

[Airspace Docket No. 60-AN-33]

**PART 600—DESIGNATION OF
FEDERAL AIRWAYS****PART 601—DESIGNATION OF CON-
TROLLED AIRSPACE, REPORTING
POINTS, POSITIVE CONTROL ROUTE
SEGMENTS, AND POSITIVE CON-
TROL AREAS****Alteration**

On February 28, 1961, there were published in the *FEDERAL REGISTER* (26 F.R. 1715) amendments to the regulations of the Administrator which extended Blue Federal airway No. 26 and its associated control areas from Fairbanks, Alaska, to Fort Yukon, Alaska, and designated the Fort Yukon radio beacon as a reporting point. These amendments were to become effective July 26, 1962.

Because of a delay in delivery of equipment for the Fort Yukon RBN, the installation of this facility will not be completed until January 1963. Accordingly, action is taken herein to alter Airspace Docket No. 60-AN-33 by postponing the effective date until January 10, 1963. Appropriate adjustments in this will be made if developments prior to effective date merits them.

Since more than thirty days will elapse from the time of publication of the rule as initially adopted to the new effective date, these changes are in compliance with section 4 of the Administrative Procedure Act.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) effective immediately, Airspace Docket No. 60-AN-33 (26 F.R. 1715) is amended as follows: "Effective 0001, e.s.t., July 26, 1962" is deleted and "Effective 0001, e.s.t., January 10, 1963" is substituted therefor. (Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on April 20, 1962.

D. D. THOMAS,
Director, Air Traffic Service.

[F.R. Doc. 62-4095; Filed, Apr. 26, 1962;
8:46 a.m.]

[Airspace Docket No. 62-SW-21]

**PART 601—DESIGNATION OF CON-
TROLLED AIRSPACE, REPORTING
POINTS, POSITIVE CONTROL ROUTE
SEGMENTS, AND POSITIVE CON-
TROL AREAS****Alteration of Control Area Extension**

The purpose of this amendment to § 601.1202 of the regulations of the Administrator is to alter the Tucumcari, N. Mex., control area extension.

The Tucumcari control area extension is designated within 5 miles either side of the Tucumcari radio range north and south courses extending from 25 miles north to 25 miles south of the radio range and within 11 miles north and 8 miles south of the Tucumcari VOR 267° and 087° True radials extending from 7 miles east to 24 miles west of the VOR.

The portion of this control area extension based on the Tucumcari radio range is no longer required for air traffic control purposes. Therefore, action is taken herein to revoke the portion of the Tucumcari control area extension based on this navigational aid.

Since this amendment is less restrictive in nature than present requirements, notice and public procedure hereon are unnecessary and it may be made effective immediately. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, this amendment will become effective more than 30 days after publication.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582), § 601.1202 (26 F.R. 12287) is amended to read:

**§ 601.1202 Control area extension
(Tucumcari, N. Mex.).**

That airspace within 11 miles N and 8 miles S of the Tucumcari, N. Mex. VOR 267° and 087° radials extending from 7 miles E to 24 miles W of the VOR.

This amendment shall become effective 0001, e.s.t., June 28, 1962.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on April 20, 1962.

D. D. THOMAS,
Director, Air Traffic Service.

[F.R. Doc. 62-4097; Filed, Apr. 26, 1962;
8:46 a.m.]

[Airspace Docket No. 62-WE-32]

**PART 601—DESIGNATION OF CON-
TROLLED AIRSPACE, REPORTING
POINTS, POSITIVE CONTROL ROUTE
SEGMENTS, AND POSITIVE CON-
TROL AREAS****Alteration of Control Zone**

The purpose of this amendment to Part 601 of the regulations of the Administrator is to alter the Long Beach, Calif., control zone.

The Long Beach, Calif., control zone (§ 601.2178) is presently designated, in part, within a 5-mile radius of the NAS Los Alamitos, Calif. This portion of the control zone presently passes through the center of the Sunset Beach Airport. It has been determined that the air traffic procedures at Long Beach and NAS Los Alamitos would not be adversely affected if the Sunset Beach Airport were excluded from the description of the Long Beach control zone. Therefore, action is taken herein to exclude the Sunset Beach Airport from the Long Beach control zone.

Since the change effected by this amendment is less restrictive in nature than present requirements, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and it may be made effective immediately.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582),

radial to the Nenana VOR with the southwest course of the Fairbanks ILS localizer to the Fairbanks ILS localizer via the Nenana VOR, including the area within 16 miles either side of the centerline of the airway and its west alternate at and above 24,000 feet MSL from the Anchorage VOR to the Fairbanks ILS localizer. It has been determined that utilization of the Fairbanks ILS middle marker compass locator will provide more precise navigational guidance for aircraft en route to the terminating point of the airway and its west alternate than as designated at present. Accordingly, action is taken herein to extend Victor 438 from its present termination at the Fairbanks ILS localizer to the Fairbanks ILS middle marker, and to realign the portion of the west alternate between Nenana and Fairbanks to terminate at the Fairbanks ILS middle marker. In addition, the Fairbanks ILS localizer is being revoked as a reporting point, and the Fairbanks ILS middle marker designated in lieu thereof.

Since these changes are minor or procedural in nature and impose no additional burden on any person, notice and public procedure hereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, these amendments will become effective more than 30 days after publication.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582), the following actions are taken:

1. In the text of § 600.6438 (27 F.R. 561), "to the Fairbanks, Alaska, ILS localizer, including a W alternate from the INT of the Anchorage VOR direct radial to the Nenana VOR with the SW course of the Fairbanks ILS localizer to the Fairbanks ILS localizer via the Nenana VOR, including the area within 16 miles either side of the centerline of the airway and its W alternate at and above 24,000 feet MSL from the Anchorage VOR to the Fairbanks ILS localizer," is deleted and "Fairbanks ILS localizer; to the Fairbanks ILS MM, including a W alternate from the INT of the Anchorage VOR direct radial to the Nenana VOR with the Fairbanks ILS localizer SW course, to the Fairbanks ILS MM via the Nenana VOR, including the area within 16 miles either side of the centerline of the airway and its W alternate at and above 24,000 feet MSL from the Anchorage VOR to the Fairbanks ILS MM." is substituted therefor.

2. In § 601.7001 (14 CFR 601.7001, 27 F.R. 562) "Fairbanks, Alaska, ILS localizer," is deleted and "Fairbanks, Alaska, ILS MM," is substituted therefor.

These amendments shall become effective 0001, e.s.t., June 28, 1962.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on April 20, 1962.

D. D. THOMAS,
Director, Air Traffic Service.

[F.R. Doc. 62-4094; Filed, Apr. 26, 1962;
8:45 a.m.]

§ 601.2178 (14 CFR 601.2178) is amended to read:

§ 601.2178 Long Beach, Calif., control zone.

Within a 5-mile radius of Long Beach, Calif., Municipal Airport (latitude 33°49'07" N., longitude 118°09'04" W.); within a 5-mile radius of the NAS Los Alamitos, Calif., (latitude 33°47'30" N., longitude 118°02'50" W.), excluding the portion within a 1-mile radius of the Sunset Beach, Calif., Airport (latitude 33°43'10" N., longitude 118°02'10" W.).

This amendment shall become effective upon the date of publication in the FEDERAL REGISTER.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on April 20, 1962.

D. D. THOMAS,
Director, Air Traffic Service.

[F.R. Doc. 62-4096; Filed, Apr. 26, 1962; 8:46 a.m.]

[Airspace Docket No. 62-SW-18]

PART 601—DESIGNATION OF CONTROLLED AIRSPACE, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Alteration of Control Zone

The purpose of this amendment to § 601.2263 of the regulations of the Administrator is to alter the Lafayette, La., control zone.

The Lafayette control zone is designated, in part, on the Lafayette radio beacon.

The control zone extension based on this navigational aid is no longer required for air traffic control purposes. Therefore, action is taken herein to revoke the control zone extension based on the Lafayette radio beacon.

Since this change effected by this amendment is less restrictive in nature, notice and public procedure hereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, this amendment will become effective more than thirty days after publication.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582), § 601.2263 (26 F.R. 6236) is amended to read:

§ 601.2263 Lafayette, La., control zone.

Within a 5-mile radius of the Lafayette, La., Airport (latitude 30°12'00" N., longitude 91°59'40" W.); within 2 miles either side of the Lafayette ILS localizer N course extending from the 5-mile radius zone to the ILS OM and within 2 miles either side of the 172° radial of the Lafayette VOR extending from the 5-mile radius zone to 12 miles S of the VOR.

This amendment shall become effective 0001, e.s.t., June 28, 1962.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on April 20, 1962.

D. D. THOMAS,
Director, Air Traffic Service.

[F.R. Doc. 62-4096; Filed, Apr. 26, 1962; 8:46 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

COMBUSTION PRODUCT GAS

The Commissioner of Food and Drugs, having evaluated the data submitted by the Vitagen Corporation, 354 South Spring Street, Los Angeles 13, California, and other relevant material, has concluded that the following amendment to § 121.1060 should issue with respect to the food additive combustion product gas used for the displacing and removal of oxygen in the processing and packaging of fresh leafy vegetables. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (c) (1), 72 Stat. 1786; 21 U.S.C. 348(c) (1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), § 121.1060 of the food additive regulations is amended by adding to paragraph (c) the words "fresh leafy vegetables". As amended, paragraph (c) reads as follows:

§ 121.1060 Combustion product gas.

(c) It is used or intended for use to displace or remove oxygen in the processing, storage, or packaging of citrus products, coffee, fresh leafy vegetables, vegetable fats and vegetable oils, and wine.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: April 20, 1962.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 62-4127; Filed, Apr. 26, 1962; 8:49 a.m.]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

SURFACE LUBRICANTS USED IN THE MANUFACTURE OF METALLIC ARTICLES

The Commissioner of Food and Drugs, having evaluated data submitted in a petition filed by W. R. Grace and Company, Cambridge 40, Massachusetts, and other relevant material, has concluded that § 121.2531 of the food additive regulations should be amended as hereinafter provided. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), the regulations (21 CFR 121.2531; 26 F.R. 11800) are amended as set forth below:

Section 121.2531(c) is changed to read:

§ 121.2531 Surface lubricants used in the manufacture of metallic articles.

(c) Subject to any prescribed limitations, substances permitted to be used in surface lubricants in the manufacture of metallic articles include substances subject to prior sanction or approval for such use and employed under the conditions of use prescribed by such sanction or approval, substances generally recognized as safe for use in food, and the following substances:

Tert.—Butyl alcohol.
Castor oil.
Cottonseed oil monoglyceride.
Dipropylene glycol.
Isopropyl alcohol.
Mineral oil.
Myristic acid.
Oleic acid.
Paraffin, refined.
Polyoxyethylene (20) sorbitan monolaurate.
Polyvinyl alcohol.
Sorbitan monolaurate.
Stearic acid.
Triethanolamine.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must

state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: April 23, 1962.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 62-4128; Filed, Apr. 26, 1962;
8:49 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATIONS

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

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

1. Internal cross references in this subchapter are changed to read as indicated in the following tabulation:

Location of reference	From—	To—
Section	Section	Section
1.1903(b)(3)	3.405-5(c)	3.409-3
2.194-2	3.403-1	3.404-2
2.194-3	3.403-2	3.404-3
2.194-4(a)	3.405-5(a)	3.409-1
2.194-4(b)	3.405-5(b)	3.409-2
2.194-4(c)	3.405-5(c)	3.409-3
3.303(b)	3.403-4	3.404-4
3.303(b)	3.404	3.405
3.303(b)	3.404-3	3.405-5
3.303(b)	3.404-4	3.405-4
3.304(b)	3.403-4	3.404-4
3.304(b)	3.404	3.405
3.304(b)	3.404-3	3.405-5
3.304(b)	3.404-4	3.405-4
3.303(a)	3.402 lists	3.402 and 3.403 list.
3.308-3	3.403-4	3.404-4
3.308-3	3.404-4	3.405-4
3.308-5	3.406	3.407
7.102	3.404-3(c)	3.405-5(e)
7.108	3.403	3.404
7.109-2(a)	3.403-4(a)(2)	3.404-4(a)(2)
7.109-4(a)	3.403-3(b)(1)	3.404-5
7.109-6(a)	3.403-3(b)(3)	3.404-6
7.202	3.403-3(b)(5)	3.404-7
7.203-4(b)	3.404	3.405
7.401	3.404-4	3.405-4
7.601	3.404	3.405
8.702	3.403	3.404
13.501(a)	3.404	3.405
13.501(b)	3.403	3.404
15.102	3.404	3.405
15.102(a)	3.405-1	3.406-1
15.102(a)	3.405-1(d)	3.406-1(d)
15.103	3.404	3.405
15.104(c)	3.404	3.405
15.105	3.404	3.405
15.601(a)	3.403-1	3.404-2
15.601(b)	3.403-2	3.404-3
15.601(c)	3.403-3	3.404-5, 3.404-6 and 3.404-7.
15.601(d)	3.403-4	3.404-4
15.601(e)	3.405-1	3.406-1
15.601(f)	3.405-2	3.406-2
16.303-2(d)(1)	3.405-5	3.409

PART 3—PROCUREMENT BY NEGOTIATION

2. Revise Subpart D to read as follows:

Subpart D—Types of Contracts

- Sec. 3.400 Implementation.
- 3.401 Types of contracts.
- 3.402 Basic principles for use of contract types.
- 3.403 Negotiation of contract type.
- 3.404 Fixed-price contracts.
- 3.404-1 General.
- 3.404-2 Firm fixed-price contract.
- 3.404-3 Fixed-price contract with escalation.
- 3.404-4 Fixed-price incentive contracts.
- 3.404-5 Prospective price redetermination at a stated time or times during performance.
- 3.404-6 Retroactive and prospective price redetermination at a stated time during performance.
- 3.404-7 Retroactive price redetermination after completion.
- 3.405 Cost reimbursement type contracts.
- 3.405-1 General.
- 3.405-2 Cost contract.
- 3.405-3 Cost sharing contract.
- 3.405-4 Cost-plus-incentive-fee contract.
- 3.405-5 Cost-plus-a-fixed fee contract.
- 3.406 Other types of contracts.
- 3.406-1 Time and materials contracts.
- 3.406-2 Labor-hour contract.
- 3.407 Additional incentives.
- 3.407-1 General.
- 3.407-2 Contracts with performance incentives.
- 3.407-3 Contracts with value engineering incentives.
- 3.408 Letter contract.
- 3.409 Indefinite delivery type contracts.
- 3.410 Other types of agreements.
- 3.410-1 Basic agreement.

AUTHORITY: §§ 3.400 to 3.410-1 issued under R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

Source: ASPR, Rev. 8, March 15, 1962.

§ 3.400 Implementation.

In order to provide maximum uniformity in application, implementations of §§ 3.401 through 3.405 and 3.407-2 shall not be issued. In the event need exists for more detailed coverage of the subjects contained in the sections referred to, appropriate recommendations should be submitted to the ASPR Committee.

§ 3.401 Types of contracts.

(a) To provide the flexibility needed in the purchase of the large variety and volume of military supplies and services, a wide selection of types of contracts is available to the contracting parties. The respective contract types vary as to (1) the degree and timing of responsibility assumed by the contractor for the costs of performance, and (2) the amount and type of profit incentive offered the contractor to achieve or exceed specified standards or goals. With regard to degree of cost responsibility, the various types of contracts may be arranged in order of decreasing contractor responsibility for the costs of performance. At one end is the firm fixed-price contract under which the parties agree that the contractor assumes full responsibility in the form of profits or losses, for all costs under or over the

firm fixed price. At the other end of this range is the cost-plus-a-fixed-fee contract where profit, rather than price, is fixed and the contractor's cost responsibility is therefore minimal. In between are the various incentive contracts which provide for varying degrees of contractor cost responsibility, depending upon the degree of uncertainty involved in contract performance.

(b) Pursuant to the authority of 10 U.S.C. 2306, a contract negotiated under this part may be of any type or combination of types described herein which will promote the best interests of the Government, subject to the restrictions described below. Types of contracts not described herein shall not be used, unless pursuant to a deviation under § 1.109 of this chapter. The cost-plus-a-percentage-of-cost system of contracting shall not be used. Accordingly, all prime contracts (including letter contracts) on other than a firm fixed-price basis shall prohibit cost-plus-a-percentage-of-cost subcontracts by an appropriate clause.

§ 3.402 Basic principles for use of contract types.

(a) **General.** (1) Profit, generally, is the basic motive of business enterprise. Both the Government and its defense contractors should be concerned with harnessing this motive to work for the truly effective and economical contract performance required in the interest of national defense. To this end, the parties should seek to negotiate and use the contract type best calculated to stimulate outstanding performance. The objective should be to insure that outstandingly effective and economical performance is met by high profits, mediocre performance by mediocre profits, and poor performance by low profits or losses. The proper application of these objectives on a contract by contract basis should normally result in range of profit rates.

(2) Success in harnessing the profit motive begins with the negotiation of sound performance goals and standards. This objective is met if the contractor either benefits or loses in relation to achieving or failing to achieve realistic targets. Where award is based on effective price competition, there is reasonable assurance that the contract price represents a realistic pricing standard, including a profit factor which reflects an appropriate return to the contractor for the financial risk assumed in undertaking performance at the competitive price. In the absence of competitive forces, however, the contract type selected should provide for a profit factor that will tie profits to the contractor's efficiency in controlling costs and meeting desired standards of performance, reliability, quality, and delivery. Therefore, in noncompetitive situations, the degree to which available cost estimates are realistic should be carefully considered in determining which type of contract should be selected and how it should be used, especially where the contractor is to assume substantial cost responsibility, since it is to his advantage to maximize the difference between esti-

mated costs and actual costs in price negotiation as well as in contract performance. If estimated costs are negotiated on the basis of reliable cost or pricing at the time of negotiation in accordance with Subpart H of this part, a contract type providing a high profit potential and concomitant contractor risks, may be entirely appropriate even though there is a possibility that actual costs will vary widely from the estimate.

(3) The policies in subparagraphs (1) and (2) of this paragraph require that the contractor assume a reasonable degree of cost responsibility as early in contract performance as is possible. This can be achieved only through vigorous contract administration and effort on the part of both parties to assure timely pricing. Particularly in fixed-price type contracts providing for price revisions, delays in pricing actions by either party may distort the type of contract which has been agreed upon, and such delays must be avoided.

(4) Where a contract type providing for a reasonable degree of contractor cost responsibility cannot be negotiated on a timely basis, due to the contractor's unwillingness to assume reasonable risk, profits should be negotiated so as to reflect this fact (see § 3.808-2(b)).

(b) *Preferred contract types.* (1) The firm fixed-price contract is the most preferred type because the contractor accepts full cost responsibility, and the relationship between cost control and profit dollars is established at the outset of the contract. Accordingly, whenever a reasonable basis for firm pricing exists (see § 3.404-2), the firm fixed-price contract shall be used, because its use under these circumstances will provide the contractor with a maximum profit incentive to control the costs of performance. Similarly, a profit incentive to control costs can be achieved through use of the fixed-price incentive contract, and to a lesser degree, the cost-plus-incentive-fee contract, where appropriate target costs and incentive arrangements can be negotiated.

(2) In many procurement situations objectives other than cost control, for example, performance and time goals in the case of development projects, may also be significant. Such objectives may be (i) performance with a view toward a better or more reliable product; (ii) delivery when it is necessary to obtain supplies or services with the utmost speed to meet military needs; or (iii) a combination of any of the objectives of cost, performance, and delivery (see § 3.407). A contractual arrangement can be used to provide incentive to obtain these objectives in addition to effective cost control. Thus, by providing for increased profit for exceeding predetermined target levels and decreased profit for failing to meet target levels, an additional incentive is credited for maximum effort on the part of the contractor to accomplish the desired objectives. When additional objectives are made a part of the various types of incentive contracts described in this subpart (§§ 3.404-4 and 3.405-4), particular care must be taken by the contracting officer to maintain an appropriate balance between the various incentives, by weighting incentive objec-

tives to apportion the total incentive profits or fee in accordance with the emphasis desired by, and maximum benefit to, the Government. Without proper balancing of the incentive objectives, the Government may receive at unwarranted expense, a product of greater quality than desired or delivery before needed.

§ 3.403 Negotiation of contract type.

(a) *General.* The selection of contract type is generally a matter for negotiation and requires the exercise of judgment. Type of contract and pricing are interrelated and should be considered together in negotiation in accordance with § 3.803. Because the type of contract affects the resulting price to the Government, use of an appropriate type is of primary importance in obtaining fair and reasonable prices. Each contract file shall include documentation to show why the particular contract type was used, except for the following: First, small purchases (Subpart F of this part); second, repetitive types of procurement usually accomplished on a firm fixed-price basis, such as subsistence procurement; or third, awards made on the set-aside portion of formally advertised procurements partially set aside for either small business, labor surplus or disaster areas. Although no absolute rules can be laid down, there are many factors which should be considered in the use of an appropriate type of contract, including those which follow:

(1) *Price analysis.* See § 3.807-3. Price analysis may provide a basis for selection of contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered, even where there may not be full and free competition.

(2) *The cost estimate.* In the absence of effective price competition and where price analysis is not sufficient, the cost estimates of the offeror and of the Government are the bases for negotiation of many pricing arrangements. As a minimum, the uncertainties involved in performing at the cost estimated, and their possible impact on costs, must be identified and evaluated so that a pricing arrangement can be negotiated which imposes a reasonable degree of cost responsibility upon the contractor. The following are some of the considerations which may influence the estimate and hence, the selection of contract type:

- (i) Type and complexity of the item;
- (ii) Stability of design, which in turn may influence such subordinate considerations as the adequacy and firmness of specifications, and the availability of relevant historical pricing data and prior production experience;
- (iii) Prospective period of contract performance and length of production run at the time of negotiation;
- (iv) Extent and nature of subcontracting contemplated;
- (v) Adequacy of the contractor's estimating system; and

(3) *Urgency of the requirement.* In certain procurements the best interests of the Government may dictate that the urgency of the requirement be a primary consideration in selection of contract type.

(4) *Technical capability and financial responsibility of the contractor.*

(5) *Adequacy of the contractor's accounting system.* Before reaching agreement on price and contract type, determination should be made that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated. This may be particularly critical where the contract type requires revision of price while performance is in progress, or where a cost-reimbursement type of contract is being considered and all current or past experience with the contractor has been on a fixed-price basis (see § 3.809).

(6) *Other concurrent contracts.* If performance under a proposed procurement involves operations which concurrently are required in performance of other work, the nature of the pricing arrangements on the other work may be important in selecting the contract type for the proposed procurement. This factor may not be so important where close controls exist that will assure proper allocation of costs.

(b) *Research.* In the majority of research programs, including preliminary explorations and studies, the work to be performed cannot be described precisely. Hence, the negotiation of cost-plus-a-fixed-fee or cost-sharing contracts frequently is necessary. However, where the level of contractor effort desired can be identified and agreed upon in advance of performance, negotiation of a firm fixed-price contract should be considered.

(c) *Development and test.* Where possible, a final commitment to undertake specific product development and test should be avoided until preliminary exploration and studies have indicated a high degree of probability that the development is feasible and the Government generally has determined its desired performance objectives and schedule of completion. As a result, the Government should be able to make such desired objectives known to prospective contractors in advance of source selection. In all major system developments, and in other development programs where use of cost and performance incentives are considered desirable and administratively practicable, the request for proposals should describe the Government's desired performance and schedule completion objectives and the type of contract contemplated. The request for proposals should also include the relative weights which the Government attaches to these objectives, and to cost factors. Where such relative weights are included in the request, proposals should be required to include proposed targets for the accomplishment of the Government's desired performance and schedule completion objectives, together with an estimate of the cost of doing so. Then, to the extent practical, performance and schedule completion targets proposed by each prospective contractor in meeting the Government's desired objectives, together with the estimated cost thereof, should be considered by the Government in the com-

petitive contractor selection process. Where this approach to contractor selection has been used, the resulting development program should be performed under an incentive contract which includes performance, schedule completion, and cost targets, the requisite test procedures against which attainment of performance targets will be measured, and provisions for varying profits to the extent targets are or are not met. In order to provide the maximum incentive, the range of profit variation should, in each case, be as wide as practical (see § 3.405-4(b)). The introduction of incentives into development is of such compelling importance that, to the extent practicable, firms not willing to negotiate appropriate incentive provisions may be excluded from consideration for the award of development contracts.

§ 3.404 Fixed-price contracts.

§ 3.404-1 General.

Fixed-price contracts are of several types so designed as to facilitate proper pricing under varying circumstances. The fixed-price type contracts provide for a firm price, or under appropriate circumstances may provide for an adjustable price, for the supplies or services which are being procured. In providing for an adjustable price, the contract may fix a ceiling price, target price (including target cost), or minimum price. Unless otherwise provided in the contract, any such ceiling, target, or minimum price is subject to adjustment only if required by the operation of any contract clause which provides for equitable adjustment, escalation, or other revision of the contract price upon the occurrence of an event or a contingency.

§ 3.404-2 Firm fixed-price contract.

(a) *Description.* The firm fixed-price contract provides for a price which is not subject to any adjustment by reason of the cost experience of the contractor, in the performance of the contract. This type of contract, when appropriately applied as set forth below, places maximum risk upon the contractor. Because the contractor assumes full responsibility, in the form of profits or losses, for all costs under or over the firm fixed-price, he has a maximum profit incentive for effective cost control and contract performance. Use of the firm fixed-price contract imposes a minimum administrative burden on the contracting parties.

(b) *Application.* The firm fixed-price contract is suitable for use in procurements when reasonably definite design or performance specifications are available and whenever fair and reasonable prices can be established at the outset, such as where:

- (1) Adequate competition has made initial proposals effective;
- (2) Prior purchases of the same or similar supplies or services under competitive conditions or supported by valid cost or pricing data provide reasonable price comparisons;
- (3) Cost or pricing information is available permitting the development of

realistic estimates of the probable costs of performance;

(4) The uncertainties involved in contract performance can be identified and reasonable estimates of their possible impact on costs made, and the contractor is willing to accept a firm fixed price at a level which represents assumption of a reasonable proportion of the risks involved; or

(5) Any other reasonable basis for pricing can be used consistent with the purpose of this type of contract.

The firm fixed-price contract is particularly suitable in the purchase of standard or modified commercial items, or military items for which sound prices can be developed.

§ 3.404-3 Fixed-price contract with escalation.

(a) *Description.* The fixed-price contract with escalation provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies which are specifically defined in the contract. The risks in a fixed-price contract are reduced by the inclusion of escalation provisions in which the parties agree to revise the stated price upon the happening of a prescribed contingency. Where escalation is agreed upon, upward adjustments shall be limited by the establishment of a reasonable ceiling, and provisions will be included for downward adjustments in those instances where the prices or rates fall below the base levels provided in the contract. In the establishment of the base levels from which escalation will operate, contingency allowances shall be eliminated from the base to be set forth in the contract to the extent that escalation is provided for any particular contingency. Generally, escalation provisions are of two broad types:

(1) Price escalation provides for adjustment of the contract price on the basis of increases or decreases from an agreed upon level in published or established prices of specific items or in price levels of the contract end items.

(2) Labor and material escalation provides for adjustment of the contract price on the basis of increases or decreases from agreed standards or indices in wage rates, specific material costs, or both.

(b) *Application.* Use of this type of contract is appropriate where serious doubt exists as to the stability of market and labor conditions which will exist during an extended period of production and where contingencies which would otherwise be included in a firm fixed-price contract are identifiable and can be covered separately by escalation. Its usefulness is limited by the difficulties inherent in its administration. To the extent possible, escalation should be restricted to industrywide contingencies and labor and material escalation should be limited to contingencies beyond the normal control of the contractor.

§ 3.404-4 Fixed-price incentive contracts.

(a) *Description.*—(1) *General.* The fixed-price incentive contract is a fixed-

price type contract with provision for adjustment of profit and establishment of the final contract price by a formula based on the relationship which final negotiated total cost bears to total target costs.

(2) *Firm target.* Under this type of incentive contract there is negotiated at the outset a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a formula for establishing final profit and price. After performance of the contract, the final cost is negotiated and the final contract price is then established in accordance with the formula. Where the final cost is less than target cost, application of the formula results in a final profit greater than the target profit; conversely, where final cost is more than target cost, application of the formula results in a final profit less than the target profit, or even a net loss. Thus, within the price ceiling, the formula provides for the Government and the contractor to share the responsibility for costs greater or less than those originally estimated, as determined by a comparison of negotiated final cost with target cost. Because the profit resulting from application of the formula is in inverse relationship to costs, the formula provides the contractor in advance with a calculable profit incentive to control costs. To provide an incentive consistent with the circumstances, the formula should reflect the relative risks involved in contract performance. Thus, it is appropriate in certain procurements to establish a formula which provides for contractor assumption of a considerable or major share of total cost responsibility. In such circumstances, when a major share of total cost responsibility is assumed by the contractor, every consideration will be given to establishing target profits which reflect assumption of such responsibility.

(3) *Successive targets.* Under this type of incentive contract there is negotiated at the outset an initial target cost, an initial target profit, a price ceiling, a formula for fixing the firm target profit, and a production point at which the formula will be applied. Generally, the production point will be prior to delivery or shop completion of the first item. This formula does not apply for the life of the contract but simply is used to fix the firm target profit for the contract. The initial formula shall also provide for a ceiling and floor on the firm target profit. To provide an incentive consistent with the circumstances, the formula for fixing the firm target profit should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset (see paragraph (b) (3) of this section). Thus, it normally will not provide for as great a degree of contractor cost responsibility as would a formula for establishing final profit and price. When the production point for applying the formula is reached, the firm target cost is then negotiated, consideration being given to experienced cost and all other pertinent factors, and the firm target profit is automatically determined in accordance with the formula. At this

point, two alternatives are possible. First, a firm fixed price may be negotiated using as a guide the firm target cost plus the firm target profit. Second, if use of the firm fixed price is determined to be inappropriate, a formula for establishing final profit and price may be negotiated, using the firm target profit and the firm target cost. As in the firm target type of contract described in subparagraph (2) of this paragraph, the final cost is negotiated at the completion of the contract and the final contract price is then established in accordance with the formula for establishing final profit and price.

(4) *Billing price.* In either of the above types of contract, a billing price will be established as an interim basis for payment. This billing price may be adjusted within the ceiling limits, upon request of either party to the contract, when it becomes apparent that final negotiated costs will be substantially different from the target cost.

(b) *Application.* (1) Fixed-price incentive contracts are appropriate when use of the firm fixed-price contract is inappropriate, and the supplies or services being procured are of such a nature that assumption of a degree of cost responsibility by the contractor is likely to provide him with a positive profit incentive for effective cost control and contract performance. It may also be appropriate to negotiate additional incentive provisions covering performance levels and more timely delivery (see § 3.407-2). Contract performance requirements must be such that there is reasonable opportunity for the incentive provisions to have a meaningful impact on the manner in which the contractor manages the work.

(2) The firm target type of incentive contract, described in paragraph (a) (2) of this section, is appropriate for use whenever a firm target and a formula for establishing final profit and price can be negotiated at the outset which will provide a fair and reasonable incentive.

(3) The successive targets type of incentive contract, described in paragraph (a) (3) of this section, is appropriate for use whenever available cost and pricing information is not sufficient to permit the negotiation of realistic firm targets at the outset. However, enough information should be available to permit negotiation of initial targets, and there should be reasonable assurance that additional reliable information will be available at an early point in the performance of the contract so as to permit negotiation of either a firm fixed price, or firm targets and a formula for establishing final profit and price, which will provide a fair and reasonable incentive. The additional information need not in all cases come from experience under the contract itself, but may be drawn from experience on any other contracts for the same or similar items.

(c) *Limitations.* Fixed-price incentive contracts shall not be used unless the contractor's accounting system is adequate for price revision purposes and permits satisfactory application of the profit and price adjustment formulas.

In no case should such contracts be used where cost or pricing information adequate for firm targets is not available at the time of initial contract negotiation or at a very early point in performance, or the sole or principal purpose is to shift substantially all cost responsibility to the Government. In no case shall the firm target profit or the formula for final profit and price be established prior to the negotiation of the firm target cost. Neither type of fixed-price incentive contract shall be used unless a determination has been made, in accordance with the requirements of Subpart C of this part, that:

(1) Such method of contracting is likely to be less costly than other methods, or

(2) It is impractical to secure supplies or services of the kind or quality required without the use of such type of contract.

§ 3.404-5 Prospective price redetermination at a stated time or times during performance.

(a) *Description.* This type of contract provides for a firm fixed price for an initial period of contract deliveries or performance and for prospective price redetermination either upward or downward at a stated time or times during the performance of the contract. It also may provide for a price ceiling, where appropriate. Once established, ceiling prices are subject to adjustment only by reason of the operation of other contract clauses (see § 3.404-1).

(b) *Application.* This type of contract is appropriate in procurements calling for quantity production or services where it is possible to negotiate fair and reasonable firm fixed prices for an initial period, but not for subsequent periods of contract performance. This initial period should be the longest period for which it is possible to establish fair and reasonable firm fixed prices at the time of original negotiation. The length of the prospective pricing periods should depend on the circumstances of each case and should generally be at least twelve months each. Ceiling prices, where appropriate, should be based on an evaluation of the uncertainties involved in contract performance, and their possible impact on cost, and should be negotiated at a level which represents contractor assumption of a reasonable degree of risk.

(c) *Limitations.* This type of contract shall not be used unless:

(1) It has been established through negotiation that a firm fixed-price contract does not fulfill the requirements established by the conditions surrounding the procurement;

(2) The contractor's accounting system is adequate for price redetermination purposes;

(3) The prospective pricing period can be made to conform with the operation of the contractor's accounting system; and

(4) Reasonable assurance exists that price redetermination action will be taken promptly at the time or times specified.

§ 3.404-6 Retroactive and prospective price redetermination at a stated time during performance.

(a) *Description.* This type of contract provides for a price ceiling and for retroactive and prospective redetermination of prices either (1) upward or downward, or (2) downward only, at a designated time early in the contract performance. The designated time for redetermination may be expressed in terms of delivery, shop completion, percentage of total contract performance on a cost incurred basis or any other reasonable basis. Under a follow-on contract, it may be timed to coincide with price revision under a preceding contract if both contracts together cover continuing production of similar supplies. In any event, the time designated as the cutoff point for price redetermination should be as early as practicable. The redetermination price may apply to all supplies or services delivered under the contract. Once established, ceiling prices are subject to adjustment only by reason of the operation of other contract clauses (see § 3.404-1).

(b) *Application.* This type of contract is appropriate in procurements where it is established at the time of negotiation that a fair and reasonable firm fixed price cannot be negotiated, but the contracting parties are reasonably certain that a fair and reasonable firm fixed price can be negotiated prior to the performance of forty percent (40%) of the contract on a cost incurred basis. Based on an evaluation of the uncertainties involved in contract performance, and their possible impact on cost, ceiling prices should be negotiated at a level which represents contractor assumption of a reasonable degree of risk. Additional cost or pricing information necessary to redetermination early in contract performance need not in all cases come from experience under the contract itself, and should be drawn from experience under any earlier contracts for the same or similar items.

(c) *Limitations.* This contract type shall not be used on and after January 1, 1963, and until then, only when:

(1) It has been determined through negotiation that use of a fixed-price incentive contract, of either the firm or successive targets type, or a fixed-price contract providing for prospective redetermination only, is impracticable;

(2) The estimated value of the procurement is in excess of \$500,000;

(3) The initial negotiated price is a reasonable estimate sufficient to establish a billing price;

(4) There is sufficient time of contract performance to accomplish the price redetermination prior to completion of forty percent (40%) of the contract on a cost incurred basis;

(5) The contractor's accounting system is adequate for price redetermination purposes;

(6) Reasonable assurance exists that price redetermination action will be taken at the time specified;

(7) A ceiling price is established; and

(8) Written approval has been received from the Office of the Deputy

Chief of Staff for Logistics or Offices of the Heads of the Technical Services, for the Army; Office of Naval Material, for the Navy; Headquarters, Air Force Systems Command or Headquarters, Air Force Logistics Command, for the Air Force; and the Executive Director, Procurement and Production, for the Defense Supply Agency.

§ 3.404-7 Retroactive price redetermination after completion.

(a) *Description.* This type of contract provides for a ceiling price and retroactive price redetermination after completion of the contract. The redetermined price should be negotiated so as to give weight to the management effectiveness and ingenuity exhibited by the contractor during performance, and the basis for such negotiation should be fully discussed with the contractor when this type of contract is negotiated. Because the price is redetermined on a completely retroactive basis, this contract type (except for the price ceiling) does not provide the contractor with a calculable incentive for effective cost control. Once established, the ceiling price is subject to adjustment only if required by the operation of other contract clauses (see § 3.404-1).

(b) *Application.* This type of contract is appropriate in procurements where it is established at the time of negotiation that a fair and reasonable firm fixed price cannot be negotiated and the amount involved is so small or the time for performance so short that use of any other type of contract is impracticable. Even in these situations, however, it should be used only after negotiation of a billing price as fair and reasonable as the circumstances of the particular procurement permit. Based on an evaluation of the circumstances involved in contract performance, and their possible impact on cost, the ceiling price should be negotiated at a level which represents contractor assumption of a reasonable degree of risk.

(c) *Limitations.* This type of contract shall not be used unless the procurement is for research and development at an estimated cost of \$100,000 or less, or until January 1, 1963, the procurement is of an urgent nature and the total period of contract performance is six months or less; and in either case:

- (1) The contractor's accounting system is adequate for price redetermination purposes;
 - (2) Reasonable assurance exists that price redetermination action will be taken promptly at the time specified;
 - (3) A ceiling price is established; and
 - (4) Until January 1, 1963, written approval has been received from the Office of the Deputy Chief of Staff for Logistics or Offices of the Heads of the Technical Services, for the Army; Office of Naval Material, for the Navy; Headquarters, Air Force Systems Command or Headquarters, Air Force Logistics Command, for the Air Force; and the Executive Director, Procurement and Production, for the Defense Supply Agency.
- (5) After January 1, 1963, written approval has been received from a level above the Head of a Procuring Activity.

§ 3.405 Cost-reimbursement type contracts.

§ 3.405-1 General.

(a) *Description.* The cost-reimbursement type of contract provides for payment to the contractor of allowable costs incurred in the performance of the contract, to the extent prescribed in the contract. This type of contract establishes an estimate of total cost for the purpose of (1) obligation of funds, and (2) establishing a ceiling which the contractor may not exceed (except at his own risk) without prior approval or subsequent ratification of the contracting officer.

(b) *Application.* The cost-reimbursement type contract is suitable for use only when the uncertainties involved in contract performance are of such magnitude that cost of performance cannot be estimated with sufficient reasonableness to permit use of any type of fixed-price contract. In addition, it is essential that (1) the contractor's cost accounting system is adequate for the determination of costs applicable to the contract and (2) appropriate surveillance by Government personnel during performance will give reasonable assurance that inefficient or wasteful methods are not being used. While cost-reimbursement contracts are particularly useful for procurements involving substantial amounts, e.g., estimated cost of \$100,000 or more, the parties may agree in a given case to use this type of contract to cover transactions in which the estimated costs are less than \$100,000.

(c) *Limitations.* The cost-reimbursement type contract may be used only after a determination, in accordance with the requirements of Subpart C of this part, that:

- (1) Such method of contracting is likely to be less costly than other methods, or
- (2) It is impractical to secure supplies or services of the kind or quality required without the use of such type of contract.

§ 3.405-2 Cost contract.

(a) *Description.* The cost contract is a cost-reimbursement type contract under which the contractor receives no fee.

(b) *Application.* The following are illustrative situations in which the use of this type of contract may be appropriate:

- (1) Research and development work, particularly with nonprofit educational institutions or other nonprofit organizations; and
- (2) Facilities contracts.

§ 3.405-3 Cost-sharing contract.

(a) *Description.* A cost-sharing contract is a cost-reimbursement type contract under which the contractor receives no fee and is reimbursed only for an agreed portion of his allowable costs.

(b) *Application.* A cost-sharing contract is suitable for use for those procurements which cover production or research projects that are jointly sponsored by the Government and the contractor with benefit to the contractor in lieu of full monetary reimbursement of costs. In consideration of this

benefit, the contractor agrees to absorb a portion of the costs of performance. The following are illustrative situations in which this type of contract is generally desirable:

- (1) Jointly sponsored research and development work with nonprofit educational institutions or other nonprofit organizations; and
- (2) Other research and development work where the parties agree that the results of the contract may have commercial benefit to the contractor.

§ 3.405-4 Cost-plus-incentive-fee contract.

(a) *Description.* The cost-plus-incentive-fee contract is a cost-reimbursement type contract with provision for a fee which is adjusted by formula in accordance with the relationship which total allowable costs bear to target cost. Under this type of contract, there is negotiated initially a target cost, a target fee, a minimum and maximum fee, and a fee adjustment formula. After performance of the contract, the fee payable to the contractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs, and decreases in fee below target fee when total allowable costs exceed target costs. The provision for increase or decrease in the fee is designed to provide an incentive for maximum effort on the part of the contractor to manage the contract effectively.

(b) *Application.* The cost-plus-incentive-fee contract is suitable for use primarily for development and test when a cost-reimbursement type of contract is found necessary in accordance with § 3.405-1(b), and when a target and a fee adjustment formula can be negotiated which are likely to provide the contractor with a positive profit incentive for effective management. In particular, where it is highly probable that the development is feasible and the Government generally has determined its desired performance objectives, the cost-plus-incentive-fee contract should be used in conjunction with performance incentives in the development of major systems, and in other development programs where use of the cost and performance incentive approach is considered both desirable and administratively practical (see §§ 3.403(c) and 3.407-2(b)). Range of fee and the fee adjustment formula should be negotiated so as to give appropriate weight to basic procurement objectives. For example, in an initial product development contract, it generally is appropriate to negotiate a cost-plus-incentive-fee contract providing for relatively small increases or decreases in fee tied to the cost incentive feature, balanced by the inclusion of performance incentive provisions providing for significant upward or downward fee adjustment as an incentive for the contractor to meet or surpass negotiated performance targets. Conversely, in subsequent development and test contracts, it may be more appropriate to negotiate an incentive formula where the opportunity to earn additional

fee is based primarily on the contractor's success in controlling costs. With regard to the cost incentive provisions of a contract, the minimum and maximum fees, and the fee adjustment formula, should be negotiated so as to provide an incentive which will be effective over variations in costs of at least twenty-five percent (25%) from the target. Whenever this type of contract, with or without the inclusion of performance incentives, is negotiated so as to provide incentive up to a high maximum fee, the contract also shall provide for a low minimum fee, which may even be a "zero" fee or, in rare cases, a "negative" fee.

(c) *Limitations.* The target fee shall be subject to the administrative limitations and approvals stated in § 3.405-5 (c) (2), and the maximum fee shall not exceed the statutory limitations stated therein.

§ 3.405-5 Cost-plus-a-fixed-fee contract.

(a) *Description.* The cost-plus-a-fixed-fee contract is a cost reimbursement type of contract which provides for the payment of a fixed fee to the contractor. The fixed fee once negotiated does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or services to be performed under the contract. Because the fixed fee does not vary in relation to the contractor's ability to control costs, the cost-plus-a-fixed-fee contract provides the contractor with only a minimum incentive for effective management control of costs.

(b) *Application.* The cost-plus-a-fixed-fee contract is suitable for use when:

(1) A cost-reimbursement type of contract is found necessary in accordance with § 3.405-1 (b);

(2) The parties agree that the contract should be fee bearing;

(3) The contract is for the performance of research, or preliminary exploration or study, where the level of effort required is unknown; or

(4) The contract is for development and test where the use of a CPIF is not practical.

(c) *Limitations.* (1) This type of contract normally should not be used in the development of major weapons and equipment, once preliminary exploration and studies have indicated a high degree of probability that the development is feasible and the Government generally has determined its desired performance objectives and schedule of completion (see § 3.405-4).

(2) 10 U.S.C. 2306(d) provides that in the case of a cost-plus-a-fixed-fee contract the fee shall not exceed ten percent (10%) of the estimated cost of the contract, exclusive of the fee, as determined by the Secretary concerned at the time of entering into such contract (except that a fee not in excess of fifteen percent (15%) of such estimated cost is authorized in any such contract for experimental, developmental, or research work and that a fee inclusive of the contractor's cost and not in excess of six percent (6%) of the estimated cost, exclusive of fees, as determined by the

Secretary concerned at the time of entering into the contract, of the project to which such fee is applicable is authorized in contracts for architectural or engineering services relating to any public works or utility projects). The Head of a Procuring Activity in the Departments of the Army, Navy, and DSA, and the Commander of a Major Command in the Department of the Air Force, or their duly authorized representatives, are authorized to approve fixed fees not in excess of (i) ten percent (10%) of the estimated costs, exclusive of fee, of any contract for experimental, developmental, or research work or, (ii) seven percent (7%) of the estimated cost, exclusive of fee, of any other contract except that in contracts for architectural or engineering services the fixed fee shall not exceed that authorized by the terms of the law as set forth above. In appropriate cases, fees above the prescribed limits in the authorizations granted herein but within the limitations of the law may be authorized by the Secretary concerned or his designee. (As to fee limitations in subcontracts see § 3.807-5(d).)

§ 3.406 Other types of contracts.

§ 3.406-1 Time and materials contracts.

(a) *Description.* The time and materials type of contract provides for the procurement of supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates (which rates include direct and indirect labor, overhead, and profit) and (2) material at cost. Material handling costs may be included in the charge for "material at cost," to the extent they are clearly excluded from any factor of the charge computed against direct labor hours. This type of contract may establish either a price ceiling, or a ceiling amount which the contractor may not exceed (except at his own risk). This type of contract does not afford the contractor with any positive profit incentive to control the cost of materials or to manage his labor force effectively.

(b) *Application.* The time and materials contract is used only where it is not possible at the time of placing the contract to estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. Particular care should be exercised in the use of this type of contract since its nature does not encourage effective management control. Thus it is essential that this type of contract be used only where provision is made for adequate controls, including appropriate surveillance by Government personnel during performance, to give reasonable assurance that inefficient or wasteful methods are not being used. This type of contract may be used in the procurement of (1) engineering and design services in connection with the production of supplies; (2) the engineering, design and manufacture of dies, jigs, fixtures, gauges, and special machine tools; (3) repair, maintenance or overhaul work; and (4) work to be performed in emergency situations.

(c) *Limitation.* Because this type of contract does not encourage effective

cost control and requires almost constant Government surveillance, it may be used only after determination that no other type of contract will suitably serve.

(d) *Optional method of pricing material.* When the nature of the work to be performed requires the contractor to furnish material which is regularly sold to the general public in the normal course of business by the contractor, the contract may provide for charging material on a basis other than at cost if:

(1) The total estimated contract price does not exceed \$25,000 or the estimated price of material so charged does not exceed twenty percent (20%) of the estimated contract price;

(2) No element of profit on material so charged is included in the profit in the fixed hourly labor rates; and

(3) The contract provides that the price to be paid for such material shall be on the basis of an established catalog or list price, in effect when material is furnished, less all applicable discounts to the Government, provided that in no event shall such price be in excess of the contractor's sales price to his most favored customer for the same item in like quantity, or the current market price, whichever is lower.

§ 3.406-2 Labor-hour contract.

(a) *Description.* The labor-hour type of contract is a variant of the time and materials type contract differing only in that materials are not involved in the contract or are not supplied by the contractor.

(b) *Application.* The labor-hour type contract is applicable in those procurements described for the time and materials contract, but in situations in which contractor-furnished materials are not involved in the contract or are not supplied by the contractor.

(c) *Limitations.* Because this type of contract does not provide the contractor with a positive profit incentive to manage his labor force effectively, it may be used only after determination that no other type of contract will suitably serve.

§ 3.407 Additional incentives.

§ 3.407-1 General.

In addition to the profit incentives to control costs, inherent in many of the contract types, and combinations thereof, described in §§ 3.404 through 3.406, there are other means of providing profit incentives to contractors, which are described below, to obtain extra management attention and effort. Increases in profits or fees resulting from the use of incentive provisions are made only because cost, performance, or other contractual goals or standards have been surpassed.

§ 3.407-2 Contracts with performance incentives.

(a) *Description.* A contract with a performance incentive is one which incorporates an incentive to the contractor to surpass stated performance targets by providing for increases in the fee or profit to the extent that such targets are surpassed and for decreases to the extent that such targets are not met. Salient

features and consideration in the use of this type of contract are as follows:

(1) "Performance," as used in this section, refers not only to the performance of the article being procured, but to the performance of the contractor as well. Performance which is the minimum which the Government will accept shall be mandatory under the terms of the contract and shall warrant only the minimum profit or fee related thereto. Performance which meets the stated targets will warrant the "target" profit or fee. Performance which surpasses these targets will be rewarded by additional profit or fee. The incentive feature (providing for increases or decreases, as appropriate) is applied to performance targets rather than performance requirements.

(2) The incentive, when applied to the product, should relate to specific performance characteristics, such as range of a missile, speed of an aircraft or ship, thrust of an engine, maneuverability of a vehicle, and fuel economy. However, high overall performance of the end item is the primary objective of such contracts. Accordingly, the incentive feature should reflect a balancing of the various characteristics which together account for overall performance, so that no one characteristic will be exaggerated to the detriment of the end item as a whole. When applied to the performance of the contractor, the incentive should relate to specific performance areas or milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

(3) Since performance tests generally are essential in order to determine the degree of attainment of performance targets, the contract must be as specific as possible in establishing test criteria, such as conditions of testing, precision of instrumentation, and interpretation of test data.

(4) It is essential that there be explicit agreement between the Government and the contractor as to the effect on performance of contract changes (e.g., pursuant to the Changes clause).

(5) Care must be exercised, in establishing performance criteria, to give recognition to the fact that the contractor should not be rewarded or penalized for attainments of Government-furnished components.

(6) In establishing incentives in connection with delivery schedules, it is important to determine the Government's primary objectives in a given contract. In some instances, earliest possible delivery is of paramount importance. In others, early quantity production is essential. On the other hand, it may be that maintaining an established delivery schedule is all that is desired, and that a bettering of such schedule may disrupt continuity of production or run counter to funding limitations.

(b) *Application.* Contracts with performance incentives are suitable for use in procurements where it is desired to provide the contractor with an incentive in the form of financial reward for surpassing stated performance targets, counterbalanced by a penalty in the

form of decreased profit or fee for failure to achieve such targets. Performance incentives are particularly appropriate for inclusion in contracts for major weapons and equipment, both in development when desired performance objectives are known and the fabrication of prototypes for test and evaluation is required, and in production where there is potential for improved performance that would be highly desirable to the Government. Effort always should be made in these procurement situations to include a performance incentive in the contract. Performance incentives present complex problems in contract administration and should be negotiated and administered by contracting officers with the full cooperation of Government engineering and pricing specialists.

(c) *Limitations.* (1) Performance incentives, when related to the performance of the product, may result in increased costs and should always be coupled with a balancing of range of fee or profit on the cost and performance aspects, negotiated so as to give appropriate weight to basic procurement objectives. Where incentives relating to the performance of the product are included in a contract, and earliest possible delivery is of considerable importance to the Government, and contract normally should include a performance incentive relating to time of performance or for expedited delivery schedules.

(2) In the case of cost-reimbursement type contracts involving a fee, the maximum fee shall not exceed the statutory limitations in § 3.405-5(c) (2).

§ 3.407-3 Contracts with value engineering incentives.

(a) *Description.* Value engineering incentive provisions may either require or encourage the contractor to maintain a staff devoting time and effort to "value engineering studies" to reduce costs under the contract in return for which the contractor receives a stated percentage of the resulting savings. A "value engineering study" is an intensive appraisal of all the elements of the design, manufacture or construction, procurement, inspection, installation, and maintenance of an item and its components, including the applicable specifications and operational requirements, in order to achieve the necessary performance, maintainability, and reliability of the item at minimum cost. The purpose of value engineering is to make certain that every element of cost (e.g., labor, material, supplies, styling, and services) contribute proportionately to the function of the item. The Government shall make reasonable efforts to expedite the analysis of each study submitted by the contractor. Where a change recommended by a study is adopted, a change order is issued under the Changes clause, together with a reduction in the contract price corresponding to the agreed percentage of the cost reduction. The Government does not have to adopt any study and failure to do so is not subject to the Disputes clause of the contract.

(b) *Application.* Value engineering incentive provisions are suitable primarily where the items being procured are covered by firm Government specifications, and where there is a reasonable

likelihood that time and effort devoted to value engineering studies will result in reduced costs.

(c) *Limitations.* Value engineering incentive provisions shall be used only upon the written approval of the Head of a Procuring Activity.

§ 3.408 Letter contract.

(a) *Description.* A letter contract is a written preliminary contractual instrument which authorizes immediate commencement of manufacture of supplies, or performance of services, including, but not limited to, reproduction planning, and the procurement of necessary materials.

(b) *Application.* A letter contract may be entered into when (1) the interests of national defense demand that the contractor be given a binding commitment so that work can be commenced immediately, and (2) negotiation of a definitive contract in sufficient time to meet the procurement need is not possible, as, for example, when the nature of the work involved prevents the preparation of definitive requirements, specifications, or cost data.

(c) *Limitations.* (1) A letter contract shall be used only after a determination in accordance with Departmental procedures that no other type of contract is suitable.

(2) A letter contract shall not be entered into without competition when competition is practicable. Where a letter contract award is based on price competition an overall price ceiling shall be included in the letter contract.

(3) A letter contract shall be superseded by a definitive contract at the earliest practicable date. This date shall be prior to:

(i) The expiration of 180 days from the date of the letter contract; or

(ii) Forty percent (40%) of the production of the supplies, or the performance of the work, called for under the contract, whichever occurs first. In extreme cases, an additional period may be authorized in accordance with Departmental procedures.

(4) The maximum liability of the Government stated in the letter contract generally shall not exceed fifty percent (50%) of the total estimated cost of the procurement, but this liability may be increased in accordance with Departmental procedures.

(d) *Content.* Letter contracts shall be specifically negotiated and, as a minimum, shall include agreement as to the following:

(1) The immediate commencement of performance of the contract by the contractor, including procurement of necessary materials;

(2) The extent and method of payments in the event of termination either for the convenience of the Government or for default;

(3) The fact that the contractor is not authorized to expend moneys or incur obligations in excess of the maximum liability of the Government as stated in the letter contract;

(4) The type of definitive contract anticipated at the time of letter contract award;

(5) As many definitive contract provisions as possible;

(6) The contractor's obligation to provide such price and cost information as may reasonably be required by the contracting officer; and

(7) The prompt entry into good faith negotiations by the contractor and the Government to reach agreement upon and execute a definitive contract.

§ 3.409 Indefinite delivery type contracts.

One of the following indefinite delivery type contracts may be used for procurement where the exact time of delivery is not known at time of contracting.

(a) *Definite quantity contracts.*—(1) *Description.* This type of contract provides for a definite quantity of specified supplies or for the performance of specified services for a fixed period, with deliveries or performance at designated locations upon order. Depending on the situation, the contract may provide for: (i) Firm fixed prices; (ii) price escalation; or (iii) price redetermination.

(2) *Applicability.* This type of contract is particularly suitable for use where it is known in advance that a definite quantity of supplies or services will be required during a specified period and are regularly available or will be available after a short lead time. Advantages of this type of contract are that it permits stocks in storage depots to be maintained at minimum levels and permits direct shipment to the user.

(b) *Requirements contract.*—(1) *Description.* This type of contract provides for filling all actual purchase requirements of specific supplies or services of designated activities during a specified contract period with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. Depending on the situation, the contract may provide for: (i) Firm fixed prices; (ii) price escalation; or (iii) price redetermination. An estimated total quantity is stated for the information of prospective contractors, which estimate should be as realistic as possible. The estimate may be obtained from the records of previous requirements and consumption, or by other means. Care should be used in writing and administering this type of contract to avoid imposition of an impossible burden on the contractor. Therefore, the contract shall state, where feasible, the maximum limit of the contractor's obligation to deliver and, in such event, shall also contain appropriate provision limiting the Government's obligation to order. When large individual orders or orders from more than one activity are anticipated, the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered.

(2) *Applicability.* A requirements contract may be used for procurements where it is impossible to determine in advance the precise quantities of the supplies or services that will be needed

by designated activities during a definite period of time. Advantages of this type of contract are:

(i) Flexibility with respect to both quantities and delivery scheduling;

(ii) Supplies or services need be ordered only after actual needs have materialized;

(iii) Where production lead time is involved, deliveries may be made more promptly because the contractor is usually willing to maintain limited stocks in view of the Government's commitment;

(iv) Price advantages or savings may be realized through combining several anticipated requirements into one quantity procurement; and

(v) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

Generally, the requirements contract is appropriate for use when the item of service is commercial or modified commercial in type and when a recurring need is anticipated.

(c) *Indefinite quantity contract.*—(1) *Description.* This type of contract provides for the furnishing of an indefinite quantity, within stated limits, of specific supplies or services, during a specified contract period, with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. Depending on the situation, the contract may provide for: (i) Firm fixed prices; (ii) price escalation; or (iii) price redetermination. The contract shall provide that during the contract period the Government shall order a stated minimum quantity of the supplies or services and that the contractor shall furnish such stated minimum and, if and as ordered, any additional quantities not exceeding a stated maximum which should be as realistic as possible. The maximum may be obtained from the records of previous requirements and consumption, or by other means. When large individual orders or others from more than one activity are anticipated, the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered.

(2) *Applicability.* An indefinite quantity contract may be used where it is impossible to determine in advance the precise quantities of the supplies or services that will be needed by designated activities during a definite period of time and it is not advisable for the Government to commit itself for more than a minimum quantity. Advantages of this type of contract are:

(i) Flexibility with respect to both quantities and delivery scheduling;

(ii) Supplies or services need be ordered only after actual needs have materialized;

(iii) The obligation of the Government is limited; and

(iv) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

The indefinite quantity contract should be used only when the item or service is commercial or modified commercial in type and when a recurring need is anticipated.

§ 3.410 Other types of agreements.

§ 3.410-1 Basic agreement.

(a) *Description.* A basic agreement is a written instrument of understanding executed between a Department or procuring activity and a contractor which sets forth the negotiated contract clauses which shall be applicable to future procurements entered into between the parties during the term of the basic agreement. The use of the basic agreement contemplates the coverage of a particular procurement by the execution of a formal contractual document which will provide for the scope of the work, price, delivery, and additional matters peculiar to the requirements of the specific procurement involved, and shall incorporate by reference or append the contract clauses agreed upon in the basic agreement as required or applicable.

(b) *Applicability.* (1) Basic agreements are appropriate for use when (i) past experience and future plans indicate that a substantial number of separate contracts may be entered into with a contractor during the term of the basic agreement, and (ii) substantial recurring negotiating problems exist with a particular contractor.

(2) A basic agreement shall be modified only by a modification of the basic agreement itself and shall not be modified or superseded by individual contracts or purchase orders entered into under and subject to the terms of such basic agreement. To minimize modification, revisions to this subchapter involving changes in authorized contract clauses utilized in basic agreements will provide appropriate direction with respect to any required modifications of basic agreements and to the extent possible, modifications will be required only in matters resulting from changes in statutes, or executive orders. As a minimum, basic agreements shall be reviewed annually before the anniversary of their effective date and revised to conform with the current requirements of this subchapter. Modifications shall not have retroactive effect.

(3) Basic agreements shall provide for discontinuance of their future application upon 30 days written notice by either party. Discontinuance of basic agreement will not affect any individual contract referencing the basic agreement (or the clauses appended thereto) entered into prior to the effective date of discontinuance.

(c) *Limitations.* (1) Basic agreements shall neither cite appropriations to be charged nor be used alone for the purpose of obligating funds.

(2) Basic agreements shall not in any manner provide for or imply any agreement on the part of the Government to place future orders or contracts with the contractor involved, nor shall they be used in any manner to restrict competition.

(3) Basic agreements generally shall be utilized only in connection with negotiated contracts.

PART 7—CONTRACT CLAUSES

3. Revise § 7.109-1; revoke §§ 7.109-3, 7.109-5, and 7.109-7; redesignate § 7.109-4 as § 7.109-3; redesignate § 7.109-6 as § 7.109-4; and revise § 7.301, as follows:

§ 7.109-1 General.

When it is determined in accordance with § 3.403 of this chapter, to use a fixed-price contract providing for redetermination of price, the applicable clause of those set forth below shall be used.

§ 7.109-3 Prospective price redetermination on request. [Revoked]**§ 7.109-3 Retroactive and prospective price redetermination at a stated time prior to completion. [Redesignation]****§ 7.109-4 Retroactive price redetermination after completion. [Redesignation]****§ 7.109-5 Retroactive and Prospective price redeterminations including further prospective redetermination on request. [Revoked]****§ 7.109-7 Modified retroactive and prospective price redetermination for follow-on contracts. [Revoked]****§ 7.301 Applicability.**

As used throughout this subpart, the term "fixed price research and development contract" means any contract (other than a letter contract, a notice of award, or a modification not affecting new procurement) which (a) is entered into at a fixed price in an amount exceeding \$2,500 (with or without any provision for price redetermination, escalation, or other form of price revision as covered in § 3.404 of this chapter), and (b) is for experimental, developmental, or research work. See § 3.403 (b) and (c) for use of types of contracts for research and developmental work.

[ASPR Rev. 8, Mar. 15, 1962] (R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

J. C. LAMBERT,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 62-4089; Filed, Apr. 26, 1962;
8:45 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS**Chapter II—Corps of Engineers, Department of the Army****PART 202—ANCHORAGE REGULATIONS****St. Johns River, Fla.**

Pursuant to the provisions of section 1 of an Act of Congress approved April 22, 1940 (54 Stat. 150; 33 U.S.C. 180), § 202.73 is hereby prescribed designating special anchorage areas in St. Johns River, Florida, wherein vessels not more than 65 feet in length, when at anchor, shall not be required to carry or exhibit anchor lights, effective 30 days after pub-

lication in the FEDERAL REGISTER, as follows:

§ 202.73 St. Johns River, Fla.

(a) *Area A.* The waters lying within an area bounded by a line beginning at a point located at the west bank of St. Johns River at latitude 30°15'11", longitude 81°41'23"; thence to latitude 30°15'13", longitude 81°41'14"; thence to latitude 30°15'03", longitude 81°41'11"; thence to latitude 30°15'04", longitude 81°41'20"; and thence to the point of beginning.

(b) *Area B.* The waters lying within an area bounded by a line beginning at latitude 30°15'03", longitude 81°41'28"; thence to latitude 30°15'02", longitude 81°41'10"; thence to latitude 30°14'56", longitude 81°41'08"; thence to latitude 30°14'54.5", longitude 81°41'10.5"; and thence to the point of beginning.

[Regs., Apr. 13, 1962, 285/112 (St. Johns River, Fla.)—ENGW-ON] (Sec. 1, 28 Stat. 150; 33 U.S.C. 180)

J. C. LAMBERT,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 62-4088; Filed, April. 26, 1962;
8:45 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF**Chapter I—Veterans Administration****PART 3—ADJUDICATION****Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation****MISCELLANEOUS AMENDMENTS**

1. In § 3.1, paragraph (i) is amended and paragraph (o) is added to read as follows:

§ 3.1 Definitions.

(i) "State" means each of the several States, Territories and possessions of the United States, the District of Columbia, and Commonwealth of Puerto Rico.

(o) "Political subdivision of the United States" includes the jurisdiction defined as a State in paragraph (i) of this section, and the counties, cities or municipalities of each.

2. In § 3.3, paragraphs (b) (2) (ii), (c) (1) and (2) and (d) are amended to read as follows:

§ 3.3 Pension.

(b) *Service pension; Indian and Spanish-American Wars.* * * *

(2) *Spanish-American War.* Basic entitlement exists if the veteran:

(ii) Was discharged or released from such service for a disability service connected without benefit of presumptive provisions of law. (38 U.S.C. 512)

(c) *Disability pension; World War I and later wars.* Basic entitlement exists if the veteran:

(1) Served 90 days or more in either World War I, World War II, or the Korean conflict, or served an aggregate of 90 days or more in separate periods of service during the same or, effective July 21, 1961, during different war periods, including service during the Spanish-American War. (38 U.S.C. 521(f)); or

(2) Was discharged or released from such service for a disability service connected without benefit of presumptive provisions of law; and

(d) *Death pension—(1) Indian war.* Basic entitlement exists for the widow or child of a deceased veteran of an Indian war if the veteran's service meets the requirements of paragraph (b) (1) of this section. (38 U.S.C. 534, 535)

(2) *Spanish-American War.* Basic entitlement exists for the widow or child of a deceased veteran if the veteran:

(i) Had 90 days or more active service during the Spanish-American War; or

(ii) Was discharged or released from such service for a disability service-connected without benefits of presumptive provisions of law. (38 U.S.C. 536, 537)

(3) *World War I and later wars.* Basic entitlement exists for the widow or child of a deceased veteran of World War I if the veteran's service meets the requirements of paragraph (c) (1) or (2) of this section or the veteran was, at the time of death, receiving or entitled to receive compensation or retirement pay based on a service-connected disability. Effective July 1, 1960, basic entitlement exists under the provisions of this subparagraph for the widow or child of a deceased veteran of World War II or the Korean conflict. (38 U.S.C. 541, 542)

3. In § 3.6(b), subparagraph (6) is amended to read as follows:

§ 3.6 Duty periods.

(b) "Active duty." This means:

(6) A person discharged or released from a period of active duty, shall be deemed to have continued on active duty during the period of time immediately following the date of such discharge or release from such duty determined by the Secretary concerned to have been required for him to proceed to his home by the most direct route, and, in all instances, until midnight of the date of such discharge or release. (38 U.S.C. 106(c)) This provision is effective:

(i) January 1, 1957, for service-connected death benefits where the discharge or release occurred on or after that date.

(ii) January 1, 1959, for service-connected disability compensation where the discharge or release occurred on or after January 1, 1957.

(iii) July 21, 1961, for compensation or pension, where the discharge or release occurred prior to January 1, 1957.

4. In § 3.7, paragraphs (b), (u) (1), and (v) are amended to read as follows:

§ 3.7 Persons included.

(b) *Aliens.* Effective July 28, 1959, a veteran discharged for alienage during a period of hostilities unless evidence affirmatively shows he was discharged at his own request. A veteran who was discharged for alienage after a period of hostilities and whose service was honest and faithful is not barred from benefits if he is otherwise entitled. A discharge changed prior to January 7, 1957, to honorable by a board established under authority of section 301, Public Law 346, 78th Congress, as amended, or section 207, Public Law 601, 79th Congress, as amended (now 10 U.S.C. 1552 and 1553), will be considered as evidence that the discharge was not at the alien's request. (38 U.S.C. 3103(c)) (See § 3.12.)

(u) *Women's Army Auxiliary Corps and Women's Army Corps.*—(1) *Women's Army Auxiliary Corps.* A member of the Women's Army Auxiliary Corps who had 90 days or more service in such corps and who prior to October 1, 1943, was honorably discharged for disability incurred in line of duty. Effective August 7, 1959, service rendered in the Women's Army Auxiliary Corps by a member who was discharged or released under conditions other than dishonorable and who also had active service in the Armed Forces subsequent to September 29, 1943, is included for purposes of Veterans Administration benefits. (38 U.S.C. 106(a); 10 U.S.C. 1038)

(v) *Women's Reserve of Navy, Marine Corps, and Coast Guard.* Same benefits as members of the Officers Reserve Corps or enlisted men of the United States Navy, Marine Corps or Coast Guard.

5. Immediately following § 3.7, a new cross reference is added to read as follows:

CROSS REFERENCE: Bureau of Employees' Compensation. See § 3.708.

6. In § 3.12, paragraphs (b) (7) and (c) are amended to read as follows:

§ 3.12 Character of discharge.

(b) * * *

(7) As an alien during a period of hostilities where it is affirmatively shown he requested his release. (See § 3.7(b).)

(c) Discharge because of homosexual acts generally will be considered a discharge under dishonorable conditions.

7. In § 3.13, paragraphs (a) (1) and (b) are amended to read as follows:

§ 3.13 Discharge to change status.

(a) * * *

(1) World War I; prior to November 11, 1918. As to reenlistments, this subparagraph applies only to Army and National Guard. No involuntary extension or other restrictions existed on Navy enlistments.

(b) The entire period of service under the circumstances stated in paragraph (a) of this section constitutes one period of service and entitlement will be determined by the character of the final termination of active service. This rule does not apply to certifications for loan guaranty benefits, entitlement to which is based on each period separately.

8. In § 4.14, paragraph (a) is amended to read as follows:

§ 3.14 Validity of enlistments.

(a) *Enlistment not prohibited by statute.* Where an enlistment is voided by the service department for reasons other than those stated in paragraph (b) of this section, service is valid from the date of entry upon active duty to the date of voidance by the service department. Benefits may not be paid, however, unless the discharge is held to have been under conditions other than dishonorable. Generally discharge for concealment of a physical or mental defect except incompetency or insanity which would have prevented enlistment will be held to be under dishonorable conditions.

9. Section 3.15, is revised to read as follows:

§ 3.15 Computation of service.

For non-service-connected or service-connected benefits, active service is countable exclusive of time spent on an industrial, agricultural, or indefinite furlough, time lost on absence without leave (without pay), under arrest (without acquittal), in desertion, while undergoing sentence of court-martial or a period following release from active duty under the circumstances outlined in § 3.9. Time spent in a hospital on sick furlough or as a prisoner-of-war is included. In claims based on Spanish-American War service, leave authorized under General Order No. 130, War Department, is included.

10. Immediately following § 3.15, a new cross reference is added to read as follows:

CROSS REFERENCE: Duty periods. See § 3.6(b) (6).

11. Section 3.1551 is revoked.

§ 3.1551 Payment of benefits to certain veterans who were discharged as aliens and to their dependents. [Revoked]

(72 Stat. 1114; 38 U.S.C. 210)

These regulations are effective April 27, 1962.

[SEAL]

W. J. DRIVER,
Deputy Administrator.

[F.R. Doc. 62-4121; Filed, Apr. 26, 1962; 8:48 a.m.]

PART 14—LEGAL SERVICES, GENERAL COUNSEL

Defense of Suits Against Veterans Administration Employees Arising Out of Operation of Motor Vehicles

In Part 14, § 14.514a is added to read as follows:

§ 14.514a Defense of suits against Veterans Administration employees arising out of operation of motor vehicles.

(a) Public Law 87-258 (28 U.S.C. 2679), effective March 21, 1962, provides

for the defense of suits against Federal employees or their estates arising out of their operation of motor vehicles in the scope of their office or employment with the Federal Government. The act applies only to civil actions and proceedings commenced as a result of incidents occurring on or after March 21, 1962.

(b) Any Veterans Administration employee against whom a civil action or proceeding is brought for damage to property, or for personal injury or death, on account of the employee's operation of a motor vehicle in the scope of his office or employment with the Government (or his personal representative, if the action is brought against his estate) shall deliver all process and pleadings served upon him, or an attested true copy thereof, forthwith to the Chief Attorney having jurisdiction over the area in which the employee is employed. In addition, upon his receipt of such process or pleadings, or any prior information regarding the commencement of such a civil action or proceeding, he shall immediately so advise the Chief Attorney by telephone or telegraph. The Chief Attorney shall promptly upon receipt thereof furnish the United States Attorney for the district embracing the place wherein the action or proceeding is brought information concerning the commencement of such action or proceeding, and copies of all process and pleadings therein. Two copies of all process and pleadings along with information concerning the commencement of the action or proceeding shall be submitted immediately to the General Counsel.

(c) The Chief Attorney shall submit a report containing all available data bearing upon the question whether the employee was acting within the scope of his office or employment with the Federal Government, at the time of the incident out of which the suit arose, to the United States Attorney, with two copies of the report to the General Counsel, at the earliest possible date, or within such time as shall be fixed by the United States Attorney upon request. The report should include factual information bearing upon the nature of the employee's duties, his authorized destination, the conveyance authorized, whether he had departed from the route authorized or disobeyed the instructions given him, whether at the time of the incident he was engaged in the furtherance of his own personal interests, and any other relevant data. The Chief Attorney will render all practicable assistance requested by the United States Attorney.

(72 Stat. 1114; 38 U.S.C. 210)

This regulation is effective April 27, 1962.

[SEAL]

W. J. DRIVER,
Deputy Administrator.

[F.R. Doc. 62-4120; Filed, Apr. 26, 1962; 8:48 a.m.]

Title 44—PUBLIC PROPERTY AND WORKS

Chapter I—General Services Administration

SUBCHAPTER A—ARCHIVES AND RECORDS MANAGEMENT

PART 2—PUBLIC USE OF RECORDS AND FACILITIES OF THE NATIONAL ARCHIVES

Part 2 of Title 44 of the Code of Federal Regulations is revised to read as follows:

GENERAL PROVISIONS

- Sec.
2.0 Scope.
2.1 Meaning of terms.
2.2 Legal custody.
2.3 Availability of records in general.
2.4 Access to classified and restricted records.
2.5 Photography in the National Archives Exhibition Hall.

PERMISSION TO EXAMINE RECORDS

- 2.10 Application for permission to examine records.
2.11 Granting and withdrawal of permission to examine records.
2.12 Hours of admission to research rooms.
2.13 Admission to National Archives Theater.

RESEARCH ROOM RULES

- 2.20 Register of researchers.
2.21 Researcher's responsibility.
2.22 Protection of records.
2.23 Keeping records in order.
2.24 Night and Saturday use.
2.25 Removal or mutilation of records.
2.26 Disturbances.
2.27 Smoking and eating.

REPRODUCTION SERVICES

- 2.30 Reproduction fees.
2.31 Reproduction equipment and personnel.
2.32 Authentication and attestation.

INFORMATION SERVICE

- 2.35 Information about records.
2.36 Information derived from records.

LEGAL DEMANDS

- 2.40 Compliance with subpoena or other legal demand.

AUTHORITY: §§ 2.0 to 2.40 issued under sec. 205, 63 Stat. 389, as amended; 40 U.S.C. 486. Interpret or apply secs. 507, 509, 64 Stat. 587, as amended, 588; 44 U.S.C. 397, 399.

GENERAL PROVISIONS

§ 2.0 Scope.

The provisions of this part apply to the public use of records deposited with the National Archives of the United States.

§ 2.1 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meaning ascribed in the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377, as amended; 40 U.S.C. 472, 44 U.S.C. 391).

§ 2.2 Legal custody.

The Administrator has legal custody of all records deposited with the National Archives of the United States.

§ 2.3 Availability of records in general.

(a) Records deposited with the National Archives of the United States will be made available for use subject to restrictions and limitations imposed by law, by Executive order, by the regulations in this part, by the agency from which they have been transferred, or by the Archivist of the United States.

(b) The following general practices will be observed:

(1) Records will not ordinarily be made available for purposes that can be as well served by a public library.

(2) Persons wishing to examine records, will, as a rule, be required to do so in the research rooms of the National Archives Building.

(3) The National Archives and Records Service will also render services with regard to reproductions, information, motion pictures, and sound recordings in accordance with the provisions of this part.

§ 2.4 Access to classified and restricted records.

Access to records bearing security classification will be governed by the terms of Executive Order 10501, as amended by Executive Order 10816 and Executive Order 10964. Access to records subject to other forms of restriction will be governed by the conditions set forth by the Archivist in the pertinent Restriction Statements.

§ 2.5 Photography in the National Archives Exhibition Hall.

Visitors are permitted to take photographs in the National Archives Exhibition Hall without restriction if flash equipment or other special photo-lighting devices are not used and if the photographs are not intended for commercial use. Persons desiring to take photographs requiring the use of photo-lighting devices or for commercial purposes must obtain special permission from the Archivist. Application for such permission should be made to the Exhibits and Publications Branch.

PERMISSION TO EXAMINE RECORDS

§ 2.10 Application for permission to examine records.

Persons desiring permission to examine records in the National Archives Building must make application on a form provided for that purpose, on which they will clearly state the subject or nature of their research. The application must show a definite and serious purpose. Permission to examine records will not be given to persons under the age of 16 years unless accompanied by an adult who will undertake in writing to remain with the applicant while records are in use, and to be responsible for the applicant's compliance with all National Archives and Records Service regulations. Officers or employees of foreign governments who wish to examine records must apply for permission through the Department of State. Forms will be provided and applications received at any of the research rooms in the National Archives Building.

§ 2.11 Granting and withdrawal of permission to examine records.

If an application is approved, a card of permission to examine records will be issued. This card will be valid for a period not longer than one year but may be renewed upon application. It is not transferable and must be produced when required. Possession of this card does not entitle a researcher to examine records whose use is restricted. The Archivist of the United States may withdraw the privilege of permission to use records from any one who violates the regulations in this part or disregards the instructions of a research room supervisor.

§ 2.12 Hours of admission to research rooms.

The research rooms and the library will be open to persons authorized to use them from 8:45 to 5:00 p.m. Monday through Friday, Federal holidays excepted. The central research room will also remain open from 5:15 to 9:50 p.m. Monday through Friday, and from 8:45 a.m. to 5:00 p.m. on Saturdays, Federal holidays excepted. In special circumstances, by direction of the Archivist of the United States, the research rooms may be closed during any of the hours specified in this section or may be opened at other times.

(c) Each application for the use of the theater will be submitted in writing by the head of the requesting agency or organization, or his duly authorized representative, at least one week in advance of the use for which the assignment is requested. Each application for use should be addressed and delivered to General Services Administration, National Archives and Records Service, Administrative Officer, The National Archives Building, Washington 25, D.C. and shall include the following information:

(1) The name of the governmental agency or private organization requesting the assignment;

(2) The date on which assignment is requested, and the hours of contemplated use;

(3) A brief description of the program of the scheduled meeting or performance;

(4) The approximate number of persons expected to attend the meeting or performance (the capacity of the National Archives theater is 216 persons);

(5) A statement as to whether it is the intention to exhibit at the meeting or performance motion pictures or lantern slides and, if so, the size of the film (35 mm. or 16 mm.) or of the lantern slides; and whether the film to be shown, if any, is on nitrate or safety base; and

(6) Samples of any literature, folders, or posters to be distributed or exhibited at the meeting or performance.

(d) No program will be permitted to continue beyond 10:00 p.m.

(e) Assignments will not be made, unless specifically justified, for Saturdays, Sundays, Holidays, or other days or at hours during which the building is normally closed.

(f) No admission fee will be charged, no indirect assessment will be made for

admission, and no collection will be taken. Commercial advertising or the sale of articles of any character will not be permitted.

(g) The serving or consumption of food or beverages within the theater will be prohibited.

(h) Smoking will be prohibited within the theater.

(i) If the projection of motion pictures or lantern slides is a part of the program, competent operators will be furnished by the National Archives and Records Service on a reimbursable basis.

(j) Posting of any material about the premises will be subject to the approval of the General Services Administration building superintendent.

(k) All persons attending meetings or performances will be required to go directly to the theater which is on the fifth floor of the building. No one will be admitted to other parts of the building closed to the general public.

(l) All persons attending meetings or performances will be subject to the "Rules and Regulations Governing Public Buildings and Grounds" issued by the Administrator of General Services (Part 100 of this title).

RESEARCH ROOM RULES

§ 2.20 Register of researchers.

Each day that a researcher uses records in a research room he must sign the register maintained there.

§ 2.21 Researcher's responsibility.

When a researcher has completed his use of records or leaves the research room for more than a short period of time, he must notify the supervisor. A researcher is responsible for all records delivered to him until he returns them to the supervisor. The researcher must at no time leave loose or unprotected papers on desks or tables while he is absent from the room.

§ 2.22 Protection of records.

Researchers must exercise all possible care to prevent damage to the records delivered to them. They must not use ink at desks upon which there are records, except when a supervisor authorizes the use of a fountain pen or a ball point pen. Bottled liquids may not be placed on desks where there are records. Records may not be leaned on, written on, folded anew, traced, or handled in any way likely to damage them. Application to the records of paper clips, rubber bands, or other fasteners not on them when they are delivered to a researcher is prohibited. The use of records of exceptional value or in fragile condition will be subject to such special safeguards as the supervisor may deem necessary.

§ 2.23 Keeping records in order.

The researcher must keep unbound papers in the order in which they are delivered to him. If records appear to be in disorder, the researcher must not attempt to restore them to order but should call the fact to the attention of a supervisor. The supervisor may place a limitation on the use of records from

more than one container at one time and may limit the quantity of records delivered to a researcher at one time.

§ 2.24 Night and Saturday use.

Requests for records or library books to be used at night must be submitted to the supervisor in charge of the central research room before 4:00 p.m. on the day on which they are to be used, and those for records or books to be used on Saturdays must be submitted before 3:00 p.m. on the preceding Friday.

§ 2.25 Removal or mutilation of records.

No records or other property of the National Archives and Records Service may be taken from the research rooms except by members of the Service staff acting in their official capacities or by others having written authorization from a research room supervisor. The unlawful removal or mutilation of records is forbidden by law and is punishable by fine or imprisonment or both (62 Stat. 695; 18 U.S.C. 2071).

§ 2.26 Disturbances.

Loud talking and other actions likely to disturb researchers are prohibited. Persons desiring to use typewriters, to read proof aloud, or to do other work that may disturb others in the research rooms will, where possible, be assigned desks in a room designated for such purposes.

§ 2.27 Smoking and eating.

Smoking and eating in the research rooms are prohibited, and food may not be brought into the research rooms except in sealed containers.

REPRODUCTION SERVICES

§ 2.30 Reproduction fees.

The National Archives and Records Service will, for a fee, furnish reproductions of records in its custody to which no restriction has been attached. Fees must be paid in advance except in cases where the Chief of a Reference Branch approves an order for handling them on an "accounts receivable basis." Fees may be paid to the National Archives and Records Service in coin or currency of the United States, by postal money order, by check drawn on a bank in the United States or one of its possessions and made payable to the General Services Administration, or by international money order or check drawn in United States dollars on a bank in the United States and payable to the General Services Administration.

§ 2.31 Reproduction equipment and personnel.

Insofar as practicable the reproduction of records in the National Archives Building will be done by personnel of the National Archives and Records Service with equipment belonging to the Service. Exceptions to this rule may be made by the Chief of a Reference Branch only when it has been determined by proper authority that the equipment proposed to be used is safe for use in the place and manner intended: *And provided*, That the equipment is used under the

supervision of responsible personnel of the Service.

§ 2.32 Authentication and attestation.

Upon request and the payment of appropriate fees, authentication certificates in the name of the Archivist of the United States will be prepared and attached to reproductions of records deposited with the National Archives. Authority to issue such certificates is re-delegated to the Director, Office of the Federal Register; the Assistant Archivists for Civil and Military Archives; the Director, World War II Records Division; the Chief, Central Research Room Branch; and the Chief of any Reference Branch of the Offices of Civil and Military Archives.

INFORMATION SERVICE

§ 2.35 Information about records.

Upon request, information about the over-all holdings of the National Archives and Records Service or information about the presence of specific records among its holdings will be furnished, provided that the time required to service such requests is not excessive.

§ 2.36 Information derived from records.

Information contained in the records will not ordinarily be furnished by the National Archives and Records Service except in the form of photo-copies of the records themselves subject to the provisions of § 2.4.

LEGAL DEMANDS

§ 2.40 Compliance with subpoena or other legal demand.

When a subpoena duces tecum or other legal demand for the production of records or other material deposited with the National Archives is served upon the Administrator of General Services, the Administrator will, so far as legally practicable, comply with such subpoena or demand by submitting authenticated copies of such records or material, or the original records or material if necessary, unless he determines that disclosure of the information contained therein is contrary to law or Executive order or would prejudice the national interest or security of the United States. When such subpoena or demand is served upon any officer or employee of the General Services Administration other than the Administrator, he will, so far as legally practicable and unless otherwise directed by the Administrator, respectfully decline to produce such records or material on the grounds that he does not have legal custody thereof; that he is without authority under these regulations to produce the same; and that the Administrator has not determined that disclosure is lawful and will not prejudice the national interest or security of the United States.

BERNARD L. BOUTIN,
Administrator.

APRIL 25, 1962.

[F.R. Doc. 62-4203; Filed, Apr. 26, 1962;
11:39 a.m.]

PART 6—DWIGHT D. EISENHOWER LIBRARY

The following new Part 6 is added to Title 44 of the Code of Federal Regulations:

- Sec.
- 6.0 Scope.
- 6.1 Definitions.
- 6.2 Legal custody.
- 6.3 General conduct.
- 6.4 Photography by visitors.

AVAILABILITY AND USE OF HISTORICAL MATERIAL

- 6.10 Inquiries regarding use.
- 6.11 Restricted materials.
- 6.12 Admission card. [Reserved]
- 6.13 Withdrawal of admission card. [Reserved]

RESEARCH ROOM RULES [Reserved]

LOANS AND REPRODUCTIONS [Reserved]

AUTHENTICATION AND ATTESTATION [Reserved]

LEGAL DEMANDS

- 6.50 Service of subpoena, or other legal demand; compliance.

AUDITORIUM

- 6.60 Primary uses.
- 6.61 Standards for assigned uses.
- 6.62 Application procedure.
- 6.63 General provisions.

AUTHORITY: §§ 6.0 to 6.63 issued under sec. 205, 63 Stat. 389; 40 U.S.C. 486 and 69 Stat. 695; 44 U.S.C. 397 (e), (f), (j).

§ 6.0 Scope.

The provisions of this part apply to historical material in the Dwight D. Eisenhower Library.

§ 6.1 Definitions.

As used in this part, unless the context otherwise requires:

(a) The term "act" means section 507 of the Federal Records Act of 1950, 44 U.S.C. 397.

(b) The term "Library" means the Dwight D. Eisenhower Library, Abilene, Kansas.

(c) The term "building" means the building occupied by the Library at Abilene, Kansas.

(d) The term "Administrator" means the Administrator of General Services.

(e) The term "Archivist" means the Archivist of the United States.

(f) The term "Director" means the Director of the Dwight D. Eisenhower Library.

(g) The term "historical material" includes books, correspondence, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other objects or materials having historical or commemorative value.

§ 6.2 Legal custody.

The Administrator has legal custody of historical material in the Library.

§ 6.3 General conduct.

All persons entering in or upon Library property are subject to the general regulations covering public buildings and grounds issued by the Administrator (44 CFR 100).

§ 6.4 Photography by visitors.

Visitors are permitted to take photographs in the Library without restriction if flash bulbs or other special photographing devices are not used, and if the photographs are not intended for commercial use. Persons desiring to take photographs requiring the use of photographing devices, tripods, or other elaborate equipment, or for commercial purposes, must obtain special permission from the Director. Applications for such permission should be made to the Director.

AVAILABILITY AND USE OF HISTORICAL MATERIAL

§ 6.10 Inquiries regarding use.

Historical material in the Library, except for items displayed in the exhibit rooms, will not be available for use until restricted material has been identified and segregated. Notice will be published when unrestricted materials are opened to research, and this section will be revised accordingly. In the interim, questions regarding access to historical material should be addressed to the Director.

§ 6.11 Restricted materials.

In accordance with the provisions of section 507(f)(3) of the Federal Property and Administrative Services Act of 1949, as amended (44 U.S.C. 397(f)(3)), materials on which availability and use restrictions have been specified in writing by the donors or depositors will be made available subject to the restrictions specified. The following classes of material will not be made available for examination or use:

(a) Materials on which the Archivist has imposed restrictions.

(b) Materials restricted by law or Executive order.

(c) Materials containing information the disclosure of which would be prejudicial to the national interest or security of the United States.

§ 6.12 Admission card. [Reserved]

§ 6.13 Withdrawal of admission card. [Reserved]

RESEARCH ROOM RULES [Reserved]

LOANS AND REPRODUCTIONS [Reserved]

AUTHENTICATION AND ATTESTATION [Reserved]

LEGAL DEMANDS

§ 6.50 Service of subpoena or other legal demand; compliance.

When a subpoena duces tecum or other legal demand for the production of historical material in the Library is served upon the Administrator, the Administrator will, so far as legally practicable, comply with such subpoena or demand by submitting authenticated copies of such material, or the original material if necessary unless he determines that disclosure of the information is contrary to law or Executive order, would violate restrictions authorized by law and specified in writing by the donors of the material, or would prejudice the national

interest or security of the United States. When a subpoena or demand for historical material is served upon any officer or employee of the General Services Administration other than the Administrator, he will, so far as legally practicable and unless otherwise directed by the Administrator, respectfully decline to produce such material on the ground that he does not have legal custody thereof, is without authority under this part to produce the same, and that the Administrator has not determined that production of the material is in accordance with the regulations in this part.

AUDITORIUM

§ 6.60 Primary uses.

The auditorium is designed primarily to serve the purposes of the Library in the presentation or discussion of historical materials, through lectures, seminars, meetings of professional societies, projection of historical motion pictures, and the like.

§ 6.61 Standards for assigned uses.

(a) When the auditorium is not required for library purposes, assignments may be made upon application, for the following uses:

(1) For meetings of Federal Government organizations or recognized Federal employee groups.

(2) For meetings (including meetings of civic or veterans organizations and professional, scientific, educational, and other similar societies or organizations that are sponsored by or related to the activities of the Library.

(3) For the presentation to the public of lectures, concerts, and similar performances sponsored by the Library or in which its employees participate.

(4) For other uses at the discretion of the Director.

(b) Such meetings or performances shall not in any event include those sponsored by profit-making organizations, those promoting commercial enterprise or commodities, or those having political, sectarian, or a similar nature or purpose.

(c) Assignment will not be made for Saturdays, Sundays, or holidays, unless specifically justified.

§ 6.62 Application procedure.

Each application for use of the auditorium will be submitted in writing by the head of the requesting agency or organization, or his duly authorized representative, at least one week in advance of the proposed use. Each application should be directed to the Director and should include the following information:

(a) The name of the organization requesting the assignment;

(b) The date on which assignment is requested, and the hours of contemplated use;

(c) A brief description of the scheduled meeting or performance;

(d) The approximate number of persons expected to attend (capacity of the auditorium is 165);

(e) A statement as to whether or not it is the intention to exhibit at the meet-

ing or performance motion pictures or slides and, if so, the size of the film or slides and whether the film to be shown, if any, is on nitrate or safety base; and

(f) Samples or description of any literature, folders, or posters to be distributed or exhibited at the meeting or performance.

§ 6.63 General provisions.

(a) No program will be permitted to continue beyond 10 p.m.

(b) No admission fee may be charged, no indirect assessment fee may be made for admission, and no collection may be taken. Commercial advertising or the sale of articles of any character is prohibited.

(c) The serving or consumption of food or beverages within the auditorium is prohibited.

(d) Smoking is prohibited within the auditorium.

(e) Music racks, ushers, and attendants for checking wraps, if needed, will be furnished and paid for by the applying organization.

(f) If the projecting of motion pictures or slides is part of the program, a competent operator, if available, will be furnished by the Library for a fee. The using organization may provide its own operator with the approval of the Director of the Library.

(g) The posting of any material about the premises is subject to the approval of the General Services Administration's Building Manager.

(h) All persons attending meetings or performances are required to go directly to the auditorium. No one shall be admitted to other parts of the building closed to the general public.

BERNARD L. BOUTIN,
Administrator.

APRIL 25, 1962.

[F.R. Doc. 62-4204; Filed, Apr. 26, 1962; 11:39 a.m.]

SUBCHAPTER C—REAL PROPERTY MANAGEMENT PART 100—PUBLIC BUILDINGS AND GROUNDS

Revision and Transfer of Section

Section 100.37 is rescinded because it has been revised, renumbered and transferred as § 2.13 of Part 2 of this chapter.

BERNARD L. BOUTIN,
Administrator.

APRIL 25, 1962.

[F.R. Doc. 62-4205; Filed, Apr. 26, 1962; 11:39 a.m.]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce

SUBCHAPTER G—EMERGENCY OPERATIONS

[General Order 75, 2d Rev., Amdt. 1]

PART 308—WAR RISK INSURANCE

Miscellaneous Amendments

Effective as of midnight, June 7, 1962, G.m.t., Part 308 is hereby amended to reflect the following changes:

1. Amend § 308.6 *Period of interim binders and renewal procedure*, § 308.106 *Standard form of war risk hull insurance interim binder and optional disbursements insurance endorsement*, § 308.206 *Standard form of war risk protection and indemnity insurance interim binder*, and § 308.305 *Standard form of Second Seamen's war risk insurance interim binder*, by changing the expiration dates contained therein to read "midnight, June 7, 1963, G.m.t."

2. Amend § 308.200 *Amount of insurance for which application may be made*, § 308.201 *Form of application*, § 308.203 *Sum which will be insured under interim binder*, and § 308.206 *Standard form of war risk protection and indemnity insurance interim binder*, by changing the amounts contained therein to read "\$750.00."

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

Dated: April 17, 1962.

By order of the Maritime Administrator.

JAMES S. DAWSON, Jr.,
Secretary.

[F.R. Doc. 62-4118; Filed, Apr. 26, 1962; 8:48 a.m.]

Title 45—PUBLIC WELFARE

Chapter I—Office of Education, Department of Health, Education, and Welfare

PART 114—FEDERAL ASSISTANCE UNDER PUBLIC LAW 815, 81ST CONGRESS, AS AMENDED, IN THE CONSTRUCTION OF MINIMUM SCHOOL FACILITIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES

Second Deadline for Applications With Respect to Funds Available During Fiscal Year 1962

Subpart B of Part 114, 45 CFR (23 F.R. 7291, September 19, 1958, as amended by 24 F.R. 3694, May 7, 1959, 24 F.R. 7694, September 24, 1959, 25 F.R. 2531, March 25, 1960, 25 F.R. 9141, September 23, 1960, 26 F.R. 2688, March 30, 1961, and 26 F.R. 9777, October 18, 1961), issued pursuant to Public Law 815, 81st Congress, as amended (64 Stat. 967) 20 U.S.C. 631, is hereby amended by adding a new section (§ 114.27) in order to establish a second deadline date for filing applications with respect to funds available during the fiscal year 1962. The new section reads as follows:

§ 114.27 Second deadline for applications with respect to funds available during fiscal year 1962.

For the purposes of sections 3 and 14 of the Act, June 25, 1962, is fixed as the date on or before which all complete applications for payments to which an applicant may be entitled under the Act from funds then available for such purposes shall be filed.

(Sec. 208, 64 Stat. 975, as amended; 20 U.S.C. 642)

[SEAL] STERLING M. McMURRIN,
U.S. Commissioner of Education.

Approved: April 19, 1962.

IVAN A. NESTINGEN,
Acting Secretary of Health,
Education, and Welfare.

[F.R. Doc. 62-4125; Filed, Apr. 26, 1962; 8:48 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 33—SPORT FISHING

Fort Peck Game Range, Montana

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

MONTANA

FORT PECK GAME RANGE

Sport fishing on the Fort Peck Game, Montana, is permitted only on the areas designated by signs as open to fishing. This open area, comprising 180,000 acres or 18 percent of the total area of the refuge, is delineated on a map available at the refuge headquarters, P.O. Box 819, Lewistown, Montana, and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay, Portland 8, Oregon.

Sport fishing is subject to the following conditions:

(a) Species permitted to be taken: All species.

(b) Open season: Open entire year as prescribed by State regulations.

(c) Daily creel limits: Trout: 10 fish not to exceed 10 pounds and 1 fish. Pike and sauger: 15 fish not to exceed 15 pounds and 1 fish. Plus minor species as prescribed by State regulations.

(d) Methods of fishing. (1) Tackle: As prescribed by State regulations.

(2) Bait: As prescribed by State regulations.

(3) Boats: Boats with or without motors may be used for fishing.

(e) Other provisions. (1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area during the prescribed fishing season.

(3) The provisions of this special regulation are effective to May 21, 1963.

RICHARD E. GRIFFITH,
Acting Regional Director, Bureau
of Sport Fisheries and Wildlife.

APRIL 19, 1962.

[F.R. Doc. 62-4107; Filed, Apr. 26, 1962; 8:47 a.m.]

PART 33—SPORT FISHING**Ninepipe National Wildlife Refuge, Montana**

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.**MONTANA****NINEPIPE NATIONAL WILDLIFE REFUGE**

Sport fishing on the Ninepipe National Wildlife Refuge, Montana, is permitted only on the areas designated by signs as open to fishing. This open area, comprising 1,200 acres or 59 percent of the total area of the refuge, is delineated on a map available at the refuge headquarters at the National Bison Range, Moiese, Montana, and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay, Portland 8, Oregon.

Sport fishing is subject to the following conditions:

(a) Species permitted to be taken: Bass, perch, bullhead and sunfish.

(b) Open season. (1) All waters are closed from March 1, 1962, through July 15, 1962, except that portion of Ninepipe Refuge from and including the main dike along the north shore to the Allentown bridge and that portion of the refuge east of Highway 93.

(2) All waters open to fishing July 15, 1962, through September 3, 1962 (Labor Day).

(3) All waters closed to fishing except main dike as posted from September 4, 1962, to the beginning of migratory waterfowl hunting season.

(4) All waters closed to fishing during migratory waterfowl hunting season.

(5) All waters open to fishing day following migratory waterfowl hunting season through February 28, 1963.

Fishing hours: 5:00 a.m. to 10:00 p.m.

(c) Daily creel limits: Bass: 15 fish not to exceed 15 pounds and 1 fish. Minor species as per State regulations.

(d) Methods of fishing. (1) Tackle: One line and hook or hooks with or without pole in immediate control.

(2) Bait: Sculpin (*Cottus*) may be used. Other fish, live or dead, may not be used for bait.

(e) Other provisions. (1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area during the prescribed fishing season.

(3) The provisions of this special regulation are effective to March 1, 1963.

RICHARD E. GRIFFITH,
Acting Regional Director, Bureau
of Sport Fisheries and Wildlife.

APRIL 20, 1962.

[F.R. Doc. 62-4108; Filed, Apr. 26, 1962; 8:47 a.m.]

PART 33—SPORT FISHING**Pishkun National Wildlife Refuge, Montana**

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.**MONTANA****PISHKUN NATIONAL WILDLIFE REFUGE**

Sport fishing on the Pishkun National Wildlife Refuge, Montana, is permitted only on the areas designated by signs as open to fishing. This open area, comprising 1,500 acres or 47 percent of the total area of the refuge, is delineated on a map available at the refuge headquarters of the Benton Lake National Wildlife Refuge, 302 Rocky Mountain Building, Great Falls, Montana, and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay, Portland 8, Oregon.

Sport Fishing is subject to the following conditions:

(a) Species permitted to be taken: Trout and other minor species permitted under State regulations.

(b) Open season: June 2, 1962, through February 28, 1963, except closed during waterfowl hunting season. Fishing hours: 5:00 a.m. to 10:00 p.m.

(c) Daily creel limits: Trout—10 fish not to exceed 10 pounds and 1 fish, plus other creel limits for minor species as are prescribed for State regulations.

(d) Methods of fishing. (1) Tackle: One line and hook or hooks with or without pole in immediate control.

(2) Bait: Sculpin (*Cottus*) may be used for bait. Other live or dead fish prohibited.

(3) Boats: Boats prohibited on West Lake. Boats with motors up to 10 h.p. may be used for fishing on East Lake.

(e) Other provisions. (1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area during the prescribed fishing season.

(3) The provisions of this special regulation are effective to March 1, 1963.

RICHARD E. GRIFFITH,
Acting Regional Director, Bureau
of Sport Fisheries and Wildlife.

APRIL 20, 1962.

[F.R. Doc. 62-4109; Filed, Apr. 26, 1962; 8:47 a.m.]

PART 33—SPORT FISHING**Willow Creek National Wildlife Refuge, Montana**

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.**MONTANA****WILLOW CREEK NATIONAL WILDLIFE REFUGE**

Sport fishing on the Willow Creek National Wildlife Refuge, Montana, is permitted only on the areas designated by signs as open to fishing. This open area, comprising 1,420 acres or 44 percent of the total area of the refuge, is delineated on a map available at the refuge headquarters of the Benton Lake National Wildlife Refuge, 302 Rocky Mountain Building, Great Falls, Montana, and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay, Portland 8, Oregon.

Sport fishing is subject to the following conditions:

(a) Species permitted to be taken: Trout and other minor species as prescribed by State regulations.

(b) Open season: June 2, 1962, through February 28, 1963, except closed during migratory waterfowl hunting season. Fishing hours 5:00 a.m. to 10:00 p.m.

(c) Daily creel limits: Trout—10 fish not to exceed 10 pounds and 1 fish, plus other creel limits for minor species as are prescribed for State regulations.

(d) Methods of fishing. (1) Tackle: One line and hook or hooks with or without pole in immediate control.

(2) Bait: Sculpin (*Cottus*) may be used. Other live or dead fish may not be used for bait.

(3) Boats: Boats with motors up to 10 h.p. may be used for fishing.

(e) Other provisions. (1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area during the prescribed fishing season.

(3) The provisions of this special regulation are effective to March 1, 1963.

RICHARD E. GRIFFITH,
Acting Regional Director, Bureau
of Sport Fisheries and Wildlife.

APRIL 20, 1962.

[F.R. Doc. 62-4110; Filed, Apr. 26, 1962; 8:47 a.m.]

PART 33—SPORT FISHING**Cape Romain National Wildlife Refuge, South Carolina**

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.**SOUTH CAROLINA****CAPE ROMAIN NATIONAL WILDLIFE REFUGE**

Sport fishing on the Cape Romain National Wildlife Refuge is permitted only on the areas designated by signs as open to fishing. This open area, comprising

RULES AND REGULATIONS

580 acres or 1.67 percent of the total area of the refuge, is delineated on a map available at the refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta 23, Georgia. Sport fishing is subject to the following conditions:

(a) Species permitted to be taken: Black bass; bream and other minor species permitted by State regulations.

(b) Open season: May 1 through September 30. Daylight hours only.

(c) Daily creel limits: Black bass: 10; game fish other than bass: 25; other minor species as permitted by State regulations.

(d) Methods of fishing. (1) Pole and line, rod and reel, artificial and live baits permitted.

(2) Rowboats, canoes, and other floating devices without motors permitted.

(3) Fishing from dikes, dams and water control structures prohibited.

(e) Other provisions. (1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) Rowboats, canoes, and other floating devices without motors may be placed in Jack's Creek only at points designated by posting by the officer in charge but must be removed from the refuge at the close of each day's fishing.

(3) A Federal permit is not required to enter the public fishing area.

(4) The provisions of this special regulation are effective to October 1, 1962.

WALTER A. GRESH,
*Regional Director, Bureau of
Sport Fisheries and Wildlife.*

APRIL 19, 1962.

[F.R. Doc. 62-4111; Filed, Apr. 26, 1962;
8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 7]

GREAT SMOKY MOUNTAINS NATIONAL PARK, NORTH CAROLINA AND TENNESSEE

Fishing

Notice is hereby given that pursuant to the authority contained in section 3 of the act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 3), Departmental Order 2640 (16 F.R. 5846), National Park Service Order No. 14 (19 F.R. 8824), Regional Director, Region One, Order No. 3 (21 F.R. 1493), as amended, it is proposed to amend 36 CFR 7.14 as set forth below. The purpose of this amendment is to close additional waters to general fishing and to provide special fishing streams for the exclusive use of children under age twelve. Special creel limits and rules governing lures are provided for this purpose.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Superintendent, Great Smoky Mountains National Park, Gatlinburg, Tennessee, within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

FRED J. OVERLY,
Superintendent, Great Smoky
Mountains National Park.

Paragraph (a) of § 7.14 is amended to read as follows:

§ 7.14 Great Smoky Mountains National Park.

(a) Fishing—(1) Open and closed waters. All park waters are open to fishing except the following:

(ii) Tennessee: All waters of the Middle Prong of Little Pigeon River above the point where Ramsey Prong enters it; and that portion of LeConte Creek (also known as Mill Creek) as posted through the residential area of Twin Creeks.

(4) Restrictions as to use of bait. Fishing is permitted only with artificial flies or lures with one hook. Possession of insect adults, pupae and larvae, earthworms, amphibians or mammals, or parts thereof, along any stream while in possession of fishing tackle shall be considered prima facie evidence of violation

of this section, except as noted in subparagraph (7) (i) (c) of this paragraph.

(6) Limit of catch and in possession. Five fish is the maximum number of trout or bass, or combination thereof, which an angler may catch and retain in any one day or have in his possession at any time, except upon portion of streams designated as waters reserved for children, where limit shall be two (2) fish per child fishing per day with one day's catch in possession. Immediately upon retention of the fifth fish, the fisherman must disassemble his fishing tackle and cease fishing. There is no creel limit on other species of fishes.

(7) Restrictions and exceptions in certain waters of the park. The following waters are designated as "Sport Fishing Streams" and subject to the following restrictions:

(i) * * *

(c) Waters reserved for children. That portion of the Little River in Tennessee which lies between the stone bridge at the entrance to the Appalachian Club downstream to the lower boundary of Millsaps Picnic Area, and that portion of the Oconaluftee River in North Carolina which lies between the junction of the Bradley Fork with the Oconaluftee River to the steel bridge where Tow String Road crosses the Oconaluftee River, shall be reserved for children under the age of 12 during the regular fishing season as permitted under subparagraph (3) of this paragraph. Children may use artificial flies and lures, worms, grasshoppers, or other live insects, on single hook.

[F.R. Doc. 62-4112; Filed, Apr. 26, 1962; 8:47 a.m.]

[36 CFR Part 7]

MAMMOTH CAVE NATIONAL PARK, KENTUCKY

Limitation on Load and Weight of Vehicles

Notice is hereby given that pursuant to the authority contained in section 3 of the act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 3), Departmental Order 2640 (16 F.R. 5846), National Park Service Order No. 14 (19 F.R. 8824), Regional Director, Region One, Order No. 3 (21 F.R. 1493), as amended, it is proposed to amend 36 CFR 7.36 as set forth below. The purpose of this amendment is to control load and weight limitations on roads and ferries within Mammoth Cave National Park.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Superintendent, Mammoth Cave National Park, Kentucky, within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

A new paragraph (e) is added to § 7.36 to read as follows:

§ 7.36 Mammoth Cave National Park.

(e) Limitation on load and weight of vehicles. (1) Vehicles with a gross weight in excess of 8 tons (16,000 pounds) are prohibited from using the roads or ferries within Mammoth Cave National Park, except that vehicles in excess of 8 tons carrying passengers and/or their luggage, camping equipment and related items for vacation or recreational purposes may use park roads.

(2) The Superintendent may, in his discretion and when it has been administratively determined to be in the best interest of the government, issue a special permit for the moving of vehicles with a gross weight in excess of 8 tons over park roads, but in no case may the 8 ton load limit on the ferries be exceeded.

PERRY E. BROWN,
Superintendent,
Mammoth Cave National Park.

[F.R. Doc. 62-4113; Filed, Apr. 26, 1962; 8:47 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 748) has been filed by Mobay Chemical Company, 812 Monsanto Avenue, Springfield, Massachusetts, proposing the issuance of a regulation to provide for the safe use of polycarbonate plastics as articles or components of articles intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding dry food.

Dated: April 19, 1962.

J. K. KIRK,
Assistant Commissioner
of Food and Drugs.

[F.R. Doc. 62-4129; Filed, Apr. 26, 1962; 8:49 a.m.]