause entitled "Payments under Fixed-Price Construction Contracts" in FAR 52.232-5 will be supplemented as follows:

Payments Under Fixed-Price Construction Contracts

Clause entitled "Payments Under Fixed-Price Construction Contracts" in FAR 52.232-5 is implemented as follows:

(a) Retainage:

(1) In accordance with the clause entitled "Payments to Contractor," the contracting officer may retain funds:

(i) Where performance under the contract has been determined to be deficient or the contractor has performed in an unsatisfactory manner in the past; or

(ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following:

(i) Unsatisfactory progress as determined by the contracting officer;

(ii) Failure to meet schedule in Schedule of Work Progress;

(iii) Failure to present submittals in a timely manner; or

(iv) Failure to comply in good faith with approved subcontracting plans, certifications or contract requirements.

(2) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this subparagraph shall be construed as limiting the contracting officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The contractor shall submit a schedule of cost to the contracting officer for approval. Such schedule will be signed and submitted in triplicate. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed. This schedule shall show cost by the branches of work for each building or unit of the contract, as instructed by the resident engineer.

(1) The branches shall be subdivided into as many subbranches as are necessary to cover all component parts of the contract work.

(2) Costs as shown on this schedule must be true costs and, should the resident engineer so desire he/she may require the contractor to submit the original estimate sheets or other information to substantiate detailed makeup of schedule.

(3) The sum of subbranches, as applied to each branch, shall equal the total cost of such branch. The total costs of all branches shall equal the contract price.

(4) Insurance and similar items shall be prorated and included in the cost of each branch of the work.

(5) The cost schedule shall include separate cost information for the systems listed below. The percentages listed below are proportions of the cost listed in contractor's cost schedule and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed. Payment of the listed percentages will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

Value of adjusting, correcting, and testing system

System:	Percent
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Water distilling equipment	5
Prefab temperature rooms (cold, constant temperature)	5
Entire air-conditioning system (Specified under 600 Sections)	5
Entire boiler plant system (Specified under 700 Sections)	5
General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

(c) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing his/her bid and will not be binding as pertaining to any contract changes.

(d) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be stored separately and will be readily available for inspection and inventory by the resident engineer.

(4) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of Clause)

852.236.83 Payments under fixed-price construction contracts (including NAS).

For contracts that contain a section entitled "Network Analysis System (NAS)," the clause entitled "Payments under Fixed-Price Construction Contracts" in FAR 52.232-5 is supplemented as follows:

Payments Under Fixed-Price Construction Contracts

Clause entitled "Payments under Fixed-Price Construction Contracts in FAR 52.232-5 is implemented as follows:

(a) Retainage:

(1) In accordance with the clause entitled "Payments to Contractor," the contracting officer may retain funds:

(i) Where performance under the contract has been determined to be deficient or the contractor has performed in an unsatisfactory manner in the past; or

(ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following:

(i) Unsatisfactory progress as determined by the contracting officer;

(ii) Failure either to meet schedules in Section NAS (Network Analysis System), or to process the Interim Arrow Diagram/ Complete Project Arrow Diagram;

(iii) Failure to present submittals in a timely manner; or

(iv) Failure to comply in good faith with approved subcontracting plans, certifications or contract requirements.

(2) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this subparagraph shall be construed as limiting the contracting officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The contractor shall submit a schedule of costs in accordance with the requirements of Section NAS (Network Analysis System) to the contracting officer for approval. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed.

(1) Costs as shown on this schedule must be true costs and, should the resident engineer so desire, he/she may require the contractor to submit his/her original estimate sheets or other information to substantiate the detailed makeup of the cost schedule.

(2) The total costs of all activities shall equal the contract price.

(3) Bonds, insurance and similar items shall be prorated and included in each activity cost of the critical path method (CPM) network.

(4) The CPM network shall include a separate cost loaded activity for adjusting and testing of the systems listed below. The percentages listed below will be used to determine the cost of adjust and test activities and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed.

(5) Payment for adjust and test activities will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

Values of adjusting correcting, and testing system

System:	Percent
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Prefab temperature rooms (cold, constant temperature)	5

Values of adjusting correcting, and testing system—Continued

	Percent
Entire air-conditioning system (Specified under 700 Sections)	5
General supply conveyors	5
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Enginer-generator system	5
Primary switchgear	5
Secondary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Redio system	5
TV (entertainment) system	5

(c) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing his/her bid and will not be binding as pertaining to any contract changes.

(d) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be stored separately and will be readily available for inspection and inventory by the resident engineer.

(4) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of Clause)

852.236-84 Schedule of work progress.

Schedule of work progress

(a) The contractor shall submit with the schedule of costs, as required by supplemental "Payments under Fixed-Price Construction Contracts" clause a progress curve indicating anticipated work progression against lapsed contract time, for approval of the contracting officer. Submission shall be in quadruplicate on VA Form 08-6159, Construction Progress Chart, furnished by the Veterans Administration, and shall be signed by the contractor. The curve shall start on the date the contractor receives the "Notice to Proceed" and terminate on the original contract completion date. Both dates shall be indicated on the Construction Progress Chart.

(b) The scheduled percent completion will be compared to the actual percent completion to determine if the contract work is on schedule. Monthly progress reports will be prepared by the Veterans Administration on a Contract Progress Report form (VA Form 08-6001 or 08-6001a, as appropriate). This report will indicate both scheduled percent completion and actual percent completion. The scheduled percent completion will be taken from the approved progress curve. The actual percent completion will be based on the value of work in place divided by current contract amount.

(c) The progress curve will be revised when additional time is granted for any reason. The curve will be revised only for individual or cumulative time extensions of 15 days or more. Either of the following methods of revising the curve will be used, depending on circumstances.

(1) Where there is additional time granted for reasons which do not immediately affect the job progress, such as changed work, use the following method: The curve is replotted between two points, starting with the point on the original or current curve established by the date when the change was ordered. The second point is the extended contract completion date resulting from the change.

(2) Where there is additional time granted for reasons which immediately affect the job progress, use the following method: The curve is replotted by means of horizontal displacement to the original or current curve. The point on the original or current curve established by the date when the change was ordered or when job progress was affected is determined. The number of days granted is plotted horizontally from this point to establish the displacement. The remainder of the curve is replotted to the extended contract completion date.

(d) The revised curve will be used for reporting future scheduled percent completion.

(End of Clause)

852.236-85 Supplementary labor standards provisions.

Supplementary Labor Standards Provisions

(a) The wage determination decision of the Secretary of Labor is set forth in section GR, General Requirements, of this contract. It is the result of a study of wage conditions in the locality and establishes the minimum hourly rates of wages and fringe benefits for the described classes of labor in accordance with applicable law. No increase in the contract price will be allowed or authorized because of payment of wage rates in excess of those listed.

(b) The contractor shall submit the required copies of payrolls to the contracting officer through the resident engineer or engineer officer, when acting in that capacity. Department of Labor Form WH-347, Payroll, available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, may be used for this purpose. If, however, the contractor or subcontractor elects to use an individually composed payroll form, it shall contain the same information shown on Form WH-347, and in addition be accompanied by Department of Labor Form WH-348, Statement of Compliance, or any other form containing the exact wording of this form.

(End of clause)

852.236-86 Workmen's compensation.

Workmen's Compensation

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of the several states to apply their workmen's compensation laws to all lands and premises owned or held by the United States.

(End of Clause)

852.236-87 Safety requirements.

The following clause is included to designate the VA Safety Officer and his/her responsibilities:

Accident Prevention

(a) The resident engineer on all assigned construction projects is designated as the VA Safety Officer, and as such is responsible for enforcing all safety regulations as they apply to the safety of Veterans Administration employees, visitors, and patients. Regular safety inspections are conducted by the resident engineer weekly, and all noted violations of safety and health regulations will be brought to the attention of the contractor who will take immediate action to correct such violations. If corrective action is not taken promptly, a copy of the resident engineer's report will be forwarded to the Department of Labor.

(b) "Safety and Health Regulations for Construction," may be obtained from any regional office of the Occupational Safety and Health Administration, Department of Labor.

(End of Clause)

852.236-88 Contract changes.

The Clauses, entitled "Changes" in FAR 52.236-2 and "Differing Site Conditions" in FAR 52.236-2 will be supplemented with the following two clauses. The clause in paragraph (a) will apply to negotiated changes exceeding $500,000 and does not provide ceiling rates for indirect expenses. Such expenses will be included as part of the submission of certified cost and pricing data, will be negotiated by the contracting officer and will be audited in accordance with 815.805-5. When the negotiated change will be less than $500,000 the clause specified in paragraph (b) will apply. If cost and pricing data is required it will be certified and will include indirect expenses, notwithstanding the ceilings specified in the clause. It must be emphasized that these indirect cost rates are ceiling rates only, and the contracting officer will negotiate the indirect expense rates within the ceiling limitations. The contractor, therefore, will not propose ceiling rates in lieu of his/her actual indirect expense rates.

(a) Applicable to changes costing $500,000 or more:

Changes—Supplement (for Changes Costing $500,000 or More)

Clauses entitled "Changes" in FAR 52.243-4 and "Differing Site Conditions" in FAR 52.236-2 are supplemented as follows:

(a) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. When certified cost or pricing data are required under FAR Subpart 15.804, the cost of pricing data shall be submitted on Standard Form 1411 (SF 1411), Contract Pricing Proposal Cover Sheet, in accordance with FAR 15.804-6. No itemized breakdown will be required for proposals amounting to less than $1,000.

(b) When the necessity to proceed with a change does not allow sufficient time to check a proposal or because of failure to reach an agreement, the contracting officer may order the contractor to proceed (proceed order) on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, if a proceed order is issued the contractor shall submit a proposal for changes in work within 30 calendar days.

(c) If the contractor's proposal required by paragraphs (a) and (b) of this clause is not received within 30 calendar days, or if agreement has not been reached, the contracting officer will consider issuing a unilateral change order.

(End of Clause)

(b) Applicable to changes costing less than $500,000:

Changes)—Supplement (for Changes Costing Less than $500,000)

Clauses entitled "Changes" in FAR 52.243-4 and "Differing Site Conditions" in FAR 52.236-2 are supplemented as follows:

(a) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. No itemized breakdown will be required for proposals amounting to less than $1,000.

(b) When the necessity to proceed with a change does not allow sufficient time to check a proposal or because of failure to reach an agreement, the contracting officer may order the contractor to proceed (proceed order) on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, if a proceed order is issued the contractor shall submit a proposal for changes in work within 30 calendar days.

(c) If the contractor's proposal required by paragraphs (a) and (b) of this clause is not received within 30 calendar days, or if agreement has not been reached, the contracting officer will consider issuing a unilateral change order.

(d) Allowances not to exceed 10 percent each for overhead and profit for the party performing the work will be based on the value of labor, material, and use of construction equipment required to accomplish the change. As the value of the change increases, a declining scale will be used in negotiating the percentage of overhead and profit. Allowable percentages on changes will not exceed the following: 10 percent overhead and 10 percent profit on the first $20,000; 7½ percent overhead and 7½ percent profit on the next $30,000; 5 percent overhead and 5 percent profit on balance over $50,000. Profit shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs.

(e) The prime contractor's or upper-tier subcontractor's fee on work performed by lower-tier subcontractors will be based on the net increased cost to the prime contractor or upper-tier subcontractor, as applicable. Allowable fee on changes will not exceed the following: 10 percent fee on the first $20,000; 7½ percent fee on the next $30,000; and 5 percent fee on balance over $50,000.

(f) Not more than four percentages, none of which exceed the percentages shown above, will be allowed regardless of the number of tiers of subcontractors.

(g) Where the contractor's or subcontractor's portion of a change involves credit items, such items must be deducted prior to adding overhead and profit for the party performing the work. The contractor's fee is limited to the net increase to contractor of subcontractor's portions cost computed in accordance herewith.

(h) Where a change involves credit items only, a proper measure of the amount of downward adjustment in the contract price is the reasonable cost to the contractor if he/she had performed the deleted work. A reasonable allowance for overhead and profit are properly includable as part of the downward adjustment for a deductive change. The amount of such allowance is subject to negotiation.

(i) Cost of Federal Old Age Benefit (Social Security) tax and of Workmen's Compensation and Public Liability insurance appertaining to changes are allowable. While no percentage will be allowed thereon for overhead or profit, prime contractor's fee will be allowed on such items in subcontractor's proposals.

(j) Overhead and contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, watchmen, use of small tools, incidental job burdens, and general home office expenses and no separate allowance will be made therefor.

(End of Clause)

852.237-70 Contractor responsibilities.

(a) Fixed-Price negotiated or advertised service contracts, other than automobile, ambulance and aircraft services, will include the following clause:

Contractor Responsibilities

The contractor shall obtain all necessary licenses and/or permits required to perform this work. He/she shall take all reasonable precautions necessary to protect persons and property from injury or damage during the performance of this contract. He/she shall be responsible for any injury to himself/herself, his/her employees, as well as for any damage to personal or public property that occurs during the performance of this contract that is caused by his/her employee's fault or negligence, and shall maintain personal liability and property damage insurance having coverage for a limit as required by the laws of the State of ———. Further, it is agreed that any negligence of the Government, its officers, agents, servants and employees, shall not be the responsibility of the contractor hereunder with the regard to any claims, loss, damage, injury and liability resulting therefrom.

(End of Clause)

(b) Automobile, ambulance and aircraft service contracts will utilize the clause prescribed in 852.237-71.

852.237-71 Indemnification and insurance (vehicle and aircraft service contracts).

(a) Contracts for vehicle and aircraft services will utilize the following clause as provided in 828.306.

Indemnification and Insurance

(a) *Indemnification.* The contractor expressly agrees to indemnify and save the Government, its officers, agents, servants, and employees harmless from and against any and all claims, loss, damage, injury, and liability, however caused, resulting from, arising out of, or in any way connected with the performance of work under this agreement. Further, it is agreed that any negligence or alleged negligence of the Government, its offficers, agents, servants, and employees, shall not be a bar to a claim for indemnification unless the act or omission of the Government, its officers, agents, servants, and employees is the sole, competent, and producing cause of such claims, loss, damage, injury, and liability. At the option of the contractor, and subject to the approval by the contracting officer of the sources, insurance coverage may be employed as guaranty of indemnification.

(b) *Insurance.* Satisfactory insurance coverage is a condition precedent to award of a contract. In general, a successful bidder must present safisfactory evidence of full compliance with State and local requirements, or those below stipulated, whichever are the greater. More specifically, workman's compensation and employer's liability coverage will conform to applicable State law requirements for the service contemplated, whereas general liability and automobile liability of comprehensive type, shall in the absence of higher statutory minimums, be required in the amounts per vehicle used of not less than $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage. State approved sources of insurance coverage ordinarily will be deemed acceptable to the Veterans' Administration installation, subject to timely certifications by such sources of the types and limits of the coverages afforded by the sources to the bidder. (In those instances where airplane service is to be used, substitute the word "aircraft" for "automobile" and "vehicle" and modify coverage to require aircraft public and passenger liability insurance of at least $200,000 per passenger and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.)

(End of Clause)

(b) *Exceptions.* The provisions of this 852.237-71 do not apply to emergency or sporadic ambulance service authorized by VA Manual MP-1, Part II, Chapter 3: *Provided,* That such service is not used solely for the purpose of avoiding entering into a continuing contract. *Provided further,* That such services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

852.247-70 Transportation clause for bid evaluation.

In circumstance enunciated in 847.305-70, the following clause will be inserted in the IFB:

Determining Transportation Costs for Bid Evaluation

For the purpose of evaluating bids and for not other purpose, the delivered price per unit will be determined by adding the nationwide average transportation charge to the f.o.b. origin bid prices. The nationwide average transportation charge will be determined by applying the following formula: Multiply the guaranteed shipping weight by the freight, parcel post, or express rate, whichever is proper, to each destination shown below and then multiply the resulting transportation charges by the anticipated demand factor shown for each destination. Total the resulting weighted transportation charges for all destinations and divide the total by 20 to give the nationwide average transportation charge.

Anticipated Demand

	Factor
Area destination:	
Oakland, California	3
Dallas, Texas	2
Omaha, Nebraska	3
Fort Wayne, Indiana	4
Atlanta, Georgia	3
New York, New York	5
Total of factors	20

(End of Clause)

852.270-1 Representatives of contracting officers.

Whenever it is considered necessary to designate a representative under 801.603-70, the following provisions will be made a part of the request for proposal or invitation to bid:

Representatives of Contracting Officers

The contracting officer reserves the right to designate representatives to act for him/her in furnishing technical guidance and advice or generally supervise the work to be performed under this contract. Such designation will be in writing and will define the scope and limitations of the designee's authority. A copy of the designation shall be furnished the contractor.

(End of Clause)

852.270-2 Bread and bakery products.

The following clause will be inserted in all contracts for bread and bakery products:

Quantities

The bidder agrees to furnish up to 25 percent more or 25 percent less than the quantities awarded when ordered by the Veterans Administration.

(End of Clause)

852.270-3 Purchase of shell fish.

Invitations for bids or requests for proposals covering oysters, clams or mussels, fresh or frozen, will contain the following clauses:

Shellfish

The bidder certifies that oysters, clams, and mussels will be furnished only from plants approved by and operated under the supervision of shell fish authorities of States whose certifications are endorsed currently by the U.S. Public Health Service, and the names and certificate numbers of those shell fish dealers must appear on current lists published by the U.S. Public Health Service. These items shall be packed and delivered in approved containers, sealed in such manner that tampering is easily discernible, and marked with packer's certificate number impressed or embossed on the side of such containers and preceded by the State abbreviation. Containers shall be tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper.

(End of Clause)

852.270-4 Commercial advertising.

All invitations for bids will include the following clause:

Commercial Advertising

The bidder agrees that if a contract is awarded to him/her, as a result of this solicitation, he/she will not advertise the award of the contract in his/her commercial advertising in such a manner as to state or imply that the Veterans Administration endorses a product, project or commercial line of endeavor.

(End of Clause)

852.271-70 Services provided eligible beneficiaries.

The following clause will be included in all contracts covering services provided to eligible beneficiaries:

Nondiscrimination in Services Provided Beneficiaries

The contractor agrees to provide all services specified in this contract for any person determined eligible by the Chief Medical Director, or designee, regardless of the race, color, religion, sex, or national origin of the person for whom such services are ordered. The contractor further warrants that he/she will not resort to subcontracting as a means of circumventing this provision.

(End of Clause)

852.271-71 Visits to Veterans Administration guidance centers.

The following clause will be included in contracts entered into for services relating to vocational counseling:

Inspection

Any duly authorized representative of the Veterans Administration shall at all reasonable times be permitted to inspect the counseling and testing operations being performed under this contract and the records of these operations.

(End of Clause)

852.271-72 Time spent by counselee in counseling process.

Insert the following clause in contracts entered into for services relating to vocational counseling:

Time Spent by Counselee in Counseling Process

The contractor agrees that no counselee referred under the provisions of this agreement will be required to give any extra time in connection with the counseling process to supply test results or other information for purposes other than those specified in this contract.

(End of Clause)

852.271-73 Use and publication of counseling results.

Insert the following clause in contracts entered into for services relating to vocational counseling:

Publishing Results

The contractor agrees that none of the information or data gathered in connection with the services specified in this contract or studies or materials based thereon or relating thereto will be publicized without the prior approval of the Chief Benefits Director or his/her designee.

(End of Clause)

852.271-74 Inspection.

Insert the following clause in contracts entered into with educational institutions and training establishments for education and rehabilitation:

Inspection

The contractor will permit the duly authorized representative of the Veterans Administration to visit the place of instruction as may be necessary and examine the training facilities and work of the veterans in training under this contract.

(End of Clause)

852.271-75 Extension of contract period.

The following clause will be included in contracts where appropriate pertaining to services for education and rehabilitation:

Extension of Contract Period

This contract may be extended from year to year if agreeable to both parties provided the agreement for extension is consummated 30 days prior to the expiration date, and further provided that there is no change in the provisions, terms, conditions, or rate of payment. Any extension made hereunder is subject to the availability of funds during the period covered by the extension.

(End of Clause)

PART 853—FORMS

Sec.

853.000 Scope of part.

Subpart 853.1—General

853.107 Obtaining forms.

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853.201 Federal acquisition system.

853.201-1 Contracting authority and responsibilities (SF 1402).

853.213 Small purchase and other simplified purchase procedures (VA Forms 90-2138, 10-7078, 10-7079, 10-2570d, 10-2511, and 10-2421).

853.215 Contracting by negotiation (VA Form 10-1170).

853.236 Construction and architect-engineer contracts.

853.236-1 Construction (VA Form 08-6159).

853.236-2 Architect-engineer services (VA Form 08-6298).

853.271 Loan Guaranty, Education and Vocational Rehabilitation and Counseling Programs.

853.271-1 Loan Guaranty Program (VA Forms 26-6724 and 26-1839).

853.271-2 Vocational Rehabilitation and Counseling Programs (VA Forms 22-1903, 22-1905 and 22-1931).

853.271-3 Education Programs (VA Forms 22-1982, 22-1982e, 22-1982c, and 22-7398).

Subpart 853.3—Illustration of Forms

853.300 Scope of subpart.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

853.000 Scope of part.

This part prescribes Veterans, Adminsitration forms for use in the acquisition of goods and services. It only identifies forms which are used between the VA and its contractors or the general public. It does not identify forms for uses internal to the VA or between the VA and another federal agency.

Subpart 853.1—General

853.107 Obtaining forms.

VA forms may be obtaind from any VA contracting office of by requesting such forms from the Director, Office of Procurement and Supply (91), Veterans, Adminsitration, 810 Vermont Avenue NW., Washington, D.C. 20420.

Subpart 853.2—Prescription of Forms

853.201 Federal acquisition system.

853.201-1 Contracting authority and responsibilities (SF 1402).

Current delegations of contracting authority appointed with VA Form 90-2267, Certificate of Designation (contracting officer), will remain in effect until replaced with an executed SF 1402, Certificate of Appointment, in accordance with 801.603-3.

853.213 Small purchase and other simplified purchase procedures (VA Forms 90-2138, 10-7078, 10-7079, 10-2570d, 10-2511, and 10-2421).

The following forms are prescribed as stated below and in the circumstances and within the limitations provided:

(a) VA Form 90-2138, Order for Supplies or Services shall be used as indicated in 831.505-2. It will be used in lieu of but similar to OF 347, Order for Supplies and Services.

(b) The following forms are for use for obtaining indicated medical and dental services within the limitations prescribed in 813.505-2:

(1) VA Form 10-7078, Authorization and Invoice for Medical and Hospital Services.

(2) VA Form 10-7079, Request for Outpatient Medical Services.

(3) VA Form 10-2570d, Dental Record, Authorization and Invoice for Outpatient Services.

(c) VA Form 10-2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, will be used as prescribed in 813.505-2(c).

(d) VA Form 10-2421. Prosthetics Authorization and Invoice, will be used from indicated procurements not to exceed $300 as prescribed in 813.505-2.

853.215 Contracting by negotiation (VA Form 10-1170).

VA Form 10-1170, Application for Furnishing Nursing Home Care to Beneficiaries of the Veterans Administration, will be utilized for establishing contract nursing home care for VA beneficiaries.

853.236 Construction and architect-engineer contracts.

853.236-1 Construction (VA Form 08-6159).

VA Form 08-6159, Construction Progress Chart, will be used as prescribed by 852.236-84.

853.236-2 Architect-engineer services (VA Form 08-6298).

VA Form 08-6298, Architect-Engineer Fee Proposal, will be used as prescribed in 836.606-71.

853.271 Loan Guaranty, Education, and Vocational Rehabilitation and Counseling Programs.

853.271-1 Loan Guaranty Program (VA Forms 26-6724 and 26-1839).

(a) VA Form 26-6724, Invitation, Bid, and/or Acceptance or Authorization, will be used in obtaining services specified in Subpart 871.1.

(b) VA Form 26-1839, Compliance Inspection Report, will be used for inspection of repairs for properties under the Loan Guaranty Program as specified in 846.472.

853.271-2 Vocational Rehabilitation and Counseling Programs (VA Forms 22-1903, 22-1905, and 22-1931).

The following forms will be used in acquiring education or rehabilitation services as prescribed in Subpart 871.2:

(a) VA Form 22-1903, Contract for Education and Training.

(b) VA Form 22-1905, Authorization and Certification of Entrance or Reentrance into Training and Certification of Trainee Status.

(c) VA Form 22-1931, Contract for Services Relating to Vocational Counseling.

853.271-3 Education Programs (VA Forms 22-1982, 22-1982e, 22-1982c, and 22-7398).

The following forms are prescribed for use in obtaining services for the Department of Veterans Benefits Education programs:

(a) VA Form 22-1982, State Approving Agency (SAA) Reimbursement Contract.

(b) VA Form 22-1982e, Schedule No. 1 to the SAA Reimbursement Contract; Accredited and Non-Accredited Courses Under Chapter 32, 34, and 35, or 36, of Title 38 United States Code, whichever is applicable.

(c) VA Form 1982c, Schedule No. 2 to the SAA Reimbursement Contract; Apprentice Or Other Training On-the-Job.

(d) VA Form 22-7398, Quarterly Report of State Approving Agency Activities Under Chapter 36, Title 38, United States Code.

Subpart 853.3—Illustration of Forms

853.300 Scope of subpart.

VA Forms will not be illustrated in this VAAR. Persons wishing to obtain copies of VA forms prescribed in the VAAR may do so in accordance with 853.107.

PART 870—SPECIAL PROCUREMENT CONTROLS

Subpart 870.1—Controls

Sec.

870.111 Subsistence.
870.111-5 Frozen processed food products.
870.112 Telecommunications equipment.
870.113 Paid use of conference facilities.
870.114 Asbestos.
870.114-1 General.
870.114-2 Background.
870.114-3 Approving authority.
870.114-4 Exempted products containing asbestos.
870.115 Food service equipment.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 870.1—Controls

870.111 Subsistence.

870.111-5 Frozen processed food products.

(a) All frozen, processed food products procured which contain meat, poultry or a significant proportion of eggs, will be processed or prepared in plants operated under the supervision of the USDA (U.S. Department of Agriculture). The product will be inspected and approved in accordance with the regulations of the USDA governing meat, poultry or egg inspection. A label or seal, affixed to the container, indicating compliance with these regulations will be accepted as evidence of compliance. The product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(b) All frozen, processed food products procured which contain fish or fish products will be processed or prepared in plants operated under the supervision of the USDC (U.S. Department of Commerce). The products listed in USDC publication titled, "Approved List of Sanitarily Inspected Fish Establishments" are processed in plants under Federal inspection of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The inspected products packed under various labels bearing the brand names are produced in accordance with current U.S. Grade Standards or official product specifications, packed under optimum hygienic conditions, and must meet Federal, State, and city sanitation and health regulations. Such brand label or USDC seal, affixed to a container, indicating compliance with USDC regulations will be accepted as evidence of compliance. In lieu thereof, the shipment may be lot inspected by the USDC and containers stamped to indicate acceptance or a Certification of Inspection issued to accompany the shipment. The product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(c) Producers of frozen bakery products which are shipped in interstate commerce are required to comply with the Federal Food, Drug and Cosmetic Act. Therefore, it must be vertified that the product, in fact was shipped interstate or that the producer ships products to other purchasers interstate.

In addition, the product must bear a label complying with the Act which requires that all ingredients be listed according to the order of their predominance.

870.112 Telecommunications equipment.

(a) Solicitations, including those for construction, based on detailed purchase descriptions or formal specifications for telecommunications equipment, as defined in Manual MP–6, Part VIII,[8] will include the clause required by 852.270–4.

(b) The descriptive literature to be furnished by the contractor after award, required by the clause in 852.270–4, is to be reviewed and approved by the Office of Data Management and Telecommunications prior to delivery and/or installation by the contractor. Promptly upon receipt of the descriptive literature, contracting officers will forward it together with a copy of the contract, the formal specification, or the detailed purchase description to the Director, Office of Procurement and Supply (93).

(c) Solicitations, including those for construction, for telecommunications equipment based on "brand name or equal" purchase description are subject to the following:

(1) Prior to award, contracting officers will forward to the Director, Office of Procurement and Supply (93), the abstract of bids, one copy of each offer received, including descriptive literature and pertinent letters, and the comments and recommendations of the contracting officer.

(2) No commitments are to be made to contractors prior to receipt of Central Office reaction.

(3) Allowance of at least 30 days time for acceptance will be specified in the solicitation in order to allow sufficient time for the review required by this paragraph (c). (See FAR 52.214–16.)

870.113 Paid use of conference facilities.

(a) The rental of space for VA-sponsored symposia and training sessions may be unwarranted when other alternatives are available at no expense or reduced expense to the Government. After the geographical location for a VA conference has been selected, based on minimum overall travel costs for all Government participants and other relevant factors, a request for conference space will be forwarded to the servicing Supply activity. The request for conference space should afford the contracting officer every opportunity to secure rent-free facilities.

(b) The following criteria for the selection of an appropriate facility will apply:

(1) A thorough effort will be made to schedule conferences and training sessions so that the conference facilities of VA installations in the city where the conference is held may be used.

(2) Where no VA space is available, the General Services Administration will be contacted to determine if there is other Government agency space which may be used.

(3) Efforts will be made to schedule conferences, where Government space is not available, through hotels and motels which offer free conference facilities in exchange for a stipulated number of lodging reservations for participants. Surcharges per lodging or increased room rates, to offset the cost of the conference room, shall be considered payment for such space.

(4) In the event none of these is available on the desired dates, consideration will be given to rescheduling the conference to avail the VA of the use of facilities without payment of a fee.

(5) If none of the above is practical, rental conference space will be obtained. Complete documentation of efforts to secure free conference space, as outlined above, will be maintained in the purchase order file. The costs of coffee, refreshments, meals, lodging, tips and other supplies and services not directly related to the presentations within the conference space are not allowable.

(c) The conference coordinator of the requesting organization will continue to be responsible for individual room reservations, including any cancellations.

870.114 Asbestos.

870.114–1 General.

This section applies to the purchase and use of asbestos products and equipment or materials containing asbestos products in the Veterans Administration.

870.114–2 Background.

Exposure to asbestos is associated with chronic and debilitating lung disease and cancer. To reduce the health hazard related to the exposure to asbestos, the U.S. Environmental Protection Agency and the U.S. Department of Labor (Occupational Safety and Health Administration) have issued specific regulations on asbestos. Although these regulations do not call for a complete ban on the use of asbestos, they do impose strict requirements on its use, airborne contamination and disposal.

870.114–3 Approving authority.

Asbestos products and equipment or materials containing asbestos products shall not be specified nor purchased for use in the Veterans Administration if any suitable substitutes are available. If suitable substitutes are not available, specific authorization to purchase and use asbestos products and equipment or materials specifying asbestos products, must be granted by the Administrator or designee. Requests for authorization will be submitted through the Director, Engineering Service (10A4A5). The following information will be provided:

(a) The name of the product, source of supply, and physical form of asbestos as used in the product or equipment;

(b) A description of use, including purpose, urgency, methodology, qualities, and by whom; and

(c) Safeguards being employed, with particular emphasis on the identification of the asbestos products, and procedures to be taken to prevent airborne contamination and disposal.

870.114–4 Exempted products containing asbestos.

VA Central Office, Engineering Service (10A4A5), is responsible for maintaining a list of products containing asbestos which are exempted by the Administrator or designee from this policy.

870.115 Food service equipment.

(a) All new food service equipment purchased for Dietetic Service through other than the Defense General Supply Center (DGSC) sources must meet requirements set forth by the National Sanitation Foundation (NSF).

(b) The contracting officer will accept an affixed NSF label and/or documentation of the certification by NSF from the contractor as evidence that the subject equipment meets sanitation standards issued by the Foundation.

PART 871—LOAN GUARANTY AND VOCATIONAL REHABILITATION AND COUNSELING PROGRAMS

Subpart 871.1—Loan Guaranty Program

Sec.

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871.106 Lien waivers.

[8] Available at any Veterans Administration station.

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Subpart 871.2—Vocational Rehabilitation and Counseling Program

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Subpart 871.3—Education Program [Reserved]

Authority: 38 U.S.C. 210, 40 U.S.C. 486(c), 38 CFR 36.4320, 38 U.S.C. Chs. 31, 32, 34, 35, and 37 and Pub. L. 98–77.

Subpart 871.1—Loan Guaranty Program

871.100 Scope of subpart.

This subpart sets forth policy and procedure with respect to the loan guaranty and direct loan programs as it pertains to property management, including the acquisition, management, and disposition of property, real, personal, or mixed, which were secured by loans guaranteed, insured, or made pursuant to Title 38, United States Code.

871.101 Policy.

It is the policy of the Veterans Administration that all procurement effected by formal advertising or negotiation pertaining to the expenditure of funds for the repair and maintenance of Veterans Administration property acquired under Chapter 37, Title 38, United States Code, be made in accordance with those regulations as set forth in FAR Parts 14, 15 and 16 as supplemented or implemented by Parts 814, 815 and 816 of this chapter and otherwise authorized by this Subpart 871.1 and specific subparts or sections as stated in this subpart.

871.102 Authorization for repairs to properties.

(a) Except as provided in this subpart, Directors, VA Regional Offices, are authorized to purchase supplies and services for the repair to any Veterans Administration property acquired under Chapter 37, Title 38, United States Code, where the cost does not exceed $5,000 on any single transaction.

(b) In those cases where the expenditure is known or estimated to exceed $5,000, the request, together with the loan guaranty folder, will be forwarded to the Chief Benefits Director for approval.

(c) During the period when the Veterans Administration has assumed custody of the property from a holder and prior to its conveyance to the Veterans Administration pursuant to 38 CFR 36.4320, repairs are authorized not in excess of $2,000 when appropriate to make the property ready for sale at an earlier date than would otherwise be possible if the repair program was delayed until such time as the Veterans Administration acquired absolute title.

(d) No repairs may be made to property by the holder when it has continued custody except for emergeny repairs not in excess of $200 unless adequate notice has been given the Director, VA Regional Office. Emergency repairs as applied in this paragraph will be deemed to mean those requiring immediate action to preserve the property from serious damage or to correct a situation imminently dangerous to life or limb, and includes the initial cleanup of the property in order to prevent the risk of damage by fire or vandalism.

(e) An approved management broker may be authorized, at the time a property is listed with him/her, to incur expenses for fuel and utilities or other recurring items which are required to be furnished by the Veterans Administration to its tenants or are required in the maintenance of the property. Advance blanket authorizations to management brokers will be limited to repairs not in excess of $200 in any transaction, [the management broker will either submit receipts with his/her invoice or maintain such receipts for inspection). Expenditures in excess of $200 require prior approval of the Director, Regional Office, having jurisdiction of the property. Repair jobs may not be split to circumvent this restriction.

871.103 Repair specifications.

(a) Repair specifications covering authorized repairs will be formulated in sufficient detail to permit competitive bids on an identical basis and as a mimimum will contain the following.

(1) Requirement that the contractor obtain all necessary permits.

(2) Requirement that inspection will be made at stated intervals if appropriate and that final inspection will be made in all cases.

(3) Any other requirement necessary to protect the interests of the Government.

(b) The minimum construction requirements may be used as a guide in the preparation of repair specifications. Specifications should not require conformance with minimum construction requirements in cases where scope of repairs are minor, the relatively small value of the property or its poor salability. The quality of repairs to be specified shall be consistent with the type and value of the property.

(c) In all cases, the specifications for repairs will be based on one of the following categories:

(1) Minimum specifications for rental purposes.

(2) Average specifications for sales purposes.

(3) Above average specifications for desirable properties.

871.104 Qualification of bidders.

(a) Qualification of bidders shall be established in accordance with procedures outlined in FAR Subpart 9.1 and Subpart 809.1 of this chapter.

(b) Management brokers are not considered acceptable bidders for repair contracts due to their close association on a fee basis with the Veterans Administration. This restriction would apply equally to any contracting firm in which the management broker has an interest and in which it could be presumed that such firm would have an advantage over the other bidders. This does not preclude the performance of work by management brokers of a routine recurring maintenance category or minor repairs by personnel employed directly on the payroll of the broker. In these cases, it must be established that any charges for such services are not in excess of the prevailing fees for like services in the area.

871.105 Debarred, suspended and ineligible bidders.

Firms or individuals will be debarred and suspended in accordance with FAR Subpart 9.4 and Subpart 809.4 of this chapter.

871.106 Lien waivers.

(a) Contracts in the amount of $2,500 or more will contain a requirement that the contractor will sign a formal release in full or a lien waiver before payment may be made. The release or waiver will accompany the contractor's invoice.

(b) Contractors will be required to notify the Director, Regional Office, of any subcontractors for services or materials in excess of $2,500. Such subcontractors or material men will be required to sign the release or waiver jointly with the prime contractor or to

execute release or waiver in his/her own name.

(c) Prior to any authorized partial payment the contractor will be required to execute a release or waiver.

(d) Due to the variations of local law, no standard release or waiver is prescribed. Each release or waiver will be prepared in accordance with local law and will be in form acceptable by the District Counsel.

871.107 Stipulations against liens.

(a) Where determined necessary by the Director, Regional Office, contracts in an amount less than $2,500 may contain the following:

The contractor expressly waives any and all rights to file or maintain any mechanics lien or claim against the aforesaid premises.

(b) Contracts in the amount of $2,500 or more where there is doubt as to the final responsibility of the contractor will provide maximum potection to the Government by including such requirements as are available under local law. Advice and approval of any contract stipulation or legal stipulations against liens will be obtained from the District Counsel.

Subpart 871.2—Vocational Rehabilitation and Counseling Program

871.200 Scope of subpart.

This subpart establishes policy and procedures for the vocational rehabilitation and counseling program as it pertains to contracts for training and rehabilitation services, approval of institutions (including rehabilitation facilities), training establishments, and employers under Chapter 31, Title 38, United States Code, and contracts for counseling services under Chapter 32, 34, and 35, Title 38, United States Code and Pub. L. 98–77, Emergency Veterans' Jobs Training Act of 1983.

871.201 General.

871.201–1 Requirements for the use of contracts.

Contracts will be negotiated for tuition, fees, books, supplies and other allowable expenses incurred by the institution, training establishment or employer for the training and rehabilitation of eligible veterans under Chapter 31, Title 38, United States Code, under the following conditions:

(a) With institutions offering courses of instruction by correspondence. Courses of instruction by correspondence is deemed to mean a course of education or training conducted by mail consisting of regular lessons or reading assignments, the preparation of required written work which involves the application or principles studied in each lesson, the correction of assigned work with such suggestions or recommendation as may be necessary to instruct the student, the keeping of student achievement records and issuance of a diploma, certificate, or other evidence to the student upon satisfactorily completing the requirements of the course.

(b) With institutions, training establishments, employers, or individuals approved to provide training and rehabilitation services under Chapter 31, Title 38, United States Code, for whom special services or special courses are furnished at the request of the Veterans Administration. The terms "special services" or "special courses" have the same meaning as under 831.7001–2.

871.201–2 Requirements when contracts are not required.

(a) When a contract is not required, a signed statement of charges will be obtained from the educational institution or training establishment for courses to be offered, including the rate of tuition, fees, and separate charges, if any, for books, supplies, and equipment handling charges, refund policy and such other provisions as are required to determine proper payment. The statement of charges may be in the form of a statement on VA Form 22–1905, Authorization and Certification of Entrance of Reentrance into Training, that charges will be in accordance with catalog or other published document (identify publication). The statement of charges may not exceed those charges paid by nonveterans or that is published in the school catalog or other published document.

(b) For the purpose of this section a contract will not be required when all tuition, fees, books, supplies, or services necessary to train, or educate an eligible veteran under Chapter 31, Title 38, United States Code, are published in the school catalog or other published document.

871.201–3 Medical services.

The medical services provided trainees under vocational rehabilitation and education contracts, agreements, or arrangements are separate and distinct from any other medical service under the jurisdiction of the Department of Medicine and Surgery to which the veteran may be entitled and no certificate of eligibility is required from that department.

871.201–4 Letter contracts.

Letter contracts are authorized for use in accordance with the provision of FAR 16.603 and in those cases in which it is not possible to complete a formal contract with an approved educational institution prior to the enrollment of eligible veterans for training.

871.202 Marking and release of supplies.

Supplies will not be marked to indicate ownership by the United States and will be deemed released to the trainee at the time they are furnished.

871.203 Renewals or supplements to contracts.

Except for contracts for educational and vocational counseling, contracts may be renewed from year to year, providing there is no change in the schedule or provisions as originally consummated by completion of a renewal agreement no later than 30 days prior to the expiration of the contract.

(a) Supplements may be negotiated at any time during the contract period upon the completion of the supplemental agreement.

(b) Contracts for educational and vocational counseling may provide for automatic extension from year ~~to~~ year.

871.204 Guarantee payment.

No contract or agreement may be entered into with any institution or training establishment whereby the Veterans Administration will be required to pay a minimum charge, or required to enroll a minimum number of participants per quarter, semester, term, course, or other period.

871.205 Proration of charges.

The contract will include the exact formula agreed on for the proration of charges in the event that the veteran's program is interrupted or discontinued prior to the end of the term, semester, quarter, or other period, or the program is completed in less time than stated in the contract.

871.206 Other fees and charges.

Fees and other charges which are not prescribed by law but are by nongovernmental organizations, such as initiation fees required to become a member of a labor union and the dues necessary to maintain membership incidental to training on the job or to obtaining employment during a period in which the veteran is a chapter 31 participant, may be paid provided there are no facilities feasibly available whereby the necessary training can be feasibly accomplished or employment obtained without paying such charges.

Payment for such fees will be made in accordance with Part 813.

871.207 Payment of tuition or fees.

(a) Contracts, agreements, or arrangements requiring the payment of tuition or fees will provide for the following:

(1) Payment for tuition or fees will be made in arrears and will be prorated in installments over the school year or the length of the course except that institutions may be paid in accordance with the provision of paragraph (a)(2) of this section, provided such institutions operate on a regular term, quarter, or semester basis and normally accept students only at the beginning of the term, quarter, or semester and provided for further such institutions are either:

(i) Institutions of higher learning that use a standard unit of credit recognized by accrediting associations (such institutions will include those which are members of recognized national or regional educational accrediting associations, and those which, although not members of such accrediting associations, grant standard units of credit acceptable at full value without examination by collegiate institutions which are members of national on regional accrediting associations).

(ii) Public tax supported institutions.

(iii) Institutions operated and controlled by State, county, or local boards of education.

(2) Institutions coming within the exceptions of paragraph (a)(1) of this section which have a refund policy providing for a graduated scale of charges for purposes of determining refunds may be paid part or all such tuitions or fees for a term, quarter, or other period of enrollment immediately following the date on which the refund expires.

(3) Proration of charges will not apply to a fee which is for noncontinuing service such as registration fee, etc.

(b) The period for which payment of charges may be made will be the period of actual enrollment and subject to the following:

(1) The effective date will be the date of the trainee's entrance into training status except that payment may be made for an entire-semester, quarter, or term in institutions operating on that basis if the training enters no later than the final date set by the institution for enrolling for full credit.

(2) In those cases where the institution has not set a final date for enrolling for full credit or will not set a date acceptable to the Veterans Administration, payment may be prorated on the basis of attendance regardless of the refund policy.

(3) If an institution customarily charges for the amount of credit or number of hours of attendance for which a trainee enrolls, payment may be made on that basis when a trainee enrolls after the final date permitted for carrying full credit for the semester or term.

(c) The terminal date to which payment will be made is the day following:

(1) The end of the semester, term or quarter during which the training is furnished.

(2) The date of interruption or discontinuance of training.

(3) The date of completion of the course.

871.208 Rehabilitation facilities.

The provisions for payment of charges to rehabilitation facilities for the rehabilitation services provided under Chapter 31 are paid in the same manner as charges for educational and vocational services through contract, agreement, or other arrangement.

871.209 Records and reports.

Contracts, agreements, or arrangements will provide for the number and frequency of reports, adequate financial records to support payment for each trainee and maintenance of attendance and progress records. Such records will be preserved for a period of three years.

871.210 Correspondence courses.

Contracts with institutions for correspondence courses will provide that:

(a) Major changes in courses or course material will not be binding on the Veterans Administration until such time as a supplemental agreement is negotiated to the contract.

(b) Minor changes in course or course material not affecting the length of the course or number of lessons and not lowering the educational value of the course or the quality of the course material such as revision of text, the substitution of a newer lesson for an older one, or the substitution of equipment of equal or greater value, are permitted without supplemental agreements. Such minor changes and revisions shall be placed on file with the contracting officer at the time of the change or revision.

(c) Trainees be provided with prompt and adequate lesson service and, unless otherwise specified in the contract, be furnished the same texts, lessons service, diplomas, and other services as are normally provided for regularly enrolled nonveteran students.

(d) All lessons be adequately serviced on an individual basis. Grouping of lessons into units or partial servicing does not meet this requirement.

(e) Each lesson must have a separate examination adequate in terms of lesson content.

(f) The training of persons under a Veterans Administration contract or the fact that the United States is utilizing the facilities of the institution for training veterans shall not be used in any way to advertise the institution. References in the advertising media or correspondence of the institution shall be limited to a list of courses under Chapter 31, Title 38, United States Code, and shall not be directed or pointed specifically to veterans.

(g) The rates, fees, and charges are not in excess of those charged nonveterans.

(h) That payment will be made on a lesson completed basis in areas for assignments sent in by trainees and serviced during a pay period as established by the contract.

(i) Payment will be made only once for each lesson even through it is necessary to service a lesson more than once.

871.211 Information concerning correspondence courses.

Specific questions on correspondence courses as to the content of courses, academic credit, and entrance requirements for courses included in Veterans Administration contracts may be directed to the institutions offering the courses.

Subpart 871.3—Education Program [Reserved]

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Part IV

Federal Emergency Management Agency

48 CFR Ch. 44
Acquisition Regulations; Interim Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

48 CFR Ch. 44

FEMA Implementation of the Federal Acquisition Regulation (FAR); FEMA Acquisition Regulation (FEMAAR)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule and invitation for comments.

SUMMARY: This document establishes an interim rule known as the Federal Emergency Management Agency Acquisition Regulation (FEMAAR). This rule is codified as Chapter 44 of Title 48 of the Code of Federal Regulations. The purpose of the FEMAAR is to prescribe acquisition regulations needed to implement specific requirements of the Federal Acquisition Regulation (FAR) as well as statutory requirements peculiar to FEMA.

The FAR is being promulgated as the uniform, simplifed acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms. The FAR will supersede the Defense Acquisition Regulation (DAR), the Federal Procurement Regulation (FPR) and the National Aeronautics and Space Administration Procurement Regulation (NASAPR). Except for certain new requirements of the FAR, the regulatory material in the FEMAAR will supersede the current Federal Emergency Management Agency Procurement Regulations (FEMAPR).

DATES: *Effective Date:* April 1, 1984.

Comments: Due not later than May 31, 1984.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 835, 500 C Street SW., Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Joseph A. Pegnato, Chief, Policy and Evaluation Division, Office of Acquisition Management, Federal Emergency Management Agency, 500 C Street SW., Washington, D.C. 20472, Telephone (202) 287–3826.

SUPPLEMENTARY INFORMATION:

Background

The policies and procedures of the Federal Government regarding the procurement of supplies and services have been developed in a largely independent fashion. Many statutes bearing on Federal contracting have been directed toward specific agencies. Federal agencies traditionally have developed their own contracting procedures with limited attention to uniformity among agencies. The result of this is the current system of procurement policies that vary from agency to agency and cause confusion within the contracting community. As long ago as 1972, the Commission on Government Procurement recommended that there be a standard Government-wide procurement regulatory system. The Office of Federal Procurement Policy, created in 1974, has worked with the agencies and the public to create a uniform procurement regulation to be known as the Federal Acquisition Regulation (FAR).

The FAR was published in the **Federal Register** on September 19, 1983 with a scheduled effective date of April 1, 1984. (See 48 FR 42102.) The FAR will be codified as Chapter 1 of Title 48 of the Code of Federal Regulations.

Because of differing statutory authorities among Federal agencies, the FAR authorizes the agencies to issue regulations to implement FAR policies and procedures within the agency, and to include additional policies and procedures, solicitation provisions or contract clauses to satisfy the specific needs of the agency. The regulations being published today represent the Agency's necessary implementation and supplementation of the FAR.

The content of the interim FEMAAR is, with but a few exceptions that will be noted, drawn from the FEMAPR of August 19, 1980. The changes that have been made in the material brought forward from the FEMAPR can be categorized correctly as editorial, made in the interest of clarity, brevity, and consistency. Signficant other portions of the FEMAPR have been made unnecessary by material written into the FAR.

Most new material has been incorporated in response to explicit or implied FAR requirements. As an example: FAR 3–204 requires that an agency have procedures for handling violations of the Gratuities clause. FEMAAR 4403.204 establishes a minimum procedural framework and assigns responsibilities.

These new FEMAAR segments are:

4401.405 Deviations pertaining to treaties and executive agreements
4403.101–2 Solicitation and acceptance of gratuities by Government personnel
4403.101–3 Agency regulations
4403.203 Reporting suspected violations of the gratuities clause
4403.204 Treatment of violations
4405.502 Authority
4407.307 Appeals
4408.802 Policy
4412.303 Procedures
4415.307 Signatory authority
4419.201 General policy
4424.202 Policy

FEMAAR 4415.413–2 also is new. It requires written approval of the Head of the Contracting Activity (HCA) to use Alternate II procedures governing disclosure and use of information before award.

Since the FAR is to be the uniform Government-wide acquisition regulation, reviewers of this rule must remember that lack of coverage of a particular toxic in the FEMAAR means that the Agency accepts the FAR coverage of the topic without need for further regulatory implementation.

Procedural Requirements

A. *Executive Order 12291.* David Stockman, Director of the Office of Management and Budget, has exempted procurement regulations from the requirements of a regulatory impact analysis and review required by Executive Order 12291 in a memorandum dated December 15, 1983 to Don Sowle, Administrator, Office of Procurement Policy, and Christopher DeMuth, Administrator, Information and Regulatory Affairs.

B. *Regulatory Flexibility Act.* This interim rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. FEMA certifies that this interim rule will not have a significant economic impact on a substantial number of small entities; and, therefore, no regulatory flexibility analysis has been prepared.

C. *National Environmental Policy Act.* FEMA has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq. 1976) and the regulations (40 CFR Parts 1500–1508), therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

D. *Administrative Procedure Act.* Section 553 of the Administrative Procedure Act exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking.

However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. In OFPP Policy letter 83–2, OFPP states that an agency must provide an opportunity for public

comment before adopting procurement regulations if the regulations represent a "significant" change of existing regulations. "Significant" is defined generally as something which has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The Agency has determined that this rule does not represent a significant change. As described earlier in the preamble, changes made to FEMA's procurement regulations are principally in the areas of format and internal procedures. The internal procedural changes are necessary to implement new or modified material established by the FAR.

The Agency traditionally has provided for prior notice and comment even when not required by the Administrative Procedure Act (see 44 CFR 1.4). Although this is the general policy of the Agency, it has been determined in this instance, for the reasons already stated, that it would be impractical, unnecessary and contrary to all interests involved to provide for prior notice and comment in this rulemaking. In addition, the FAR has a scheduled effective date of April 1, 1984. It is imperative that FEMA's procurement regulations be effective at the same time as the FAR. For these reasons, the Agency is issuing the FEMA acquisition regulations as an interim rule. Because of the Agency's general policy to solicit comments to the extent practicable, comments are invited on these regulations through May 31, 1984. All comments received will be reviewed, considered and implemented if necessary prior to this regulation becoming final.

List of Subjects in 48 CFR Ch. 44

Government procurement, Federal Emergency Management Agency (FEMA) acquisition regulations.

For the reasons set forth in the preamble, Title 48 of the Code of Federal Regulations is amended by establishing Ch. 44 as set forth below.

CHAPTER 44—FEDERAL EMERGENCY MANAGEMENT AGENCY ACQUISITION REGULATION

SUBCHAPTER A—GENERAL

Part 4401—Federal Emergency Management Agency (FEMA) acquisition regulation system
Part 4402—Definition of words and terms
Part 4403—Improper business practices and personal conflicts of interests
Part 4405—Publicizing contract actions

SUBCHAPTER B—ACQUISITION PLANNING

Part 4407—Adquisition planning
Part 4408—Required sources of supplies and services
Part 4409—Contractor qualifications
Part 4412—Contract delivery or performance

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 4414—Formal advertising
Part 4415—Contracting by negotiation
Part 4416—Types of contracts

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 4419—Small business and small disadvantaged business concerns
Part 4420—Labor surplus area concerns
Part 4422—Application of labor laws to Government acquisitions
Part 4424—Protection of privacy and freedom of information

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 4429—Taxes
Part 4432—Contract financing

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

Part 4435—Research and development contracting
Part 4436—Construction and architect-engineer contracts

SUBCHAPTER H—CLAUSES AND FORMS

Part 4452—Solicitation provisions and contract clauses

SUBCHAPTER A—GENERAL

PART 4401—FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) ACQUISITION REGULATION SYSTEM

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4401.000 Scope of part.

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4401.103 Applicability.
4401.104 Issuance.
4401.104-1 Publication and code arrangement.
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4401.301 Policy.
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4401.405 Deviations pertaining to treaties and executive agreements.

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4401.7001 Procurement contracts.
4401.7001-1 Situations for use.
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4401.7002 Assistance.
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4401.7002-2 Cooperative agreements.
4401.7002-3 Examples of unsubstantial involvement.
4401.7002-4 Examples of substantial involvement.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

4401.000 Scope of part.

This part sets forth policies and procedures concerning the Federal Emergency Management Agency Acquisition Regulation (FEMAAR) System.

Subpart 4401.1—Purpose, Authority, Issuance

4401.101 Purpose.

FEMAAR is a supplement to the Federal Acqusition Regulation (FAR) and is established for the codification and publication of uniform policies and procedures for acquisitions by FEMA.

4401.103 Applicability.

This regulation applies to all acquisitions within FEMA, but not to placement or administration of cooperative agreements or grants.

4401.104 Issuance.

4401.104-1 Publication and code arrangement.

(a) The FEMAAR is published in (1) the daily issue of the **Federal Register** and (2) cumulated form in the Code of Federal Regulations (CFR).

(b) The FEMAAR is issued as Chapter 44 of Title 48, CFR.

4401.104-3 Copies.

Copies of the FEMAAR in **Federal Register** and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Agency offices may request copies of the FEMAAR from the Policy and Evaluation Division, Office of Acquisition Management.

Subpart 4401.3—Agency Acquisition Regulations

4401.301 Policy.

Policies, procedures, and guidance of an internal nature may be issued through internal FEMA issuances such as manuals, standard operating procedures, or instructions.

4401.303 Codification and public participation.

If subject matter in FAR requires no implementation, the FEMAAR will not contain a corresponding part, subpart, section, or subsection number. FAR subject matter governs.

Subpart 4401.4—Deviations from the FAR

4401.403 Individual deviations.

The Director, Office of Acquisition Management, must authorize individual deviations in advance. Requests for authorization must:

(a) Cite the specific parts of the FAR or FEMAAR from which it is desired to deviate;

(b) Describe the deviation fully;

(c) Indicate the circumstances which require the deviation;

(d) Give reasons supporting the action requested; and

(e) Give reasons why the action is in the best interest of the Government.

4401.404 Class deviations.

The Director, Office of Acquisition Management, must authorize class deviations in advance.

4401.405 Deviations pertaining to treaties and executive agreements.

The Director, Office of Acquisition Management, is the central control point for all deviations including those pertaining to treaties and executive agreements.

Subpart 4401.6—Contracting Authority and Responsibilities

4401.600-70 Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting offices.

4401.601 General.

The Director, Office of Acquisition Management, is designated the head of the contracting activity and FEMA's procurement executive. The Director, Office of Acquisition Management, shall establish policy throughout the agency; monitor the overall effectiveness and efficiency of the agency's contracting offices; establish controls to assure compliance with laws, regulations, and procedures; and delegate contracting officer authority.

4401.603 Selection, appointment, and termination of appointment.

4401.603-2 Selection.

In the areas of experience, training, and education, the following shall be required unless contracting authority is limited to simplified purchase procedures. Waiver of any of these criteria shall be in writing:

(a) An individual contracting officer or an individual appointed to a position having contracting officer authority shall have a minimum of two years experience performing contracting, procurement, or purchasing functions in a Government or commercial contracting office. Additionally, where a contracting officer will work in a specialized field, experience in the field shall be a criterion for the appointment.

(b) An individual contracting officer or an individual appointed to a position having contracting officer authority shall have the equivalent of a bachelor's degree from an accredited college or institution with major studies in business administration, law, accounting, or related fields. The appointing official may waive this requirement when a candidate is otherwise qualified by virtue of extensive contract-related experience and training, business acumen, judgment, character, reputation, and ethics.

(c) An individual contracting officer or an individual appointed to a position having contracting authority shall have successfully completed training courses in both Government basic procurement and Government contract administration, each of not less than 80 class hours. Incumbents not meeting the special training requirements shall be given 24 months to meet the minimum qualification standards.

4401.603-3 Appointment.

Except for disaster-related activities and unusual circumstances as determined by the head of the contracting activity, it is policy to delegate contracting officer authority to individuals rather than to positions. The head of the contracting activity is the appointing authority. Except where the delegation of authority specifically includes the authority for further redelegation, no other delegations or redelegations may be made. Delegations of contracting officer authority shall include a clear statement of such authority, its responsibilities and limitations.

Subpart 4401.70—Procurement Contracts Versus Assistance Instruments

4401.7000 Scope of subpart.

This subpart describes the situations appropriate for the use of procurement contracts, grants, or cooperative agreements and provides examples of each.

4401.7001 Procurement contracts.

4401.7001-1 Situations for use.

Procurement contracts are to be used whenever the principal purpose of the instrument is acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government.

4401.7001-2 Examples.

Procurement contracts normally will be used when the principal purpose of the relationship is:

(a) Evaluation (including research if an evaluative character) of the performance of Government program, projects, or grantee activity initiated by FEMA.

(b) Projects funded by administrative funds.

(c) Technical assistance rendered on behalf of the Government to any third party including those receiving grants or cooperative agreements.

(d) Surveys, studies, and research which provide specific information desired by the Government for its direct activities or for dissemination to the public.

(e) Consulting or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.

(f) Planning for Government use.

(g) Conferences conducted in behalf of the Government.

(h) Production of publications or audiovisual materials required primarily for the conduct of the direct operations of the Government.

(i) Design or development of items for Government use or pursuant to agency definition or specifications.

(j) Generation of management information or other data for Government use.

4401.7002 Assistance.

Assistance may take the form of either grants or cooperative agreements and include:

(a) General financial assistance (stimulation or support) to eligible recipients under specific legislation authorizing such assistance.

(b) Financial assistance (stimulation or support) to a specific program activity eligible for such assistance under specific legislation authorizing such assistance.

4401.7002-1 Grants.

Grants are to be used whenever the principal purpose of the relationship is to transfer money, property, services, or

anything else of value to a recipient to accomplish a public purpose. The support of stimulation to be accomplished by this transfer must be authorized by Federal statute and substantial involvement is not anticipated.

4401.7001-2 Cooperative agreements.

Cooperative agreements are to be used whenever the principal purpose of the relationship is the transfer of money, property, service, or anything else of value to recipients to accomplish a public purpose. The support or stimulation to be accomplished by this transfer must be authorized by Federal statute and substantial involvement is anticipated.

4401.7002-3 Examples of unsubstantial involvement.

Involvement is not substantial and a grant is the proper instrument if the following types of involvement are planned:

(a) Approval of recipient plans prior to award.

(b) Normal Federal stewardship such as site visits, performance reporting, financial reporting, and audits to ensure that objectives, terms, and conditions of the grants are met.

(c) Unanticipated involvement to correct deficiencies in project or financial performance from the terms of the grants.

(d) General statutory requirements understood in advance of the award such as civil rights, environmental protection, and provision for the handicapped.

(e) Review of performance after completion.

(f) General administrative requirements, such as those included in OMB Circulars A-21, A-95, A-110, and A-102.

4401.7002-4 Examples of substantial involvement.

Involvement is substantial and a cooperative agreement is the proper instrument when the following types of involvement are planned.

(a) Agency review and approval of one stage before work can begin on a subsequent stage during the period covered by the cooperative agreement.

(b) Agency and recipient collaboration or joint participation in the performance of the assisted activities.

(c) Highly prescriptive agency requirements prior to award limiting recipient discretion with respect to scope of services offered, organizational structure, staffing, mode of operation and other management processes, coupled with close agency monitoring or operational involvement during performance over and above the normal exercise of Federal stewardship responsibilities to ensure compliance with these requirements.

(d) General administrative requirements beyond those included in OMB Circulars A-102 and A-110.

PART 4402—DEFINITION OF WORDS AND TERMS

Subpart 4402-1—Definitions

4402.100 Definitions.

"Agency" means the Federal Emergency Management Agency (FEMA).

"Director" means the Director of the Federal Emergency Management Agency.

"Interagency agreement" means an agreement between two or more agencies, bureaus, or departments of the Federal Government by which supplies, services, or property are provided to, or obtained from, one or more agencies, bureaus, or departments of the Federal Government. Funds are transferred between the parties as consideration for the supplies, services, or property.

"Memorandum of Understanding" means an agreement between two or more agencies, bureaus, or departments of the Federal Government. Funds are not transferred between parties.

"Program office" means any office which generates requests for procurement actions.

"Project officer" means the program office representative cognizant over the technical aspects of a given procurement action.

(Sec. 205(c), 63 Stat. 390; 49 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943)

PART 4403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 4403.1—Safeguards

Sec.

4403.101-2 Solicitation and acceptance of gratuities by Government personnel.
4403.101-3 Agency regulations.
4403.103 Independent pricing.
4403.103-2 Evaluating the certification.

Subpart 4403.2—Contractor Gratuities to Government Personnel

4403.203 Reporting suspected violations of the Gratuities clause.
4403.204 Treatment of violations.

Subpart 4403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

4403.602 Exceptions.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

Subpart 4403.1—Safeguards

4403.101-2 Solicitation and acceptance of gratuities by Government personnel.

Exceptions to the prohibition against soliciting or accepting gratuities are explained in 44 CFR 3, Subpart B.

4403.101-3 Agency regulations.

FEMA "Standards of Conduct" are published in 44 CFR 3. They include requirements for financial disclosure.

4403.103 Independent pricing.

4403.103-2 Evaluating the certification.

The Director, Office of Acquisition Management, is authorized to make the determination described in FAR 3.103-2(b)(2).

Subpart 4403.2—Contractor Gratuities to Government Personnel

4403.203 Reporting suspected violations of the Gratuities clause.

Suspected violations shall be reported to the FEMA Office of the Inspector General. A report shall include all facts and circumstances relevant to the case.

4403.204 Treatment of violations.

Following review and any necessary investigation, the Inspector General shall make recommendations to the Director or a designee. If action is to be taken against a contractor, the contractor shall be given the opportunity for a hearing in accordance with FAR 3.204(b).

Subpart 4403.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

4403.602 Exceptions.

The Director, Office of Acquisition Management, may authorize an exception to the policy in FAR 3.601, based on facts and circumstances provided by the program office.

PART 4405—PUBLICIZING CONTRACT ACTIONS

Sec.

4405.001 Policy.

Subpart 4405.2—Synopsis of Proposed Contracts

4405.206 Synopsis of subcontract opportunities.

Subpart 4405.5—Paid Advertisements

4405.502 Authority.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

4405.001 Policy

The agency shall continually search for and develop information on sources (including small businesses owned and controlled by one or more socially or economically disadvantaged individuals) competent to provide supplies or services. Advance publicity, including use of the Commerce Business Daily to the fullest extent practicable, shall be used for this purpose. The search should include a review of data or brochures furnished by sources seeking to do business with the agency. It also should include program personnel, small business specialists, and contracting officers to obtain information and recommendations with respect to potential sources and to consider seeking other sources by publication of proposed procurements.

Subpart 4405.2—Synopsis of Proposed Contracts

4405.206 Synopsis of subcontract opportunities.

Unless it is not in the Government's interest, the contracting officer shall make the solicitation source list available to firms requesting it for subcontracting opportunities on contracts exceeding $10,000.

Subpart 4405.5—Paid Advertisements

4405.502 Authority.

In accordance with 44 CFR 2.67, authority to approve publication of paid advertisements in newspapers has been delegated to the Director, Office of Administrative Support.

SUBCHAPTER B—ACQUISITION PLANNING

PART 4407—ACQUISITION PLANNING

Subpart 4407.3—Contractor Versus Government Performance

4407.307 Appeals.

FEMA's A–76 appeals procedures are published in 44 CFR 14.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943)

PART 4408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 4408.8—Acquisition of Printing and Related Supplies

4408.802 Policy.

Contracting officers shall obtain approval from the Director, Office of Administrative Support, FEMA's central printing authority, before contracting for printing.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978; 43 FR 41943)

PART 4409—CONTRACTOR QUALIFICATIONS

Subpart 4409.4—Debarment, Suspension, and Ineligibility

Sec.
4409.404 Consolidated list of debarred, suspended, and ineligible contractors.
4409.406 Debarment.
4409.406–1 General.
4409.406–3 Procedures.
4409.407 Suspension.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

Subpart 4409.4—Debarment, Suspension, and Ineligibility

4409.404 Consolidated list of debarred, suspended, and ineligible contractors.

The Director, Office of Acquisition Management, will notify GSA, maintain records, establish procedures, and direct inquiries as required by FAR 9.404(c).

4409.406 Debarment.

4409.406–1 General.

The Executive Administrator shall be the debarring official.

4409.406–3 Procedures.

(a) Determination to debar or take other action concerning a firm or individual for a cause listed in FAR 9.406–2 shall be made by the Executive Administrator. Whenever cause for debarment becomes known to any contracting officer, the matter shall be submitted, with recommendations of the Director, Office of Acquisition Management, to the Executive Administrator for appropriate action. The documented file of the case will be included in the submission.

(b) If the Executive Administrator concurs in the proposed debarment, a notice of proposal to debar shall be issued by the Executive Administrator or designee.

(c) The Executive Administrator or designee shall conduct any hearings requested in connection with debarment proceedings. The firm or individual shall have the opportunity to appear with witnesses and counsel to present facts or circumstances showing cause why such firm or individual should not be debarred. If the firm or individual elects not to appear, or if the firm or individual does not respond within 30 days from receipt of the written notice, the reviewing authority will make the decision based on the facts on record and such additional evidence as may be furnished by the parties involved. After consideration of the facts, the reviewing authority shall notify the firm or individual of the final decision.

(d) Appeals may be taken within 30 days after receipt by the firm or individual of a decision to debar. Appeals shall be filed with the Director, FEMA, who shall make a decision based on the record. The Director's decision shall be final.

4409.407 Suspension.

4409.407–1 General.

The Executive Administrator shall be the suspending official.

4409.407–3 Procedures.

(a) Any contracting officer may recommend suspension of bidders. These recommendations shall be accompanied by the documented file in the case and be submitted through the Director, Office of Acquisition Management, to the Executive Administrator. The Executive Administrator shall issue the notice of suspension.

(b) The Director, Office of Acquisition Management, shall develop and maintain suspension procedures.

PART 4412—CONTRACT DELIVERY OR PERFORMANCE

Subpart 4412.3—Priorities, Allocations, and Allotments

4412.303 Procedures.

Rejected rated orders or ACM orders shall be sent to the Department of Commerce through the head of the contracting activity.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943)

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 4414—FORMAL ADVERTISING

Subpart 4414.2—Solicitation of Bids

Sec.
4414.202 General rules for solicitation of bids.
4414.202–1 Bidding time.
4414.202–2 Telegraphic bids.

Subpart 4414.4—Opening of Bids and Award of Contract

4414.401 Receipt and safeguarding of bids.
4414.402 Opening of bids.
4414.406 Mistakes in bids.
4414.406–3 Other mistakes disclosed before award.
4414.407 Award.
4414.407–8 Protests against award.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

Subpart 4414.2—Solicitation of Bids

4414.202 General rules for solicitation of bids.

4414.202-1 Bidding time.

(a) Procurement action which does not provide for at least 30 calendar days shall be justified by the contracting officer before releasing the invitation for bids. This justification shall be a finding of fact which establishes the basis for the exception.

(b) Thirty calendar days shall not be construed as the maximum bidding time. Each prospective procurement shall be examined on its own merits to determine the bidding time that will facilitate competition on reasonable and equal terms.

4414.202-2 Telegraphic bids.

Telegraphic bids will be authorized only by the contracting officer who shall document the file as to the need for telegraphic bids.

Subpart 4414.4—Opening of Bids and Award of Contract

4414.401 Receipt and safeguarding of bids.

(a) Envelopes or other outer coverings containing identified bids shall be stamped or otherwise marked to show the office of receipt, the time of day received, and the date. The individual receiving the bids shall then initial under the marking.

(b) A copy of the envelope or other covering bearing the documentation of a bid that was opened by mistake shall be retained in the file.

4414.402 Opening of bids.

The contracting officer, or duly authorized representative, shall be designated as the bid opening officer.

4414.406 Mistakes in bids.

4414.406-3 Other mistakes disclosed before award.

The Director, Office of Acquisition Management, is delegated the authority to make the determinations concerning mistakes in bid other than obvious clerical errors discovered prior to award. Each such determination shall be approved by the Office of General Counsel prior to notification of the bidder.

4414.407 Award.

4414.407-8 Protests against award.

(a) *General.* (1) The contracting officer shall pursue resolution of all protests. If the protest cannot be resolved, or if it has filed with GAO, the contracting officer shall send a report to the HCA. Report contents are as described in FAR 14.407-8(a)(2). The HCA shall recommend a course of action or send the report to the Office of General Counsel. All communication with GAO concerning a protest shall be coordinated through the HCA and the Office of General Counsel.

(2) The contracting officer shall give the protestor the final decision within 30 working days after receipt of the protest. A formal report shall be submitted to GAO within 25 working days after receipt of a request from GAO. To meet these dates, the contracting officer shall submit the report to the HCA within 10 working days after receipt of the protest or GAO's request for comment.

(b) *Protests before award.* If there is a protest, the contracting officer must have the approval of the HCA before awarding a contract. The contracting officer shall send a written determination with the request for approval. When the protest has been filed with GAO, the HCA shall notify the Office of General Counsel before authorizing award.

(c) *Protests after award.* The contracting officer's report also shall contain:

(1) Current status of the contract, indicating whether performance has commenced, shipment or delivery has been made, or a stop work order has been issued, and

(2) Copies of any agreement with the contractor, if applicable, to suspend performance.

(d) *Timeliness.* A protest filed with the contracting officer shall be filed to be received at the procuring office not later than five working days after the basis for protest is known or reasonably should have been known, whichever is earlier.

(3) *Records.* The HCA shall maintain records relating to all protests received. The records shall show the number and nature of formal protests received (whether filed directly with FEMA or with GAO), their disposition, and the time for resolutions. These records will be reviewed annually to update protest procedures.

PART 4415—CONTRACTING BY NEGOTIATION

Subpart 4415.1—General Requirements for Negotiation

Sec.

4415.105 Competition.
4415.105-70 Noncompetitive acquisitions.
4415.105-71 Preference for local contractors.

Subpart 4415.3—Determinations and Findings To Justify Negotiation

4415.307 Signatory authority.

Subpart 4415.4—Solicitation and Receipt of Proposals and Quotations

4415.406-5 Part IV—Representations and instructions.
4415.413 Disclosure and use of information before award.
4415.413-2 Alternate II.
4415.413-70 Policy.
4415.413-71 Release of information during the solicitation phase.
4415.413-72 Disposition of unsuccessful proposals.

Subpart 4415.5—Unsolicited Proposals

4415.500 Scope of subpart.
4415.502 Policy.
4415.502-70 Cost sharing.
4415.506 Agency procedures.

Subpart 4415.6—Source Selection

4415.612 Formal source selection.

Subpart 4415.8—Price Negotiation

4415.803 General.

Subpart 4415.10—Preaward and Postaward Notifications, Protests, and Mistakes

4415.1002 Debriefing of unsuccessful offerors.
4415.1003 Negotiated procurement protests.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

Subpart 4415.1—General Requirements for Negotiation

4415.105 Competition.

4415.105-70 Noncompetitive acquisitions.

Program offices shall give the contracting office a detailed recital of the circumstances justifying noncompetitive acquisition. If the acquisition is expected to exceed $1,000 but not the small purchase limit, the contracting officer can approve it. For all other acquisitions, both the justification and the contract file shall be submitted to the appropriate approval authority before issuing a solicitation:

(a) Acquisitions over the small purchase limit but not over $100,000—level above the contracting officer.

(b) Acquisitions over $100,000 but not over $500,000—the head of the contracting activity.

(c) Acquisitions over $500,000—the Executive Administrator.

4415.105-71 Preference for local contractors.

(a) This subsection establishes policies relating to local contractor preference to receive contract awards resulting from competitively negotiated solicitations under a Presidentially

declared major disaster or emergency operation.

(b) The geographic areas to which local contractor preference shall apply are those affected by the Presidentially declared disaster and designated in the Federal Register by the Assistant Associate Director, Office of Disaster Assistance Programs. Geographical areas shall be identified by county or other political subdivision.

(c) Pursuant to the provisions of Pub. L. 93–288(k), the provision set forth in 4452.215–70 shall be included in each competitively negotiated solicitation for disaster relief response.

(d) If the contracting officer determines it to be in the best interest of the Government, the provision set forth in 4452.215–70 need not be included in solicitations. Such determination shall be documented in the contract file with a findings and determination signed by the contracting officer and approved by the head of the contracting activity.

(e) If the contracting officer makes the determination of paragraph (d) above, local participation may be encouraged by:

(1) Setting the procurement aside for labor surplus area if the disaster area has been established as a labor surplus area;

(2) Advertising only in the local disaster area; and/or

(3) Dividing large requirements into several smaller requirements.

Subpart 4415.3—Determinations and Findings To Justify Negotiation

4415.307 Signatory authority.

The head of the contracting activity shall sign all class D&Fs not reserved to the agency head in FAR Table 15–1.

Subpart 4415.4—Solicitation and Receipt of Proposals and Quotations

4415.406–5 Part IV—Representations and instructions.

Each competitive solicitation shall contain the significant selection criteria, including the numerical weighting of each.

4415.413 Disclosure and use of information before award.

4415.413–2 Alternate II.

These alternate FAR procedures may be used if approved in writing by the head of the contracting activity.

4415.413–70 Policy.

It is FEMA policy to use information contained in proposals only for evaluation purposes unless information (a) is generally available to the public, (b) is already the property of the Government, (c) is already available to the Government with unrestricted use rights, or (d) is or has been made available to the Government without restriction.

4415.413–71 Release of information during the solictation phase.

No information shall be released during the solicitation phase, except as follows:

Each solicitation for a negotiated acquisition shall name an individual in the contracting office to respond to inquiries concerning the solicitation and evaluation of proposals resulting from the solicitation. All questions whether of a procedural or substantive nature shall be directed to that individual. No one else shall exchange comments with offerors or potential offerors. Questions requiring clarification of substantive portions of the solicitation shall be answered by amendment of the solicitation. A copy of the amendment shall be sent to each recipient of the solicitation.

4415.413–72 Disposition of unsuccessful proposals.

Unsuccessful proposals shall be disposed of as follows:

(a) All but one copy of each unsuccessful proposal shall be destroyed upon contract award. The one remaining copy of each shall be retained in the official contract file. At the end of six months it may be destroyed.

(b) Unsuccessful proposals shall not be used for purposes other than internal reference unless (1) written permission has been obtained from the offeror or (2) the proposal expressly states that unrestricted use is given to the Government regardless of its success in the competition.

Subpart 4415.5—Unsolicited Proposals

4415.500 Scope of subpart.

This subpart sets forth procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals.

4415.502 Policy.

4415.502–70 Cost sharing.

FEMA's Appropriation Act requires the contractor to cost share if a research contract results from an unsolicited proposal. This requirement may be waived only when it would not be equitable for the Government to require cost sharing. To waive, (a) the offeror must certify in writing to the contracting officer that it has no commercial, production, educational, or service activities on which to use the results of the research and that it has no means of recovering any cost on such projects; and (b) the contracting officer must make a written determination that there is no measurable gain to the performing organization and no mutuality of interest. This determination shall be placed in the contract file.

4415.506 Agency procedures.

(a) The Office of Acquisition Management is the point of contact for the receipt, acknowledgment, and handling of unsolicited proposals. Unsolicited proposals and requests for additional information regarding their preparation shall be submitted to:

Federal Emergency Management Agency, Office of Acquisition Management, Policy & Evaluation Division, 500 C Street SW., Room 728, Washington, DC 20472.

(b) Unsolicited proposals received by other FEMA offices shall be sent immediately to the Office of Acquisition Management, Policy & Evaluation Division.

(c) Unsolicited proposals shall be submitted in an original and five copies at least six months in advance of the date the offeror desires to begin work so that there will be enough time to evaluate the proposal and negotiate a contract.

4415.506–1 Receipt and initial review.

The Office of Acquisition Management shall acknowledge an unsolicited proposal. Simultaneously, copies of the proposal shall be sent to the appropriate program offices for evaluation.

Subpart 4415.6—Source Selection

4415.612 Formal source selection.

(a) All competitive acquisitions in excess of the small purchase limit shall be subject to a formal source selection procedure.

(b) The source selection organization consists of an evaluation board and a selection official. The contracting officer is the source selection official for acquisitions under $500,000. The head of the cognizant program office is the source selection official for acquisitions of $500,000 or more.

(c) The contracting officer shall establish the competitive range on all acquisitions. The range determination on acquisitions in excess of $500,000 will be approved by the source selection official.

(d) The contracting officer shall enter into final negotiations to reach agreement on terms and conditions with the firm or firms selected.

Subpart 4415.8—Price Negotiation

4415.803 General.

When all efforts to get a contractor to agree to a reasonable price or fee have failed, the contracting officer shall refer the matter to the head of the contracting activity.

Subpart 4415.10—Preaward and Postaward Notifications, Protests, and Mistakes

4415.1002 Debriefing of unsuccessful offerors.

Any unsuccessful offeror may write for a debriefing within two months after contract award. The contracting officer shall provide the debriefing.

4415.1003 Negotiated procurement protests.

Protests against award of negotiated contracts shall be processed in accordance with 4414.407–8 and FAR 14.407–8.

Part 4416—Types of Contracts

Subpart 4416.3—Cost-Reimbursement Contracts

Sec.
4416.303 Cost-sharing contracts.

Subpart 4416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

4416.603 Letter contracts.
4416.603–3 Limitations.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

Subpart 4416.3—Cost-Reimbursement Contracts

4416.303 Cost-sharing contracts.

(a) This subsection sets forth basic guidelines governing cost-sharing contracts.

(b)(1) Cost sharing with non-Federal organizations shall be encouraged in contracts for basic or applied research in which both parties have considerable interest.

(2) Contracting officers shall assure themselves of the following in determining contract type:

(i) The research effort has more than minor relevance to the non-Federal activities of the performing organization and is not primarily a service to the Government.

(ii) The performing organization has adequate non-Federal sources of funds from which to make a cash contribution.

(iii) The performing organization is engaged primarily in production or other service activities, as opposed to research and development, and is in a favorable position to make a cost contribution.

(iv) The principal purpose of the contract is research.

(v) Payment of the full cost of the project is not necessary in order to obtain the services of the particular organization.

(3) FEMA's Appropriation Act requires cost sharing by the contractor under research contracts resulting from unsolicited proposals. See 4415.502–70.

(c) Guidelines for determining the amount of cost sharing.

(1) For educational institutions and other not-for-profit or non-profit organizations, cost sharing may vary from 1 to 50 percent of the costs of the project. In some cases it may be appropriate for educational institutions to provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic-year salary of faculty members, or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities.

(2) The amount of cost participation by commercial or industrial organizations may vary from 1 percent or less to more than 50 percent of total project cost, depending upon the extent to which the research effort is likely to enhance the performing organization's capability, expertise, or competitive position, and the value of such enhancement to the performing organization. Recognize, however, that organizations predominately engaged in research and development with little other activity may not be able to derive a monetary benefit from the research under Federal agreements.

(3) A fee will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing normal fee on the research. However, if the research is expected to be of major value to the performing organization and if cost sharing is not required by statue, it may be appropriate for the performer to make a contribution in the form of a reduced fee rather than sharing the costs of the project.

(4) Each cost-sharing contract negotiated shall contain the clause in 4452.216–70.

Subpart 4416.6—Time-and-Materials, Labor-Hours, and Letter Contracts

4416.603 Letter contracts.

4416.603–3 Limitations.

A letter contract may be used only if the head of the contracting activity executes a determination and finding that not other contract type is suitable.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 4419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 4419.2—Policies

4419.201 General policy.

(a) The Director, Office of Equal Opportunity, is also the Director, Office of Small and Disadvantaged Business Utilization.

(b) The Chief, Policy and Evaluation Division, Office of Acquisition Management, is the small business technical advisor.

(c) Each contracting officer is a small and disadvantaged business utilization specialist.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943)

PART 4424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 4424.2—Freedom of Information Act

4424.202 Policy.

FEMA's Freedom of Information Act policy is codified at 44 CFR 5.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978; 43 FR 41943)

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 4429—TAXES

Subpart 4429.1—General

4429.101 Resolving tax problems.

(a) The Office of General Counsel is responsible, within FEMA, for handling all tax problems. It also is responsible for asking the Department of Justice for representation or intervention in proceedings concerning taxes.

(b) The contracting officer shall request, in writing, the assistance of the Office of General Counsel in resolving a tax problem. The request shall detail the problem and include supporting information. The Office of General Counsel shall inform the contracting officer of the disposition of the tax problem and the contracting officer will tell the contractor.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943)

PART 4432—CONTRACT FINANCING

Subpart 4432.4—Advance Payments

4432.402 General.

The head of the contracting activity has responsibility and authority to make findings and determinations and to approve or disapprove contract terms.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943)

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 4435—RESEARCH AND DEVELOPMENT CONTRACTING

4435.003 Policy.

Cost-sharing policy for research and development contracts is stated in 4415.502–70.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943)

PART 4436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 4436.6—Architect-Engineer Services

Sec.
4436.602–2 Evaluation boards.
4436.602–4 Selection authority.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

Subpart 4436.6—Architect-Engineer Services

4436.602–2 Evaluation boards.

(a) Each architect-engineer evaluation board, permanent or ad hoc, shall have at least five voting members and one alternate. These will be Federal employees. A majority of the voting members will be from the program office.

(b) During the selection process, a board member or advisor may have, or appear to have, a conflict of interest regarding a firm in the competition. Immediately upon becoming aware of a potential conflict or an appearance of a conflict, the member or advisor shall notify the board chairperson who shall, in turn, inform the Office of General Counsel. The Office of General Counsel shall make a final determination on the conflict issue.

(c) The evaluation board is to be insulated from outside pressures. Information concerning board deliberations shall be divulged only to persons having a need-to-know.

(a) Heads of program offices which may require architect-engineer services are designated as selection authorities for acquisitions of architect-engineer services.

(b) A determination shall be sent to the contracting officer listing the selected firms in order of preference.

SUBCHAPTER H—CLAUSES AND FORMS

PART 4452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 4452.2—Texts of Provisions and Clauses

Sec.
4452.215–70 Preference for local contractors in Presidentially declared major disasters or emergencies.
4452.227–70 Reproduction of reports.
4452.227–71 Coordination of Federal reporting requirements.
4452.227–72 Publication.
4452.239–70 Rights in technical data and computer software.
4452.239–71 Rights in technical data—specific acquisition.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

Subpart 4452—Clauses and Forms

4452.215–70 Preference for local contractors in Presidentially declared major disasters or emergencies.

Pursuant to the provisions of Pub. L. 93–288 and 4415.105–71, the following provisions shall be included in each competitively negotiated solicitation for on-site disaster relief response:

Preference for Local Contractors

In awarding any contract pursuant to this solicitation, the Government shall give preference to local organizations, firms, and individuals residing or doing business primarily in the geographic area identified as the disaster area.

The contracting officer reserves the right to request offerors to furnish documentation to demonstrate eligibility for local contractor preference. To be eligible, the offeror shall have been residing (in the case of individuals) or doing the major portion of its business (in the case of business entities) in the disaster area.

An offeror for which eligibility is established (local offeror) shall be permitted to meet the lowest price received from an otherwise eligible non-local offeror, provided that the proposed price from the local offeror does not exceed 130 percent of the price of the non-local offeror. The lowest priced local offeror within 130 percent of the lowest non-local price shall have the first chance to meet the non-local price. If the local offeror meets the lowest non-local price and is determined to be responsible, award shall be made. If the non-local offer is not met, the next lowest local offeror within 130 percent shall have the chance to meet the lowest non-local price. This process shall continue until award is made to a local offeror within the 130 percent requirement or the supply of such local offerors is exhausted and award made to the lowest non-local offerors.

(End of clause)

4452.227–70 Reproduction of reports.

Include the following clause when the product of the contract is a report, data, or other written material.

Reproduction of Reports

Reproduction of reports, data, or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is to be determined by multiplying pages times copies. A production unit is one sheet, size 8½ by 11 inches or less, printed on one side only, and in one color. All copy preparation to produce camera-ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils, masters, and plates which are to be used on single-unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10¾ by 14¼ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducibles (camera-ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data, or other written material.

(End of clause)

4452.227–71 Coordination of Federal reporting requirements.

The following clause shall be included in contracts when appropriate:

Coordination of Federal Reporting Services

In the event that it is a contractual requirement to collect information from 10 or more public respondents, the provisions of 44 U.S.C., Chapter 35 (Coordination of Federal Reporting Requirements), shall apply to this contract. The contractor shall obtain through the project officer the required Office of Management and Budget clearance before making public contacts for the collection of data or expending any funds for such collection. The authority to proceed with the collection of data from public respondents and the expenditure of funds therefore shall be in writing signed by the contracting officer.

(End of clause)

4452.227–72 Publication.

The following clause shall be used in all contracts under which it is anticipated that a report will be a product:

Publication

(a) *Definition.* For the purpose of this clause, "publication" includes (1) any document containing information intended

for public consumption or (2) the act of, or any act which may result in, disclosing information to the public.

(b) *General.* The results of the research and development and studies conducted under this contract are to be made available to the public through dedication, assignment to the Government, or such other means as the Director of the Federal Emergency Management Agency shall determine.

(c) *Reports furnished the Government.* All intermediate and final reports of the research and development and studies conducted hereunder shall indicate on the cover or other initial page that the research and development and studies forming the basis for the report were conducted pursuant to a contract with the Federal Emergency Management Agency. Such reports are official Government property and may not be published or reproduced (in toto, in verbatim excerpt, or in a form approximating either of these) as an unofficial paper or article. The contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or any subcontractor hereunder) may publish such reports in whole or in part in a non-Government publication only in accordance with this paragraph (c) and paragraph (e)(1) of this clause.

(d) *Publication by Government.* The Government shall have full right to publish all information, data, and findings developed as a result of the research and development and studies conducted hereunder.

(e) *Publication by contractor or technical personnel.*—(1) *Publication in whole or in part of contractor's reports furnished the Government.* Unless such reports have been placed in the public domain by Government publication, the contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or any subcontractor hereunder) may publish a report furnished the Government, in toto or in verbatim excerpt, but consistent with paragraph (c) of this clause may not secure copyright therein, subject to the following conditions, and the conditions in paragraph (e)(4) and paragraph (f):

(i) During the first six months after submission of the full final report, if written permission to publish is obtained from the contracting officer.

(ii) After six months following submission of the full report, and if paragraph (e)(3) is inapplicable, if a foreword or footnote in the non-Government publication indicates the source of the verbatim material.

(2) *Publication, except verbatim excerpts, concerning or based in whole or in part on results of research and development and studies hereunder.* The contractor or technical personnel may issue a publication concerning, or based in whole or in part on the results of, the research and development and studies conducted under this contract and may secure copyright therein, but in so publishing is not authorized thereby to inhibit the unrestricted right of the Director of the Federal Emergency Management Agency to disclose or publish, in such manner as he may deem to be in the public interest, the results of such research and development and studies, subject to the following conditions and the requirement in paragraph (e)(4):

(i) During the first six months after submission of the full final report, and if paragraph (e)(3) is inapplicable, if written waiver of the waiting period is obtained from the contracting officer.

(ii) After six months following submission of the full final report, and if paragraph (e)(3) is inapplicable, subject to Government exercise of an option that the publication contain a foreword or initial footnote substantially as follows:

The (research) (development) (studies) forming (part of) the basis for this publication were conducted pursuant to a contract with the Federal Emergency Management Agency. The substance of such (research) (development) (studies) is dedicated to the public. The author and publisher are solely responsible for the accuracy of statements or interpretations contained herein.

(3) *General condition if FEMA determines that contractor's final report contains patentable subject matter developed in contract performance.* If the contracting officer determines that the contractor's full final report contains patentable subject matter developed in the performance of this contract and so notifies the contractor in writing prior to six months from date of submission of such report, no publication of verbatim excerpts from contractor's reports or publication concerning or based in whole or in part on the results of the research and development and studies hereunder shall be made without the written consent of the contracting officer.

(4) *Copies of contractor and technical personnel publications to be furnished the Government.* The contractor or technical personnel will furnish the contracting officer six copies of any publications which are based in whole or in part on the research and development and studies conducted under this contract.

(f) *Administratively confidential information.* The contractor shall not publish or otherwise disclose, except to the Government and except matters of public record, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a publication whereby the information or data furnished by any particular person or establishment can be identified, except with the consent of such person or establishment.

(g) *Inclusion of provisions in contractor's agreements.* The contractor shall include provisions appropriate to effectuate the purposes of this clause in all contracts of employment with persons who perform any part of the research or development or study under this contract and in any consultant's agreements or subcontracts involving research or development or study hereunder.

(End of clause)

4452.239-70 Rights in technical data and computer software.

Rights in Data

(a) *Definitions.* (1) Technical data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications standards, process sheets, manuals, technical reports, catalog item identifications and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost or pricing, and management data or other information incidental to contract administration.

(2) Computer means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on these data, or a device that operates on analog data by performing physical processes on the data.

(3) Computer software means computer programs and computer data bases.

(4) Computer program means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

(5) Computer data base means a collection of data in a form capable of being processed and operated on by a computer.

(6) Computer software documentation means technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(7) Unlimited rights means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(8) Limited rights means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (a) released or disclosed in whole or in part outside the Government; (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or (c) used by a party other than the Government, except for:

(i) Emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, provided that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release of disclosure; or

(ii) Release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above.

(9) Restricted rights apply only to computer software, and include, as a minimum, the right to:

(i) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) Copy computer programs for safekeeping (archives) or backup purposes;

(iv) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights; and

(v) Treat computer software bearing a copyright notice as a published copyrighted work; and in addition, any other specific rights not inconsistent therewith listed or described in this contract or described in a license or agreement made a part of this contract.

(b) *Government right.*—(1) *Unlimited rights.* The Government shall have unlimited rights in:

(i) Technical data and computer software resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) Computer data bases, prepared under Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) Technical data necessary to enable manufacture of end items, components, and modifications, or to enable the performance of processes, when the items, components, modifications or processes have been, or are being, developed under this or any other Government contract or subcontract in which experimental, developmental, or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software develolped at private expense (but see (2)(ii) below);

(v) Technical data or computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) Technical data pertaining to end items, components, or processes, prepared or required to be delivered under this or any other Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements ("form, fit, and function" data; e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(vii) Manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance, or training purposes;

(viii) Technical data or computer software which is in the public domain, or has been or is normally furnished without restriction by the contractor or subcontractor; and

(ix) Technical data or computer software listed or described in an agreement incorporated into the schedule of this contract which the parties have predetermined, on the basis or subparagraphs (i) through (viii) above, and agreed will be furnished with unlimited rights.

(2) *Limited rights.* The Government shall have limited rights in:

(i) Technical data listed or described in an agreement incorporated into the Schedule of this contract which the parties have agreed will be furnished with limited rights; and

(ii) Technical data pertaining to items, components, or processes developed at private expense, and computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in (b)(1)(i), (v), (viii), and (ix); provided that only the portion or portions of each piece of data to which limited rights are to be asserted pursuant to (2)(i) and (ii) above are identified (for example, by circling, underscoring, or a note), that the piece of data is marked with the legend below in which is inserted:

A. The number of the contract under which the technical data is to be delivered.

B. The name of the contractor and any subcontractor by whom the technical data was generated, and

C. An explanation of the method used to identify limited rights data.

Limited Rights Legend

Contract No. _____
Contractor: _____

Explanation of Limited Rights

Identification Method Used

_____

_____

Those portions of this technical data indicated as limited rights data shall not, without the written permission of the above contractor, be either (a) used, released, or disclosed in whole or in part outside the Government; (b) used in whole or in part by the Government for manufacture or, in the case of computer software documentation, for preparing the same or similar computer software; or (c) used by a party other than the Government, except for: (i) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, provided that the release or disclosure hereof outside the Government shall be made subject to a prohibition against further use, release, or disclosure; or (ii) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above. This legend, together with the indications of the portions of this data which are subject to such limitations shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Restricted rights.* The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which parties have agreed will be furnished with restricted rights, provided however notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights in (a)(9)(i) through (v). Such restricted rights are of no effect unless the computer software is marked by the contractor with the following legend: Restricted Rights Legend

Use, duplication, or disclosure is subject to restrictions stated in Contract No.————— with————(name of contractor)————, and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to, any data or computer software which the contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this paragraph shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(c) *Material covered by copyright.* (1) In addition to the rights granted under the provisions of (b) above, the contractor agrees to and does hereby grant to the Government a royalty-free nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all technical data, except computer software documentation bearing a copyright notice and furnished in support of restricted rights computer software, and unlimited rights computer software prepared or required to be delivered under the contract, now or hereafter covered by copyright.

(2) Copyrighted matter shall not be included in technical data furnished hereunder without the written permission of the copyright owner for the Government to use such copyright matter in the manner described in (c)(1) above, unless the written approval of the contracting officer is obtained.

(3) The contractor shall report to the Government (or higher-tier contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the contractor with respect to any technical data or computer software delivered hereunder.

(d) *Removal of unauthorized markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data or computer software furnished hereunder if:

(1) The contractor fails to respond within 60 days to a written inquiry by the Government concerning the propriety of the markings; or

(2) The contractor's response fails to substantiate, within 60 days after written notice, the propriety of limited rights markings by clear and convincing evidence, or of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the contractor of the action taken.

(e) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) *Limitation on charges for data and computer software.* The contractor recognizes that the Government or a foreign government with funds derived through the Military Assistance Program, or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the contractor for charges for the use of technical data or computer software on account of such a contract. The contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data or computer software which the Government has a right to use and disclose to others, which is in the public domain, or which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data or computer software. In recognition of this policy, the contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the contractor with respect to any such charges not so excluded.

(g) *Acquisition of data and computer software from subcontractors.* (1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the contractor's rights in that subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights pursuant to (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime contractor.

(3) The contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

(End of clause)

4452.239-71 Rights in technical data—specific acquisition.

Rights in Data—Specific Acquisition

(a) *Definition.* Technical data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost or pricing, and management data, or other information incidental to contract administration.

(b) *Government rights.* The Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all or any part of the technical data delivered by the contractor to the Government under this contract.

(c) *Material covered by copyright.*

(1) In addition to the rights granted under the provisions of (b) above, the contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive, and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all technical data required to be delivered under the contract now or hereafter covered by copyright.

(2) Copyrighted matter shall not be included in technical data furnished hereunder without the written permission of the copyright owner for the Government to use such copyrighted matter in the manner described in (c)(1) above, unless the written approval of the contracting officer is obtained.

(3) The contractor shall report to the Government (or higher-tier contractor) promptly, and in reasonable written detail, each notice or claim of copyright infringement received by the contractor with respect to any technical data delivered hereunder.

(d) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Limitation on charges for data.* The contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the contractor for charges for the use of technical data on account of such a contract. The contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others which is in the public domain, which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the contractor with respect to any such charges not so excluded.

(End of clause)

Dated: March 22, 1984.

Louis O. Giuffrida,

Director.

[FR Doc. 84-8365 Filed 3-28-84; 8:45 am]

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federal register

Thursday
March 29, 1984

Part V

Department of Defense

Department of the Army, Corps of Engineers

33 CFR Parts 320, 323, 325, and 330

Regulations for Controlling Certain Activities in Waters of the United States; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army

33 CFR Parts 320, 323, 325, and 330

Proposal To Amend Permit Regulations for Controlling Certain Activities in Waters of the United States

AGENCY: Army Corps of Engineers, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army is proposing to amend the Corps of Engineers permit regulations for controlling certain activities in the waters of the United States. These amendments are being proposed in accordance with a settlement agreement reached in *National Wildlife Federation v. Marsh*, No. 83-3632 (D.D.C. December 22, 1982). We are proposing several policy and procedural changes and modifications to certain nationwide permits. These modifications would become effective after public comment and opportunity to request a public hearing and determination that these modifications are in the public interest.

DATE: Written comments must be received by May 29, 1984.

ADDRESS: Office of the Chief of Engineers, ATTN: DAEN-CWO-N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Collinson or Mr. Bernie Goode, Regulatory Branch (202) 272-0199.

SUPPLEMENTARY INFORMATION:

Why Revisions to the Regulations Are Being Proposed

In December of 1982, 16 environmental organizations filed suit against the Army and the U.S. Environmental Protection Agency (*NWF v. Marsh*) over several provisions of the Corps of Engineers interim final regulation published in the July 22, 1982, **Federal Register** (47 FR 31794). On February 10, 1984, the court approved a settlement agreement between the plaintiffs and defendants whereby the Army agreed to publish regulations proposing several policy and procedural changes and modifications to certain nationwide permits. This settlement agreement has been endorsed by the Army, EPA, the Department of Justice and by the 16 environmental organizations. The Army believes the settlement agreement strikes a reasonable balance between environmental protection and an effective and responsive regulatory program. The settlement agreement does not commit the Army to promulgate any particular final regulations. The Army will consider the comments received on these proposed regulations in promulgating its final regulations. Final regulations will be issued following evaluation of comments received on these proposes rules. The settlement agreement requires that we publish final regulations by September 8, 1984.

The Proposed Changes

Part 320—General Regulatory Policies

Section 320.4(a)(1): This section would be changed to clarify that 404 discharges must comply with the 404(b)(1) guidelines. This section would also be revised to state that, subject to applicable legal requirements, a Corps permit will be granted unless the district engineer determines that it will be contrary to the public interest.

Section 320.4(b)(4): The last two sentences of this section would be changed to state that the district engineer shall apply the 404(b)(1) guidelines (40 CFR 230.10(a) (1), (2), (3)) in evaluating whether a particular discharge affecting wetlands should be permitted.

Section 320.4(c): The last sentence of this section would be replaced with a sentence that states that district engineers will give "full consideration" to the views of federal and state fish and wildlife agencies in permit decisions.

Section 320.4(g)(1): This section would be reworded to recognize the rights of property owners to reasonable prove use of their property, and that these rights are subject to national interests and the rights of the general public in waters of the United States. If this subparagraph is adopted, existing subparagraphs (1) through (4) would be renumbered (2) through (5) respectively.

Section 320.4(j)(2): This section would be changed by adding "preservation of special aquatic areas, including wetlands, with significant interstate importance" to the list of significant issues of overriding national importance.

Part 323—Permits for Discharges of Dredged or Fill Materials Into Waters of the United States

Section 323.4(a)(3): This section would be revised to clarify the types of appurtenant structures to irrigation facilities for which associated discharges are exempt from the provisions of these regulations, except as specified in paragraph (b) and (c) of this section.

Section 323.6(a): This section would be revised to state that district engineers will deny permits for discharges which fail to comply with the 404(b)(1) guidelines, unless the economic impact on navigation and anchorage necessitate permit issuance pursuant to Section 404(b)(2).

Part 325—Permit Processing

Section 325.3: A new paragraph (b) would be added to clarify public notice procedures for any new general permit, or for modification or reissuance of existing general permits. This paragraph would provide that the public notice state the availability of information which indicates that the proposed activities comply with general permit requirements. If this paragraph is adopted, the existing paragraphs (b) and (c) would be redesignated as paragraphs (c) and (d), respectively.

Section 325.4: This section would be revised to clarify the district engineers' authority to condition permits and to identify circumstances in which he shall deny permits if conditions which are necessary to protect the public interest cannot be reasonably implemented or enforced, or cannot otherwise be required. This section would also provide that under certain conditions off-site mitigation may be required.

Part 330—Nationwide Permits

Section 330.4: This section would be replaced with a new section discussing public notice requirements for nationwide permits including making available to the public information which demonstrates compliance with general permit criteria. The nationwide permits now found in § 330.4 will be consolidated, revised, and placed at § 330.5(a)(26). See discussion below.

Section 330.5(a) (7), (17), (21): These nationwide permits would be modified to include a reference to new § 330.7.

Section 330.5(a)(23): This nationwide permit would be modified to require that the Chief of Engineers would solicit comments through a **Federal Register** notice on another Federal agency's categorical exclusions prior to determining whether those categorical exclusions qualify for authorization under this nationwide permit.

Section 330.5(a)(26): This nationwide permit is a modification of the headwaters and isolated waters nationwide permits found at § 330.4(a) (1) and (2) in the interim final regulations. We are proposing to exclude from nationwide permit (26) any discharge which would cause the loss or substantial adverse modification of 10 or more acres of water of the United States including wetlands. This nationwide permit would be further modified to require a pre-discharge notification to the district engineer for any discharge

which would cause the loss or substantial adverse modification of from 1 to 10 acres.

Section 330.7: This new section establishes procedures which would be followed by district and division engineers upon receipt of pre-discharge notifications required for certain of the nationwide permits. These procedures provide for coordination with Federal and State resource agencies in certain situations and that each notification be reviewed for compliance with the terms and conditions of the appropriate nationwide permit and with the definition of a general permit. Any discharge which does not so comply will require an individual permit. Section 330.7 of the interim final regulations would be revised and moved to § 330.8 as discussed below.

Section 330.8: This section would also be changed to recognize that the general permittee's right to proceed under the nationwide permits may be modified, suspended or revoked only in accordance with procedures similar to those for individual permittees. Section 330.8 in the interim final regulations would become § 330.9.

State Certification of Nationwide Permits

In our proposed regulation changes of May 12, 1983 (48 FR 21466), we stated that we were allowing all States to reconsider certification of nationwide permits pursuant to Section 401 of the Clean Water Act. Also, coastal States with approved coastal zone management plans were allowed to reconsider consistency determinations under the Coastal Zone Management Act. The Office of the Chief of Engineers is now sending a letter to those States which expressed 401 certification and CZM consistency concerns to ask for a final position. All of the changes to the nationwide permit program being proposed today should reduce the earlier concerns expressed by the States.

Public Hearing Requests

Any person may request a public hearing on proposed modifications to the nationwide permits. If the Corps determines that a public hearing or hearings would assist in making a decision on the proposed modifications, a 30-day advance notice will be published in the **Federal Register** advising interested parties of the date(s) and location(s) for the hearing(s).

Nationwide Permits Documentation

The Corps will update the statement of finding and environmental documentation before modifying any of the nationwide permits. The documentation will include that required by the EPA guidelines adopted under Section 404(b)(1) of the CWA. The Corps will modify these permits only if they are found to be in the public interest and in compliance with the 404(b)(1) guidelines.

Note 1.—The Department of the Army has determined that the proposed regulation revisions do not contain a major proposal requiring the preparation of a regulatory analysis under E. O. 12291.

Note 2.—The term "he" and its derivatives used in these regulations is generic and should be considered as applying to both male and female.

List of Subjects

33 CFR Part 320

Environmental protection, Intergovernmental relations, Navigation, Water pollution control, Waterways.

33 CFR Part 323

Navigation, Water pollution control, Waterways.

33 CFR Part 325

Administrative practice and procedure, Intergovernmental relations, Environmental protection, Navigation, Water pollution control, Waterways.

33 CFR Part 330

Navigation, Water pollution control, Waterways.

Dated: March 22, 1984.

Approved:

Robert K. Dawson,

Deputy Assistant Secretary of the Army (Civil Works).

Accordingly, the Department of the Army proposes to amend 33 CFR Parts 320, 323, 325, and 330 as set forth below:

Authority: 33 U.S.C. 401 et seq., 33 U.S.C. 1344, 33 U.S.C. 1413.

PART 320—GENERAL REGULATORY POLICIES

1. Section 320.4 is amended by revising paragraphs (a)(1), (b)(4), (c), (g)(1), and (j)(2) to read:

§ 320.4 General policies for evaluating permit applications.

* * * * *

(a) *Public interest review.* (1) The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered including the cumulative effects thereof: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For acivities involving 404 discharges, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the proceding sentence and any other applicable guidelines or criteria (see §§ 320.2 and 320.3), a permit will be granted unless the district engineer determines that it would be contrary to the public interest.

* * * * *

(b) *Effect on wetlands.* * * *

(4) No permit will be granted which involves the alternation of wetlands identified as important by paragraph (b)(2) of this section or because of provisions of paragraph (b)(3) of this section, unless the district engineer concludes, on the basis of the analysis required in paragraph (a) of this section, that the benefits of the proposed alteration outweigh the damage to the wetlands resource. In evaluating whether a particular discharge activity should be permitted, the district engineer shall apply the Section 404(b)(1) guidelines (40 CFR 230.10(a)(1), (2), (3)).

* * * * *

(c) *Fish and wildlife.* In accordance with the Fish and Wildlife Coordination Act (see paragraph 320.3(e) of this Part), district engineers will consult with the Regional Director, U.S. Fish and Wildlife Service, the Regional Director, National Marine Fisheries Service, and the head of the agency responsible for fish and wildlife for the state in which work is to be performed, with a view to the

conservation of wildlife resources by prevention of their direct and indirect loss and damage due to the activity proposed in a permit application. The Army will give full consideration to the views of those agencies on fish and wildlife considerations in deciding on the issuance, denial, or conditioning of individual or general permits.

* * * * *

(g) *Consideration of property ownership.* Authorization of work or structures by the Department of the Army does not convey a property right, nor authorize any injury to property or invasion of other rights.

(1) An inherent aspect of property ownership is a right to reasonable private use. However, this right is subject to the rights and interests of the public in the navigable and other waters of the United States, including the federal navigation servitude and federal regulations for environmental protection.

* * * * *

(j) *Other Federal, state or local requirements.* * * *

(2) The primary responsibility for determining zoning and land use matters rests with state, local and tribal governments. The district engineer will normally accept decisions by such governments on those matters unless there are significant issues of overriding national importance. Such issues would include but are not necessarily limited to nationa security; navigation; national economic development; water quality; preservation of special aquatic areas, including wetlands, with significant interstate importance; and national energy needs. Whether a factor has overriding importance will depend on the degree of impact in an individual case.

* * * * *

PART 323—PERMITS FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES

2. Section 323.4 is amended by revising paragraph (a)(3) to read:

§ 323.4 Discharges not requiring permits.

(a) *General.* * * *

(3) Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches. Discharges associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exemption.

* * * * *

3. Section 323.6 is amended by revising paragraph (a) to read:

§ 323.6 Special policies and procedures.

(a) The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 404 permits. The district engineer will review applications for permits for the discharge of dredged or fill material into waters of the United States in accordance with guidelines promulgated by the Administrator, EPA, under authority of Section 404(b)(1) of the Clean Water Act (see 40 CFR Part 230). Subject to consideration of any economic impact on navigation and anchorage pursuant to Section 404(b)(2), a permit will be denied if the discharge that would be authorized by such permit would not comply with the EPA 404(b)(1) guidelines. If the district engineer determines that the proposed discharge would comply with the 404(b)(1) guidelines, he will grant the permit unless issuance would be contrary to the public interest.

* * * * *

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

4. Section 325.3 is amended by adding a new paragraph (b) and redesignating paragraphs (b) and (c) as (c) and (d) respectively as follows:

§ 325.3 Public notice.

* * * * *

(b) *Public notice for general permits.* District engineers will publish a public notice for all proposed regional permits and for significant modifications to, or reissuance of, existing regional permits within their area of jurisdiction. Public notices for statewide regional permits may be issued jointly by the affected Corps districts. The notice will include all applicable information necessary to provide a clear understanding of the proposal. In addition, the notice will state the availability of information at the district office which reveals the Corps' provisional determination that the proposed activities comply with the requirements for issuance of general permits. District engineers will publish a public notice for nationwide permits in accordance with 33 CFR 330.4.

(c) *Evaluation factors.* * * *

(d) *Distribution of public notices.* * * *

* * * * *

5. Section 325.4 is revised to read:

§ 325.4 Conditioning of permits.

(a) District engineers will add special conditions to Department of the Army permits when such conditions are necessary to satisfy legal requirements or to otherwise satisfy the public interest requirement. Permit conditions will be directly related to the impacts of the proposal, appropriate to the scope and degree of those impacts, and reasonably enforceable.

(1) Legal requirements which may be satisfied by means of Corps permit conditions include compliance with the 404(b)(1) guidelines, the EPA ocean dumping criteria, the Endangered Species Act, and requirements imposed by conditions on state Section 401 water quality certifications.

(2) Where appropriate, the district engineer may take into account the existence of controls imposed under other federal, state, or local programs which would achieve the objective of the desired condition, or the existence of an enforceable agreement between the applicant and another party concerned with the resource in question, in determining whether a proposal complies with the 404(b)(1) guidelines, ocean dumping criteria, and other applicable statutes, and is not contrary to the public interest. In such cases, the Department of the Army permit will be conditioned to state that material changes in, or a failure to implement and enforce such program or agreement, will be grounds for modifying, suspending, or revoking the permit.

(3) Such conditions may be acomplished on-site, or may be accomplished off-site for mitigation of significant losses which are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment.

(b) District engineers are authorized to add special conditions, exclusive of paragraph (a) of this section, at the applicant's request or to clarify the permit application.

(c) If the district engineer determines that special conditions are necessary to insure the proposal will not be contrary to the public interest, but those conditions would not be reasonably implementable or enforceable, he will deny the permit.

(d) *Bonds.* If the district engineer has reason to consider that the permittee might be prevented from completing work which is necessary to protect the public interest, he may require the permittee to post a bond of sufficient amount to indemnify the government against any loss as a result of corrective action it might take.

PART 330—NATIONWIDE PERMITS

6. Section 330.4 is revised to read as follows:

§ 330.4 Public notice.

(a) *Chief of Engineers.* Upon proposed issuance of new nationwide permits, modification to, or reissuance of, existing nationwide permits, the Chief of Engineers will publish a notice in the **Federal Register** seeking public comments and including the opportunity for a public hearing. This notice will state the availability of information at the Office of the Chief of Engineers and at all district offices which reveals the Corps' provisional determination that the proposed activities comply with the requirements for issuance under general permit authority. The Chief of Engineers will prepare this information which will be supplemented, if appropriate, by division engineers.

(b) *District engineers.* Concurrent with publication in the **Federal Register** of new or reissued nationwide permits by the Chief of Engineers, district engineers will so notify the interested public within the district by an appropriate notice. The notice will include regional conditions, if any, developed by the division engineer.

7. Section 330.5 is amended by revising the introductory text paragraph of (a), paragraphs (a)(7), (a)(17), (a)(21), and (a)(23) and adding (a)(26) as follows:

§ 330.5 Nationwide permits.

(a) *Authorized activities.* The following activities, including discharges of dredged or fill material, are hereby permitted provided the conditions listed in paragraph (b) of this section and the notification procedures, where required, of § 330.7 are met:

* * * * *

(7) Outfall structures and associated intake structures where the effluent from that outfall has been permitted under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act) (see 40 CFR Part 122) provided that the district or division engineer makes a determination that the individual and cumulative adverse environmental effects of the structure itself are minimal in accordance with § 330.7(c)(2) and (d). Intake structures per se are not included—only those directly associated with an outfall structure are covered by this nationwide permit.

* * * * *

(17) Fills associated with small hydropower projects at existing reservoirs where the project which includes the fill is licensed by the Department of Energy under the Federal Power Act of 1920, as amended; has a total generating capacity of not more than 1500 kw (2,000 horsepower); qualifies for the short-form licensing procedures of the Department of Energy (see 18 CFR 4.61); and the district or division engineer makes a determination that the individual and cumulative adverse effects on the environment are minimal in accordance with § 330.7(c)(2) and (d).

* * * * *

(21) Structures, work, and discharges associated with surface coal mining activities provided they are authorized by the Department of the Interior, Office of Surface Mining, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977; the appropriate district engineer is given the opportunity to review the Title V permit application and all relevant Office of Surface Mining or state (as the case may be) documentation prior to any decision on that application; and the district or division engineer makes a determination that the individual and cumulative adverse effects on the environment from such structures, work, or discharges are minimal in accordance with § 330.7(c)(2) and (3) and (d).

* * * * *

(23) Activities, work, and discharges undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another federal agency or department where that agency or department has determined, pursuant to the CEQ Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN: DAEN–CWO–N) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Prior to approval for purposes of this nationwide permit of any agency's categorical exclusions, the Chief of Engineers will solicit comments through publication in the **Federal Register**.

* * * * *

(26) Discharges of dredged or fill material into the waters listed in subparagraph (i) and (ii) of this paragraph which do not cause the loss or substantial adverse modification of 10 acres or more of waters of the United States, including wetlands. For discharges which cause the loss or substantial adverse modification of 1 to 10 acres of such waters, including wetlands, notification of the district engineer is required in accordance with § 330.7 of this part.

(i) Non-tidal rivers, streams, and their lakes and impoundments, including adjacent wetlands, that are located above the headwaters.

(ii) Other non-tidal waters of the United States, including adjacent wetlands, (see 33 CFR 323.2(a)(3)) that are not part of a surface tributary system to interstate waters or navigable waters of the United States (i.e., isolated waters).

8. Section 330.8 is redesignated as § 330.9.

9. Section 330.7 is redesignated 330.8 and new § 330.7 added to read as follows:

§ 330.7 Notification procedures.

(a) The general permittee shall not begin discharges requiring pre-discharge notification pursuant to the nationwide permit at § 330.5(a)(26):

(1) Until notified by the district engineer that the work may proceed under the nationwide permit with any special conditions imposed by the district or division engineer; or

(2) If notified by the district or division engineer that an individual permit may be required; or

(3) Unless 20 days have passed from receipt of the notification by the district engineer and no notice has been received from the district or division engineer.

(b) Notification pursuant to the nationwide permit at § 330.5(a)(26) must be in writing and include the information listed below. Notification is not an admission that the proposed work would result in more than minimal impacts to waters of the United States; it simply allows the district or division engineer to evaluate specific activities for compliance with general permit criteria.

(1) Name, address, and phone number of the general permittee;

(2) Location of the planned work;

(3) Brief description of the proposed work, its purpose, and the approximate size of the waters, including wetlands, which would be lost or substantially adversely modified as a result of the work; and

(4) Any specific information required by the nationwide permit and any other information that the permittee believes is appropriate.

(c) *District engineer review of notification.* Upon receipt of

notification, the district engineer will promptly review the general permittee's notification to determine which of the following procedures should be followed:

(1) If the nationwide permit at § 330.5(a)(26) is involved and the district engineer determines either, (i) the proposed activity falls within a class of discharges or will occur in a category of waters which has been previously identified by the Regional Administrator, Environmental Protection Agency; the Regional Director, Fish and Wildlife Service; the Regional Director, National Marine Fisheries Service; or the heads of the appropriate state natural resource agencies as being of particular interest to those agencies; or (ii) the particular discharge has not been previously identified but he believes it may be of importance to those agencies, he will promptly forward the notification to the division engineer and the head and appropriate staff officials of those agencies to afford those agencies an adequate opportunity before such discharge occurs to consider such notification and express their views, if any, to the district engineer concerning whether individual permits should be required.

(2) If the nationwide permits at § 330.5(a) (7), (17) or (21) are involved and the Environmental Protection Agency, the Fish and Wildlife Service, the National Marine Fisheries Service or the appropriate state natural resource or water quality agencies forward concerns to the district engineer, he will forward those concerns to the division engineer together with a statement of the factors pertinent to a determination of the environmental effects of the proposed discharges, including those set forth in the 404(b)(1) guidelines, and his views on the specific points raised by those agencies.

(3) If the nationwide permit at § 330.5(a)(21) is involved the district engineer will give notice to the Environmental Protection Agency and the appropriate state water quality agency. This notice will include as a minimum the information required by paragraph (b) of this section.

(d) *Division engineer review of notification.* The division engineer will review all notifications referred to him in accordance with paragraph (c)(1) or (c)(2) of this section. The division engineer will require an individual permit when he determines that an activity does not comply with the terms or conditions of a nationwide permit or does not meet the definition of a general permit (see 33 CFR 322.2(f) and 323.2(n)) including discharges under the nationwide permit at § 330.5(a)(26) which have more than minimal adverse environmental effects on the aquatic environment when viewed either cumulatively or separately. In reaching his decision, he will review factors pertinent to a determination of the environmental effects of the proposed discharge, including those set forth in the 404(b)(1) guidelines, and will give full consideration to the views, if any, of the federal and state natural resource agencies identified in paragraph (c) of this section. If the division engineer decides that an individual permit is not required, and a federal or appropriate state natural resource agency has indicated in writing that an activity may result in more than minimal adverse environmental impacts, he will prepare a written statement, available to the public on request, which sets forth his response to the specific points raised by the commenting agency. When the division engineer reaches his decision he will notify the district engineer, who will immediately notify the general permittee of the division engineer's decision.

10. The redesignated § 330.8 is amended by revising the beginning paragraph and adding a new paragraph (d) as follows:

§ 330.8 Discretionary authority.

Except as provided in paragraph (d) below, division engineers on their own initiative or upon recommendation of a district engineer are authorized to modify nationwide permits by adding regional conditions or to override nationwide permits by requiring individual permit applications on a case-by-case basis. Discretionary authority will be based on concerns for the aquatic environment as expressed in the guidelines published by EPA pursuant to Section 404(b)(1). (40 CFR Part 230)

* * * * *

(d) For the nationwide permit found at § 330.5(a)(26), after the applicable provisions of § 330.7(a) (1) and (3) have been satisfied, the permittee's right to proceed under the general permit may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 325.7.

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S. 912 / Pub. L. 98–243

To modify the authority for the Richard B. Russell Dam and Lake project, and for other purposes. (Mar. 26, 1984; 98 Stat. 106) Price: $1.50

H.R. 2809 / Pub. L. 98–244

National Fish and Wildlife Foundation Establishment Act (Mar. 26, 1984; 98 Stat. 107) Price: $1.50