vinylidene chloride copolymer coatings containing polymer units derived from methyl acrylate and/or methacrylic acid are limited to use in contact with nonalcoholic foods having a pH above 5.0."

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, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

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

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

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-281; Filed, Jan. 8, 1968; 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

RUBBER ARTICLES INTENDED FOR REPEATED USE

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 5B1794) filed by E. I. du Pont de Nemours & Co. Inc., 1007 Market Street, Wilmington, Del. 19898, and other relevant material, has concluded that the food additive regulations should be amended to provide for the use of additional optional substances (identified below) in the formulation of rubber articles intended for repeated food-contact use.

As originally filed, the petition also proposed similar use of a urethane polymer elastomer and 4,4'-methylenebis (2-chloroaniline); however, the petitioner subsequently withdrew that part of the petition.

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 (21 CFR 2.120), § 121.2562 (c)(4) is amended:

1. By alphabetically inserting three new items in the list under subdivision (i);

2. By adding to subdivision (ii) (*a*) two new items and by revising subdivision (ii) (*a*) to read as indicated;

3. By revising the heading of subdivision (ii) (*d*) to read as indicated; and

4. By alphabetically inserting one new item in the list under subdivision (ix).

The affected portions read as follows:

§ 121.2562 **Rubber articles intended for repeated use.**

* * * * *

(c) * * *

(4) * * *

(i) *Elastomers.*

* * * * *

Ethylene-propylene-1,4-hexadiene copolymers containing no more than 6 weight percent of total polymer units derived from 1,4-hexadiene.

* * * * *

Vinylidene fluoride-hexafluoropropylene copolymers (minimum number average molecular weight 70,000 as determined by osmotic pressure in methyl ethyl ketone).

Vinylidene fluoride - hexafluoropropylene-tetrafluoroethylene copolymers (minimum number average molecular weight 100,000 as determined by osmotic pressure in methyl ethyl ketone).

(ii) *Vulcanization materials—(a) Vulcanizing agents.*

* * * * *

4,4'-Bis(aminocyclohexyl)methane carbamate for use only as cross-linking agent in the vulcanization of vinylidene fluoride-hexafluoropropylene copolymer and vinylidene fluoride - hexafluoropropylene - terrafluoroethylene copolymer elastomers identified under subdivision (i) of this subparagraph and limited to use at levels not to exceed 2.4 percent by weight of such copolymers.

* * * * *

Hexamethylenediamine carbamate for use only as cross-linking agent in the vulcanization of vinylidene fluoride-hexafluoropropylene copolymer and vinylidene fluoride-hexafluoropropylenetetrafluoroethylene copolymer elastomers identified under subdivision (i) of this subparagraph and limited to use at levels not to exceed 1.5 percent by weight of such copolymers.

* * * * *

Sulfur, ground.

* * * * *

(d) *Activators (total not to exceed 5 percent by weight of rubber product except magnesium oxide may be used at higher levels).*

* * * * *

(ix) *Miscellaneous (total not to exceed 5 percent by weight of rubber product).*

* * * * *

α-(*p*-Nonylphenyl) - *omega* - hydroxypoly (oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters, barium salt; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 9 moles; for use only as residual polymerization emulsifier at levels not to exceed 0.7 percent by weight of ethylene-propylene-1,4-hexadiene copolymers identified under subdivision (i) of this subparagraph.

* * * * *

Any person who will be adversely affected by the foregoing order may at any time with 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, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

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

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

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-280; Filed, Jan. 8, 1968; 8:49 a.m.]

SUBCHAPTER C—DRUGS

PART 148m—OLEANDOMYCIN

Triacetyloleandomycin Chewable Tablets

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357), and delegated by him to the Commissioner of Food and Drugs (21 CFR 2.120), Part 148m is amended to provide for the certification of the subject drug by adding the following new section:

§ 148m.9 **Triacetyloleandomycin chewable tablets.**

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Each triacetyloleandomycin chewable tablet contains an amount of triacetyloleandomycin equivalent to 125 milligrams of oleandomycin with suitable diluents, binders, buffers, colorings, and flavorings. The moisture content is not more than 5 percent. The triacetyloleandomycin used conforms to the standards prescribed by § 148m.2 (a)(1). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Requests for certification; samples.* In addition to the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The triacetyloleandomycin used in making the batch for potency, toxicity, moisture, pH, residue on ignition, identity, R_f value, acetyl value (only if more than one spot is present in the determination of R_f value), and crystallinity.

(*b*) The batch for potency and moisture.

(ii) Samples required:

(*a*) Triacetyloleandomycin used in making the batch: 10 packages; nine containing approximately 500 milligrams each and one containing approximately 2 grams.

(*b*) The batch: A minimum of 30 tablets.

(*c*) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees.* $0.75 for each tablet in the sample submitted in accordance with subparagraph (3)(ii)(*b*) of this paragraph; $4 for each container submitted in accordance with subparagraph (3)(ii)(*c*) of this paragraph; $5 for each container submitted in accordance with subparagraph (3)(ii)(*a*) of this paragraph.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 148m.2(b)(1)(ii) or (iii), except prepare the sample stock solution by placing a representative number of tablets in a glass blending jar with sufficient 80 percent isopropanol to give a sample stock solution of 1,000 micrograms per milliliter. Remove an aliquot of the sample stock solution and make the proper estimated dilutions to the prescribed reference concentration in 0.2*M* potassium phosphate buffer, pH 10.5, if the plate assay is used; or in 1 percent potassium phosphate buffer, pH 6.0, if the turbidimetric assay is used. Its potency is satisfactory if it contains not less than 90 percent nor more than 125 percent of the amount of triacetyloleandomycin that it is represented to contain.

(2) *Moisture.* Proceed as directed in § 141a.5(a) of this chapter.

Data supplied by the manufacturer concerning the safety and efficacy of the subject antibiotic drug have been evaluated. Since the conditions prerequisite to providing for certification of the subject drug have been complied with and since it is in the public interest not to delay in providing for such certification, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: December 28, 1967.

JAMES L. GODDARD,
Commissioner of Food and Drugs.

[F.R. Doc. 68-262; Filed, Jan. 8, 1968; 8:47 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 208—FLOOD CONTROL REGULATIONS

Arbuckle Dam and Lake of the Arbuckles, Rock Creek, Okla.

Pursuant to the provisions of section 7 of the Act of Congress approved December 22, 1944 (54 Stat. 890; 33 U.S.C. 709), the following regulations are hereby prescribed to govern the use of the flood control storage above elevation 872 in Lake of the Arbuckles on Rock Creek (tributary of the Washita River), Okla., and the operation of the Arbuckle Dam for flood control purposes.

§ 208.29 Arbuckle Dam and Lake of the Arbuckles, Rock Creek, Okla.

The Bureau of Reclamation, or its designated agent, shall operate the Arbuckle Dam and Lake of the Arbuckles in the interest of flood control as follows:

(a) Flood control storage in Lake of the Arbuckles between elevation 872 (top of conservation pool) and elevation 885.3 (top of flood control pool) initially amounts to 36,400 acre-feet. Whenever the lake level is within this elevation range the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable of the flood damage below the lake. In order to accomplish this purpose, flood control releases shall be limited to amounts, which when combined with local inflows below the dam will not produce flows in excess of bankfull on Rock Creek downstream of the lake and on the Washita River, from the confluence of Rock Creek to Durwood, Okla. Operating stages and corresponding flows are as follows: An 11-foot stage (15,000 c.f.s.) on the U.S.G.S. gage on Rock Creek near Dougherty, Okla., river mile 1; and a 20-foot stage (15,000 c.f.s.) on the U.S.G.S. gage on the Washita River near Durwood, Okla., river mile 63.4.

(b) When the level in Lake of the Arbuckles exceeds elevation 885.3 (top of flood control pool), releases shall be made at the maximum rate possible through the river outlet works and the uncontrolled spillway and continued until the lake level recedes to elevation 885.3 when releases shall be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation or its designated agent in immediate charge of operation of the Arbuckle Dam shall furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report, on forms provided by the District Engineer for this purpose, showing the lake elevation; the number of river outlet works gates in operation with their respective openings and releases; uncontrolled spillway release; municipal pumping rate; tailwater elevation; available evaporation data; and precipitation in inches. Normally, a reading at 8 a.m., noon, 4 p.m., and midnight shall be shown for each day. Whenever the lake level rises to elevation 872 and releases for flood regulation are necessary or appear imminent, the representative of the Bureau of Reclamation or its designated agent, shall report at once to the District Engineer by telephone or telegraph and unless otherwise instructed shall report once daily thereafter in that manner until the lake level recedes to elevation 872. These latter reports shall reach the District Engineer by 9 a.m. each day.

(d) The regulations of this section, insofar as they govern use of flood control storage capacity above elevation 872, are subject to temporary modification in time of flood by the District Engineer if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of the Bureau of Reclamation and its designated agent in immediate charge of operation of the Arbuckle Dam by any available means of communication, and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, and his designated agent, with a copy to the representative in charge of the Arbuckle Dam.

(e) Flood control operation shall not restrict pumping necessary for municipal and industrial uses and releases necessary for downstream users.

(f) Releases made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and lake from major damage or inconsistent with the safe routing of the inflow design flood (spillway design flood).

(g) The discharge characteristics of the river outlet works (capable of discharging approximately 1,880 c.f.s. when the lake level is at 872) shall be maintained in accordance with the construction plans (Bureau of Reclamation Specifications No. 6099 as modified by the "as built" drawings).

(h) All elevations stated in this section are at Arbuckle Dam and are referred to the datum in use at that location.

[Regs., December 6, 1967, ENGCW-EY]
(Sec. 7, 54 Stat. 890; 33 U.S.C. 709)

For the Adjutant General.

J. W. HURD,
Colonel, AGC, Comptroller, TAGO.

[F.R. Doc. 68-238; Filed Jan. 8, 1968; 8:46 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 authority contained in Department of Defense Directive No. 4105.30, dated March 11, 1959 (24 F.R. 2260), as amended, and 10 U.S.C. 2202.

PART 1—GENERAL PROVISIONS

1. Sections 1.113–1, 1.113–2, and the introductory text of § 1.115(a) are revised; §§ 1.323, 1.324–1, 1.324–2, 1.324–3 1.324–4, 1.324–5, and 1.324–6 are revised; and new §§ 1.324–7, 1.324–8, 1.324–9, and 1.324–10 are added, as follows:

§ 1.113–1 Government personnel.

All governmental personnel engaged in procurement and related activities shall conduct business dealing with industry in a manner above reproach in every respect. Transactions relating to expenditure of public funds require the highest degree of public trust to protect the interests of the Government. While many Federal laws and regulations place restrictions on the actions of governmental personnel, the latter's official conduct must, in addition, be such that the individual would have no reticence about making a full public disclosure thereof. See AR 600–50 (Part 579 of this title), for the Army; SECNAV Instr. 5370.2D of June 29, 1966, for the Navy; AFR 30–30, for the Air Force; and DSAR 5500.1, for the Defense Supply Agency.

§ 1.113–2 Organizational conflicts of interest.

(a) Department of Defense Directive 5500.10, promulgated June 1, 1963, Subject: Rules for the Avoidance of Organizational Conflicts of Interest is set forth in Part 141 of this chapter. The Directive sets out some of the more essential policy considerations of the Department of Defense with respect to relationships with non-Federal institutions. Specifically, the Directive describes examples of various organizational conflicts of interest which might come into being, and rules for avoidance of such conflicts; and it provides that action must be taken to avoid placing a contractor in a position where his judgment might be biased or where he would have an unfair competitive advantage within the scope and intent of the rules. However, the Directive cannot of itself impose any obligations on the contractor; such obligations must be imposed by a contract clause designed to carry out the intent of the Directive. Furthermore, potential contractors must be advised in the solicitation as to the extent of applicability of the rules, and must be given an opportunity to negotiate on the terms of the clause and its application.

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

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

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

(4) In no case shall the clause included in a solicitation or in a contract (including letter contracts) pursuant to this section defer the determination of the application of the Directive to a time after the contract has been awarded.

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

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

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

§ 1.115 Noncollusive bids and proposals.

(a) In order to promote full and free competition for Government contracts, the following certification shall be included in all (1) invitations for bids and (2) requests for proposals or quotations (other than for small purchases made in accordance with Subpart F, Part 3 of this chapter; other than for solicitations issued by overseas purchasing offices which will result in contracts performed overseas by foreign suppliers; and other than requests for technical proposals in connection with two-step formal advertising) involving firm fixed-price contracts and fixed-price contracts with escalation. When the solicitation authorizes the submission of oral offers and requires that such offers be confirmed in writing, it shall require that the certification be included with or be expressly incorporated by reference in and thereby made a part of the confirmation.

* * * * *

§ 1.323 Procurement of natural rubber for tires, tubes, tire recapping, and recapping materials.

(a) It is national policy to require contractors to purchase natural rubber from the National Stockpile in connection with:

(1) Defense contracts for aircraft tires, tubes, recapping materials and tire recapping (unless the recapping materials are Government furnished); and defense contracts for aircraft under which the contractor is to furnish tires or tubes;

(2) Army contracts for tires, tubes, recapping materials and tire recapping (unless the recapping materials are Government furnished), produced to military specifications for use on military trucks, trailers and buses; and Army contracts for such vehicles under which the contractor is to furnish tires or tubes.

The Office of Emergency Planning Executive Office of the President, has authorized the General Services Administration to dispose of natural rubber for that purpose.

(b) The following clause shall be inserted in all such contracts.

PURCHASE OF NATURAL RUBBER (JULY 1967)

(a) Except as provided in paragraph (b) below, the Contractor shall purchase from the General Services Administration, either directly or through a dealer or otherwise cause to be purchased, during the life of

this contract ------[1] pounds of crude natural rubber. Each order for rubber placed with the General Services Administration pursuant to this clause shall state that it has been placed in accordance with the provisions of this clause, shall identify this contract by number and the name of the issuing activity and shall be sent to:

Manager, Rubber Project, General Services Administration, Room 6042, GSA Building, 18th and F Streets NW., Washington, D.C. 20025.

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

(b) To the extent the Contractor places subcontracts for tires, tubes, tire recapping, or recapping materials under this contract, he is not required to purchase rubber from the General Services Administration. However, he agrees to incorporate in any such subcontract the same terms and conditions set forth in this clause including this paragraph (b), specifying approximate quantity of rubber (natural and synthetic) contained in the tires, tubes, tire recapping, or recapping materials to be delivered under the subcontract. The Contractor shall forward one copy of each such subcontract, referencing the prime contract number and the issuing activity, to the General Services Administration at the above address.

(c) Copies or pertinent abstracts of all contracts and contract modifications affecting rubber quantities will be forwarded by the purchasing activity to the General Services Administration at the address specified in the contract clause.

§ 1.324–1 General.

A warranty clause gives the Government a contractual right to assert claims regarding the deficiency of supplies or services furnished, notwithstanding any other contractual provisions pertaining to acceptance by the Government. Such a clause allows the Government additional time after acceptance in which to assert a right to correction of the deficiencies or defects, reperformance, an equitable adjustment in the contract price, or other remedies. This additional period of time may begin at the time of delivery or at the occurrence of a specified event, and may run for a given number of days or months or until occurrence of another specified event. The value of a warranty clause depends upon the circumstances, and its use, terms, and conditions are influenced by many factors (see § 1.324–3(b)). A warranty clause may therefore be tailored to fit the individual procurement or class of procurements.

§ 1.324–2 Policy.

(a) A warranty clause shall be used when it is found to be in the best interests of the Government, after an analysis of the factors listed in § 1.324–3(b).

(b) A warranty clause shall not be included in cost-reimbursement type contracts, since the warranty aspects of the clause "Inspection of Supplies and Correction of Defects" in § 7.203–5 of this chapter are sufficient to protect the interests of the Government.

(c) Any warranty clause included in a contract shall not limit any rights afforded to the Government by the provisions of the Inspection clause relating to latent defects, fraud, and gross mistakes that amount to fraud. Care should be taken to insure that the warranty clause used and any other warranty provisions in the contract (e.g., in the specifications) are consistent, especially where performance specifications are used.

§ 1.324–3 Use of a warranty.

(a) Except for the commercial warranty clauses covered in § 1.324–4 and warranties contained in Federal, military, or construction guide specifications, the decision to use a warranty clause, or to include a warranty provision in a specification other than a Federal, military, or construction guide specification, shall be made by the Head of a Procuring Activity or his designee. This decision may be made either for individual procurements or for classes of procurements.

(b) In deciding whether to use a warranty clause, at least the following factors shall be considered:

(1) Nature of the item and its end use;

(2) Cost of the warranty and degree of price competition as it may affect this cost;

(3) Criticalness of achieving specified performance capabilities and design specifications;

(4) Cost of correction or replacement, either by the contractor or another source, in the absence of a warranty;

(5) Administrative cost and difficulty of enforcing the warranty;

(6) Ability to take advantage of the warranty, as conditioned by storage time, distance of the using agency from the source, or other factors;

(7) Operation of the warranty as a deterrent against furnishing of defective or nonconforming supplies;

(8) The extent to which Government acceptance is to be based upon contractor inspection or quality control;

(9) Whether because of the nature of the items the Government inspection system would not be likely to provide adequate protection without a warranty;

(10) Whether the contractor's present quality program is reliable enough to provide adequate protection without a warranty, or, if not, whether a warranty would cause the contractor to institute an effective and reliable quality program;

(11) Reliance on "brand-name" integrity.

(12) Whether a warranty is regularly given for a commercial component of a more complex end item;

(13) Criticalness of item for protection of personnel, e.g., for safety in flight;

(14) The stage of development of the item and the state of the art; and

(15) Customary trade practices.

(c)(1) When a decision has been made to use a warranty clause in a supply contract, consideration shall be given to a contractual requirement that the warranted items be marked as such or that notice of the warranty be otherwise furnished with the items, in order to inform those who store, stock, and use the items that they are warranted and to encourage them to advise the contracting officer of any defects. The marking or notice to be required need not state the complete warranty; a short statement that a warranty exists, its duration, and whom to notify if an item is found to be defective will normally be sufficient.

(2) In deciding whether to impose such a requirement, the contracting officer shall take into account:

(i) The feasibility (for the contractor) of so marking the items or otherwise furnishing notice of the warranty with them;

(ii) The cost to the Government of such a requirement in relation to its probable benefit in the enforcement of the warranty.

(3) When the contracting officer is notified of a defect in warranted items, he should ascertain whether the warranty is currently in effect and assure that proper and timely notice of the defect is given to the contractor.

(d) Warranties required by applicable Guide Specifications shall be included in advertised or negotiated construction contracts.

§ 1.324–4 Commercial warranties.

In either formally advertised or negotiated procurements involving a commercial supply or service or construction, the contracting officer may include in the solicitation a warranty clause which is standard or customary in the trade, or one which is substantially similar to and not in excess of a standard or customary trade warranty—provided in either case the contracting officer, after reviewing the factors listed in § 1.324–3(b), decides that inclusion of such a clause is in the best interests of the Government.

§ 1.324–5 Scope of warranty clause (other than commercial warranty clause).

(a) The terms and conditions of a warranty clause vary with the circumstances of the procurement. The clause must state the duration of the warranty. The clause may either provide that the contractor will be liable for defects or nonconformance to contract requirements existing at the time of delivery, or provide that he will be liable for such defects or nonconformance which develop prior to the expiration of a specified period of time or before the occurrence of a specified event.

(b) A warranty clause shall also include a specified period during which notice must be given to the contractor of any defects or nonconformance to contract requirements. The interest of the Government normally will be protected if the notice period starts at the time of delivery, or where services are involved, upon acceptance thereof by the Government. In some cases, however, it

[1] Contracting officer shall insert the approximate quantity of natural and synthetic rubber, other than Government furnished rubber, contained in the tires, tubes, tire recapping, or recapping materials to be delivered under this contract.

may be necessary to start the notice period at a later time. For example, where conformance of supplies cannot be determined satisfactorily until they are used, the period should begin when the items are put to use, or where supplies are procured in lots under sampling procedures and delivered in increments for storage, the period may begin when the supplies are put to use or at the time of the last delivery.

(c) Where the Government specifies the design of the item and its precise measurements, tolerances, materials, tests, or inspection requirements, the contractor's liability for defects or nonconformance should usually be limited to those in existence at the time of delivery.

(d) Where a contract contains performance specifications and design is of minor importance, the contractor's liability may extend to defects or nonconformance to specifications which may arise after delivery of the supplies or acceptance of the services. Where appropriate, however, the warranty should be limited to defects or nonconformance existing at the time of delivery of the supplies or acceptance of the services.

(e) Ordinarily, the remedy provided under a warranty clause to return nonconforming supplies to the contractor for a correction or replacement should satisfy the Government's needs. However, where the supplies are of such nature (e.g., subsistence or drugs) that correction or replacement does not afford adequate remedy to the Government, the clause should provide (1) that the contracting officer may either return the supplies to the contractor; dispose of them in a reasonable manner, or replace with similar supplies, and (2) that the contractor shall be liable for any cost occasioned to the Government thereby.

(f) When it can be foreseen that it will not be practical to return an article for correction or replacement because of the nature of its use or the cost of preparation for its return (e.g., where operating equipment installed in a vessel, aircraft, or tank needs only a correction of adjustment, but to return it would require substantial expense of removal from where it is installed), the clause should provide that the Government may correct or require the contractor to correct the article in place at its location, at the contractor's expense.

(g) Where it is determined that a warranty for the entire item is not advisable, a warranty may be required for a particular aspect of the item which may need special protection, e.g., installation, components, accessories, parts, subassemblies and preservation, packaging and packing, etc.

§ 1.324–6 Pricing aspects of fixed-price incentive contract warranty provisions.

In fixed-price incentive contracts, consideration should be given to the pricing aspects of the contract as they relate to a warranty. When it is determined to include a warranty clause, the estimated costs for the warranty shall normally be considered in establishing the incentive target price. Prior to the establishment of the total final price, all costs incurred or to be incurred by the contractor in complying with the warranty clause shall be considered when negotiating the final total negotiated cost. After the establishment of the total final price, contractor compliance with the warranty clause shall be at his expense and at no increase in the total final price. Equitable adjustments in the contract price under the warranty clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause.

§ 1.324–7 Example of warranty clause for fixed-price supply contracts.

(a) The following clause is an example which is authorized for insertion in fixed-price type supply contracts in accordance with § 1.324–2 and § 1.324–3.

WARRANTY OF SUPPLIES

(a) Notwithstanding inspection and acceptance by the Government of supplies furnished under the contract or any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that_____:[1]

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(b) The Contracting Officer shall give written notice to the Contractor of any breach of the warranties in paragraph (a) of this clause_____.[2]

(c) Within a reasonable time after such notice, the Contracting Officer may either:

(i) By written notice require the prompt correction or replacement of any supplies or part thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (a) of this clause; or

(ii) Retain such supplies, whereupon the contract price thereof shall be reduced by an amount equitable under the circumstances and the Contractor shall promptly make appropriate repayment.

If the contract provides for inspection of supplies by sampling procedures, the Contracting Officer may, at his option, determine the quantity of supplies or parts thereof which are subject to this paragraph in accordance with such sampling procedures.

(d) When return, correction or replacement is required, the Contracting Officer shall return the supplies and transportation charges and responsibility for such supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for such transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the designated destination point under this contract and the Contractor's plant, and return.

(e) If the Contractor fails or refuses to correct or replace the nonconforming supplies within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure or refusal, the Contracting Officer may, by contract or otherwise, correct or replace them with similar supplies and charge to the Contractor the cost occasioned to the Government thereby. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(f) Any supplies or parts thereof corrected or furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent as supplies initially delivered.

(g) Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(h) The word "supplies" as used herein includes related services.

(i) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of the contract.

(b) When the contractor's design is to be used rather than a Government design, insert the word "design," before "material" in paragraph (a)(i) of the clause in paragraph (a) of this section.

(c) The following paragraph (c) may be substituted for the paragraph (c) of the clause in paragraph (a) of this section when the contract provides for inspection of supplies by sampling procedures:

(c) Conformance of supplies or parts thereof subject to warranty action shall be determined in accordance with the applicable sampling procedures contained in the contract except as provided herein. For sampling purposes, the Contracting Officer may group any supplies delivered under this contract. The size of the sample shall be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed. Warranty sampling results may be projected over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection, provided, the supplies remaining are reasonably representative of the quantity on which warranty action is proposed. The original inspection lots need not be reconstituted nor shall the Contracting Officer be required to use the same lot size as on original inspection. Within a reasonable time after notice of any breach of warranties in paragraph (a) of this clause as

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[1] State in the blank the specific warranty period, e.g., "at the time of delivery"; "for (insert period of time) after delivery" or the specified event whose occurrence will terminate the warranty period, e.g., the number of miles or hours of use, or combination of any applicable events or periods of time, as appropriate (see § 1.324–5(a)).

[2] Insert in the blank the specific period of time in which notice shall be given to the contractor, e.g., "within (insert period of time) after delivery of the nonconforming supplies"; "within (insert period of time) of the last delivery under this contract", as appropriate (see § 1.324–5(b)).

determined herein, the Contracting Officer may exercise one or more of the following options:

(i) Requires an equitable adjustment in the contract price for any group of supplies;

(ii) Screen the supplies grouped under this clause at Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement;

(iii) Require the Contractor to screen the supplies at depots designated by the Government within the continental United States and to correct or replace all nonconforming supplies.

(iv) Return the supplies grouped under this clause to the Contractor for screening and correction or replacement.

(d) The following paragraph (d) may be substituted for paragraph (d) of the clause in paragraph (a) of this section when it is desirable to provide that necessary transportation incident to correction or replacement will be at the Government's expense. This may be appropriate, for instance, when the cost of a warranty would otherwise be prohibitive.

(d) When correction or replacement is required, and transportation of supplies in connection with such correction or replacement is necessary, transportation charges and responsibility for such supplies while in transit shall be borne by the Government.

(e) The following paragraph (e) may be substituted for paragraph (e) of the clause in paragraph (a) of this section when the supplies cannot be obtained from another source.

(e) If the Contractor does not agree as to his responsibility to correct or replace the supplies delivered, he shall nevertheless proceed in accordance with the written request issued by the Contracting Officer under paragraph (c) to correct or replace the defective or nonconforming supplies. In the event it is later determined that such supplies were not defective or nonconforming within the provisions of this clause, the contract price will be equitably adjusted. Failure to agree to such an equitable adjustment of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(f) The following paragraph should be added when the clause in paragraph (a) of this section is included in a fixed-price incentive contract.

(j) Prior to the establishment of the total final price, all costs incurred, or to be incurred by the Contractor in complying with this clause shall be considered when negotiating the final total negotiated cost under the Incentive Price Revision clause of this contract. After the establishment of the total final price, Contractor compliance with this clause shall be at the Contractor's expense and at no increase in the total final price. Any equitable adjustments made pursuant to paragraph (c) of this clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause of this contract.

§ 1.324–8 Example of warranty clause for fixed-price services contracts.

(a) The following clause is an example which is authorized for insertion in fixed-price type services contracts in accordance with §§ 1.324–2 and 1.324–3.

WARRANTY OF SERVICES

Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will be free from defects in workmanship and will conform to the requirements of this contract at time of acceptance. The Contracting Officer shall give written notice of any such defect or nonconformance to the Contractor _____.[1] Such notice shall state either (i) that the Contractor shall correct or reperform any defective or nonconforming services, or (ii) that the Government does not require correction or replacement. If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor pursuant to this clause shall be subject to all provisions of this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similiar services and charge to the Contractor the cost occasioned to the Government thereby or obtain an equitable adjustment in the contract price. If the Government does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price. Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "disputes" clause of this contract.

(b) When the contractor's design is to be used rather than a Government design, insert the words "design and" before "workmanship" in the first sentence of the clause in paragraph (a) of this section.

§ 1.324–9 Another example of warranty clause for fixed-price supply or services or research and development contracts (correction of deficiencies clause).

(a) The following clause is an example which is authorized for insertion (in accordance with §§ 1.324–2 and 1.324–3) in fixed-price type supply and service and research and development contracts for systems and equipment where performance specifications or design are of major importance.

CORRECTION OF DEFICIENCIES

(a) *Definitions.* As used in this clause:

(i) "Deficiency" means any condition or characteristic in any supplies (which term shall include related technical data) or services furnished hereunder, which is not in compliance with the requirements of this contract; and

(ii) "Correction" means any and all actions necessary to eliminate any and all deficiencies.

(b) *General.* (1) The rights and remedies of the Government provided in this clause:

(i) Shall not be affected in any way by any other provisions under this contract concerning the conclusiveness of inspection and acceptance; and

(ii) Are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(2) This clause shall apply only to those deficiencies discovered by either the Government or the Contractor within _____.[3]

(3) The Contractor shall not be responsible under this clause for the correction of deficiencies in Government furnished property, except for deficiencies in installation, unless the Contractor performs or is obligated to perform any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of deficiencies to the extent of such modifications or other work.

(4) The Contractor shall not be responsible under this clause for the correction of deficiencies caused by the Government.

(c) *Deficiencies in accepted supplies or services*—(1) Notice to Contractor; His Recommendation for Correction. If the Contracting Officer determines that a deficiency exists in any of the supplies or services accepted by the Government under this contract, he shall promptly notify the Contractor of the deficiency, in writing, within _____.[2] Upon timely notification of the existence of such a deficiency, or if the Contractor independently discovers a deficiency in accepted supplies or services, the Contractor shall promptly submit to the Contracting Officer his recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.

(2) *Direction to Contractor Concerning Correction of Deficiencies.* Within _____[2] after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Contracting Officer, at his sole discretion, shall give the Contractor written notice not to correct any deficiency, or to correct or partially correct any deficiency within a reasonable time and at _____.[3]

(3) *Correction of Deficiencies by Contractor.* The Contractor shall promptly comply with any timely written direction by the Contracting Officer to correct or partially correct a deficiency, at no increase in the contract price. The Contractor shall also prepare and furnish to the Government data and reports applicable to any correction required under this clause (including revision and updating of all other affected data called for under this contract) at no increase in the contract price.

(4) *Modification of Contract With Respect to Uncorrected Deficiencies.* In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall promptly submit a technical and cost proposal to amend the contract to permit acceptance of the affected supplies or services in accordance with the revised requirements, and an equitable reduction in contract price shall promptly be negotiated by the parties and reflected in a supplemental agreement to this contract.

(d) *Deficiencies in Supplies or Services Not Yet Accepted.* If the Contractor becomes aware at any time before acceptance by the Government (whether before or after tender to the Government) that a deficiency exists in any supplies or services, he shall promptly correct the deficiency or, if he elects to invoke the procedures in (c) above, he shall prompt-

[1] Insert in the blank the specific period of time in which notice shall be given to the contractor, e.g., "within (insert period of time) from the date of acceptance by the Government"; "within (insert number of hours) of use by the Government"; or other specified event whose occurrence will terminate the period of notice, or combination of any applicable events or periods of time, as appropriate.

[1] Insert a specific period of time, and specify acceptance or another event from which the time is to be computed, or that the time refers to hours of use.

[2] Insert a specific period of time.

[3] Insert the locations where correction may be directed.

ly communicate information concerning the deficiency to the Contracting Officer in writing, together with his detailed recommendation for corrective action.

(e) *No Extension in Time for Performance; No Increase in Contract Price.* (1) In no event shall the Government be responsible for extension or delays in the scheduled deliveries or periods of performance under this contract as a result of the Contractor's obligations to correct deficiencies, nor shall there be any adjustment of the delivery schedule or period of performance as a result of such correction of deficiencies, except as may be agreed to by the Government in a supplemental agreement with adequate consideration.

(2) It is hereby specifically recognized and and agreed by the parties hereto that this clause shall not be construed as obligating the Government to increase the contract price of this contract.

(f) *Transportation Charges.* (1) When the Government returns supplies to the Contractor for correction or replacement pursuant to this clause, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the designated destination point under this contract to the Contractor's plant, in addition to any charges provided for by (2) below. The Contractor shall also bear the responsibility for the supplies while in transit.

(2) When compliance with the terms of this clause by the Contractor involves shipment of corrected or replacement supplies from the Contractor to the Government, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the Contractor's plant to the designated destination point under this contract, in addition to any charges provided for by (1) above. The Contractor shall also bear the responsibility for the supplies while in transit.

(g) *Failure To Correct.* If the Contractor fails or refuses to (i) present a detailed recommendation for corrective action in accordance with (c) above, (ii) correct deficiencies in accordance with (c) (3) above, or (iii) prepare and furnish data and reports in accordance with paragraph (e) (3) above, the Contracting Officer shall give the Contractor written notice specifying the failure or refusal and setting a period after receipt of the notice within which it must be cured. If the failure or refusal is not cured within the specified period, the Contracting Officer may, by contract or otherwise, as required:

(i) Obtain detailed recommendations for corrective action;

(ii) (A) Correct the supplies or services, or

(B) Replace the supplies or services—and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred; and

(iii) Obtain applicable data and reports;

and charge to the Contractor the cost occasioned to the Government thereby.

(h) *Correction of Deficient Replacements and Re-performances.* Any supplies or parts thereof corrected or furnished in replacement and any services reperformed pursuant to this clause shall also be subject to all the provisions of the clause to the same extent as supplies or services initially accepted.

(b) Depending on the circumstances of the procurement, one or more of the alternate paragraphs in § 1.324–7 (c), (d), or (e) may be substituted for the appropriate paragraphs in the "Correction of Deficiencies" clause in paragraph (a) of this section. Similarly, the alternate paragraph in § 1.324–7(f) may be added to the clause.

§ 1.324–10 Example of warranty clause for fixed-price construction contracts.

The following clause is an example which is authorized for insertion in fixed-price type construction contracts in accordance with §§ 1.324–2 and 1.324–3.

WARRANTY OF CONSTRUCTION

(a) Except as otherwise expressly provided in this contract, the Contractor shall remedy at his own expense any failure of the work (including equipment) to conform to contract specifications and any defect of material, workmanship, or design in the work—but excluding any defect of any design furnished by the Government under the contract—provided that the Government gives the Contractor notice of any such failure or defect promptly after discovery but not later than one year after final acceptance of the work, except that in the case of defects or failures in a part of the work of which the Government takes possession prior to final acceptance, such notice shall be given not later than one year from the date the Government takes such possession. The Contractor, at his own expense, shall also remedy damage to equipment, the site, or the buildings or the contents thereof which is the result of any failure or defect, and restore any work damaged in fulfilling the terms of this clause. Should the Contractor fail to remedy any such failure or defect within a reasonable time after receipt of notice therof, the Government shall have the right to replace, repair, or otherwise remedy such failure or defect at the Contractor's expense. This warranty shall not delay final acceptance of or final payment for the contract work.

(b) All subcontractors', manufacturers' and suppliers' warranties and guaranties, express or implied, respecting any part of the work and any materials used therein shall be deemed obtained—and shall be enforced—by the Contractor as the agent and for the benefit of the Government without the necessity of separate transfer or assignment thereof, provided that, if directed by the Contracting Officer, the Contractor shall require such subcontractors, manufacturers and suppliers to execute such warranties and guaranties in writing to the Government.

(c) Any work repaired or replaced pursuant to this clause shall also be subject to the provisions of this clause to the same extent as work originally performed. The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

PART 3—PROCUREMENT BY NEGOTIATION

2. In § 3.608–2, paragraphs (b) (1) (x), (2) (ii) (*d*), and (d) (7) are revised to read as follows:

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

* * * * *

(b) *Conditions for use.* (1) * * *

(x) A commercial warranty clause may be used in accordance with § 1.324–4 of this chapter.

* * * * *

(2) * * *

(ii) * * *

(*d*) A commercial warranty clause may be used in accordance with § 1.324–4 of this chapter.

* * * * *

(d) * * *

(7) The contracting officer's signature on purchase orders shall be in accordance with ASPR procedure. Facsimile signatures may be used in the production of purchase orders by automated methods, provided specific authority for such use is obtained from the Director of Procurement Policy and Review, Office of the Assistant Secretary of the Army (Installations and Logistics) in the Army; Deputy Chief of Naval Material (Procurement and Production) in the Navy; the Director of Procurement Policy, Office of the Deputy Chief of Staff (Systems and Logistics) in the Air Force; and the Executive Director, Procurement and Production, in the Defense Supply Agency.

* * * * *

3. New Subparts J and K are added, as follows:

Subpart J—Contractor's Weighted Average Share in Cost Risk (CWAS)

Sec.	
3.1000	Scope of subpart.
3.1001	General concept.
3.1002	Objectives.
3.1003	Definitions.
3.1003–1	Contractor's weighted average share in cost risk (CWAS).
3.1003–2	Costs incurred.
3.1003–3	Profit center.
3.1003–4	Threshold.
3.1003–5	Government contracts.
3.1004	Application of CWAS.
3.1005	Procedures for determining a contractor's weighted average share in cost risk.
3.1006	Reporting procedure.
3.1007	Determination and verification.
3.1008	Maintenance of records.

Subpart K—Acquisition of Automatic Data Processing Equipment

3.1100	Contractor acquisition of automatic data processing equipment (ADPE).
3.1100–1	General.
3.1100–2	Review of decision to lease.

AUTHORITY: The provisions of Subparts J and K issued under sec. 2202, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

Subpart J—Contractor's Weighted Average Share in Cost Risk (CWAS)

§ 3.1000 Scope of subpart.

This subpart sets forth the concepts and objectives which govern the Con-

tractor's Weighted Average Share in Cost Risk (CWAS) technique. It also sets forth detailed procedures for determining the contractor's weighted average share for a given fiscal year as a percentage of costs incurred by type of contract during the contractor's fiscal year.

§ 3.1001 General concept.

(a) For many years, the Department of Defense has borne a major share of the cost risk entailed in the performance of many of its research, development, and production programs because of the prevalence of cost-reimbursement type contracts. In recent years, the burden of risk has been substantially shifting from the Government to defense contractors through refinements in contract techniques and the utilization of more firm fixed-price and incentive contracts, resulting in a continuing reduction in the use of cost-plus-a-fixed-fee type contracts. During the period of high Government risk, many administrative, cost, and audit controls were imposed on industry since the cost-plus-a-fixed-fee form of contract did not provide maximum motivation for prudent cost management on the part of contractors. Now that higher risk contracts are being increasingly used, it is considered desirable and practicable to measure the cost risk motivation imposed on individual contractors as evidenced by the mix of contracts, and whenever practicable to eliminate administrative controls and reasonableness overhead audits on those contractors who attain a verifiable "weighted average share" of risk which meets a prescribed threshold. This concept is based on the premise that good management by industry properly motivated to cost consciousness, can accomplish much more effective control of costs than can detailed review, control, and overhead audit by Government personnel.

(b) The CWAS threshold level is established in applicable parts of this chapter for application to specific administrative controls and overhead costs and in contract audit instructions for application to audit procedures.

§ 3.1002 Objectives.

The objectives of the contractor's weighted average share in cost risk program are:

(a) To furnish a measure of an individual contractor's risk motivation, as provided by types of contracts, to conduct his business prudently and with maximum economy;

(b) To offer additional inducement to a contractor to accept higher risk type contracts;

(c) To minimize the extent of Government control, including controls exercised through Department of Defense prime contracts and subcontracts thereunder, thereby reducing Government costs;

(d) To provide a simple, uniform procedure for determining a contractor's assumption of cost risk that can be applied equitably to all defense contractors who desire to participate by voluntarily submitting pertinent data;

(e) To provide a means for directing audit and other Department of Defense management efforts to those areas where they are most needed because of the greater degree of Government risk; and

(f) To provide a basis for determining that indirect costs incurred during the applicable period by a contractor whose CWAS rating is above a predetermined threshold are reasonable and therefore reimbursable if otherwise allowable and allocable.

A single threshold level will be utilized for as many applications as practicable.

§ 3.1003 Definitions.

§ 3.1003–1 Contractor's weighted average share in cost risk (CWAS).

(a) The contractor's weighted average share in cost risk (CWAS) is a technique for determining and expressing numerically the degree of cost risk a contractor has assumed, based on an analysis of the mix of types of contracts which he has agreed to perform for his customers. This technique recognizes that all contractors do not have the same financial risk in arriving at decisions regarding expenditures of funds in meeting their contractual obligations. As a general rule, this technique recognizes that a contractor who accepts higher risk contracts has a greater financial motivation to exercise prudent business judgment in the performance of such contracts.

(b) A contractor who has only cost-plus-a-fixed-fee (CPFF) Government contracts has a minimal financial risk, because he will be reimbursed for every dollar he spends as long as the expense is allowable and allocable in accordance with Part 15 of this chapter, reasonable in amount, and does not result in an unauthorized overrun of the contract limitation on costs. There is little if any incentive for him to hold expenditures to the minimum. On the other hand, in the case of a firm fixed-price contract, the contractor's financial risk is great because he will receive an exact price for the performance of his contracts regardless of the costs incurred in their performance. He knows that every dollar he spends increases the cost of performance and reduces the amount of his profit. Therefore, there is substantial incentive for him to give thorough consideration to all decisions regarding the expenditure of funds. Between these two extremes is the contractor whose business consists of a mix of contracts including the incentive type which have provisions for the contractor to share, at a predetermined rate, the amount which his costs underrun or overrun a preestablished target. His financial risk is greater than the contractor with only cost-type contracts but not as great as the contractor whose business is all on a firm fixed-price basis.

(c) A contractor's cost risk can be identified by stating it as a percentage of total costs incurred by type of contract during the fiscal year. In paragraph (b) of this section, the contractor with CPFF contracts would have a "zero percent risk," the contractor with competitive firm fixed-price contracts would have a "100 percent risk," and the contractor with a mix of contracts would have a cost risk percentage between these two points. It is improbable that a contractor will have only one type of contract at any given point in time. Contractors normally have a mix of contracts (including contracts with other Government agencies) and they may have commercial work being performed in the same profit center.

(d) In those cases where contractors use a standard cost system of accounting, they may elect to substitute cost of sales in lieu of costs incurred for purposes of CWAS measurement.

(e) Contractors may use sales as the basis for computation of CWAS ratings *provided* (1) substantially the same result would be obtained through the costs incurred method, and (2) the Government authorizes the sales basis, in lieu of the cost incurred basis. In the case of those contractors who have received authorization from the Government to use the sales basis, the term "costs incurred" as applied to the computation of the CWAS rating in other sections of this subpart, will be construed to mean "sales." Use of the sales method is encouraged, where appropriate, in order to permit more timely submission and to reduce the Government's administrative and audit review workload pertaining to approval of CWAS ratings.

§ 3.1003–2 Costs incurred.

(a) For purposes of this subpart, costs incurred consist of the contractor's total cost input for his previous fiscal year identified through the use of the contractor's method of accounting and reporting. Costs incurred represent all costs (whether or not allowable), including costs of direct labor, direct material, subcontracts, and direct services as well as all properly allocated overhead (indirect) costs, except as provided in paragraph (c) of this section.

(b) The contractor's total cost input for the fiscal year will be categorized as either commercial or Government business, with Government business listed by various types of Government contracts. Government competitive firm fixed-price contract and competitive subcontract costs may be combined with commercial contract costs at the option of the contractor. The categorizing of costs will be in accordance with the accounting system and procedures used by the contractor in assigning costs to contracts and commercial business providing, in the case of Government contracts, this system and these procedures are acceptable to the Government for contract cost determination and pricing purposes.

(c) With respect to a contractor's production for stock, i.e., finished goods or finished parts not manufactured against specific commercial or Government orders in hand, the treatment to be accorded the costs incurred shall be determined on a practical case-by-case basis.

Since the concept is aimed at general orders of magnitude, emphasis in arriving at solutions to individual cases should be on practicality rather than precision. For example, if production for stock consists essentially of only standard items to be sold at a fixed or catalog price on the commercial market or to the Government on the same basis in accordance with § 3.807 or § 15.205–22(e) of this chapter, the costs incurred shall be reported in the commercial or fixed-price category. On the other hand, if production for stock involves largely items which are not sold generally on the commercial market as end items (i.e., nonstandard items), but which are incorporated as components under a variety of contracts, the costs incurred shall be excluded until such time as they are chargeable to and can be identified with specific commercial or Government orders. In those situations where production for stock is more evenly composed of standard and nonstandard items and the treatment to be accorded such production will have a significant effect upon the ultimate CWAS rating assigned to the contractor, the mix of standard and nonstandard items should be determined with a fair amount of precision, so that the costs incurred with respect to the standard items can be reported in the commercial or fixed-price category and the costs associated with the nonstandard items can be excluded. Any method developed regarding the treatment to be accorded costs applicable to items produced for stock shall be provided safeguards to prevent duplicate inclusion of such costs.

(d) Costs incurred which are applicable to raw materials not purchased against specific commercial or Government orders in hand will be excluded until such time as they are chargeable to and can be identified with specific commercial or Government orders.

§ 3.1003–3 Profit center.

A profit center is the smallest organizationally independent segment of a company which has been charged by management with profit and loss responsibilities and whose operations must therefore absorb its indirect costs. Generally, a profit center will be a plant or division, but it may consist of larger or smaller organizational segments of the company.

§ 3.1003–4 Threshold.

The percentage designation at which the control or reasonableness test is relaxed or relieved.

§ 3.1003–5 Government contracts.

For the purposes of this subpart, "government contracts" includes only contracts with the U.S. Government.

§ 3.1004 Application of CWAS.

(a) The CWAS technique is applicable to all contractors of the Department of Defense on a voluntary basis. A contractor desiring to participate in this program may do so by determining his own CWAS rating in accordance with the procedures described in § 3.1005 and submitting the requisite costs-incurred data through appropriate channels (see § 3.1006) for verification as required by § 3.1007. Contractors who do not have Department of Defense prime contracts may submit the requisite data to the regional Defense Contract Administration Office, for qualification under this subpart and application of these procedures to their Government subcontract efforts.

(b) The application of CWAS principles may be withdrawn pursuant to a finding by the Administrative Contracting Officer (ACO) of fraud, misrepresentation, or other abuse, but such a withdrawal shall be effective only after a written determination by the Head of a Procuring Activity. Such action may be taken with respect to a profit center or centers or the entire corporation.

(c) Reinstatement of CWAS principles with a contractor may be accomplished only after the contractor has satisfactorily corrected the condition leading to withdrawal. Before a contractor will be reinstated, he must submit a complete statement of corrective actions to the ACO, who shall transmit such statement together with his recommendation to the Head of a Procuring Activity for determination. The contractor shall then reapply for a CWAS rating in accordance with the procedures in paragraph (a) of this section.

(d) The Secretary of the Department having contract management cognizance may deny or revoke the application of the CWAS technique or rating in exceptional cases where, in his judgment, because of the special nature of the contractor's work, competitive position, future or follow-on contracts, known procedures or other unusual circumstances, the contractor's CWAS rating for the percentage factors in § 3.1005(e), do not comparably and consistently reflect the contractor's cost risk, motivation or controls or provide assurance that Government cost audit and controls are not needed in the Government's interest.

(e) The CWAS technique or rating shall not apply to any profit center of a contractor where the total dollar costs incurred for commercial work and Government competitive firm fixed-price contracts are less than 35 percent of the total dollar costs incurred for all business at such profit center.

§ 3.1005 Procedures for determining a contractor's weighted average share in cost risk.

(a) Each contractor may submit the required costs-incurred data from which he has determined his weighted average share in risk. If a company has only one profit center, the data shall be developed on a company-wide basis. If a company has more than one profit center which it desires to qualify for CWAS, it shall develop data on a company-wide basis and for each such profit center. Any change in an accepted basis for computing CWAS ratings must be based on a demonstrable organizational change or on an acceptable change to the accounting structure.

(b) In order to establish an initial CWAS rating, the contractor shall develop costs-incurred data at the close of his fiscal year. This data shall be based on his Government business, broken down by types of contracts, and on his entire commercial business. Government competitive firm fixed-price contract costs may be combined with commercial contract costs at the option of the contractor. Thereafter, to continue in the program, he must submit similar data annually.

(c) For purposes of determining the Government contract mix, the types of contracts to be considered are those authorized in Subpart D of this part. For any other approved type of contract not listed in Subpart D of this part, use the factor or procedure for the most similar type of contract in § 3.1005(e). For purposes of determining contract mix, commercial contracts are assumed to have been obtained in the competitive environment of the free market place, and will be accorded the same treatments as the competitive firm fixed-price contract. Subcontracts, other than competitive firm fixed-price subcontracts, under Government contracts cannot be classed as commercial.

(d) The contractor's weighted average share in cost risk will be determined as follows:

(1) For the fiscal year just ended, determine the total dollar costs incurred for commercial work and Government competitive firm fixed-price contracts and by specific types of contracts for other Government business;

(2) Multiply these costs incurred by the approved percentage factor for the respective contract types; this becomes the contractor's "dollar cost risk"; and

(3) Total the resulting contractor dollar cost risks for the respective types of contracts and divide this result by the total dollar costs incurred.

The resulting percentage is the contractor's weighted average share in cost risks, or CWAS rating.

(e) (1) The percentage factors to be used in determining the contractor's dollar cost risk by type of contract are as follows:

Type of contract	*Percentage factor*
Letter Contracts	0 (see subparagraph (2) of this paragraph).
Time and Material	0.
Labor Hour	0.
Cost Only	0.
Cost Sharing	Share Line.
Cost-Plus-a-Fixed-Fee.	0.
Cost-Plus-Incentive-Fee.	15 percent.
Fixed-Price Incentive (Successive Targets).	55 percent (see subparagraph (3) of this paragraph).
Fixed-Price Incentive (Firm Target).	See subparagraph (4) of this paragraph.
Fixed-Price Redeterminable (Retroactive).	50 percent.
Fixed-Price Redeterminable (Propective).	80 percent.

Type of contract	*Percentage factor*
Fixed-Price With Escalation—Noncompetitive.	80 percent (see subparagraph (6) of this paragraph).
Firm Fixed-Price—Noncompetitive.	80 percent (see subparagraph (6) of this paragraph).
Fixed-Price With Escalation—Competitive.	100 percent.
Firm Fixed-Price—Competitive.	100 percent (see subparagraph (5) of this paragraph).
Commercial	100 percent (see subparagraph (5) of this paragraph).

(2) All costs incurred prior to definitization of a letter contract shall be assigned a zero factor. Costs incurred after definitization shall be assigned the factor applicable to the definitive contract type. Date of definitization may be considered as the end of the month immediately prior to the date of definitization.

(3) The percentage factor 55 will be used for fixed-price incentive (successive targets) contracts up to the point when either a fixed-price incentive (firm target) or firm fixed-price contract is negotiated. From that point on, the contract factor will be determined in accordance with the procedure applicable to the type of contract negotiated.

(4) (i) Percentage factors for fixed-price incentive contracts will be determined by computing ceiling price as a percentage of target cost—target cost being a constant at 100 percent—and applying the factor from the following table:

Ceiling price as percentage of target cost	*Interim factor*
110 percent	75.
115 percent	65.
120 percent	55.
125 percent	40.
130 percent and over	15 (minimum).

(ii) The interim factor for ceilings between those indicated shall be interpolated.

(iii) Add to the interim factor 1 point for each 5 percent of contractor share above target. For multiple contractor share rates, use a weighted average of the share percentages between target cost and ceiling. The result is the contract percentage factor.

(iv) The maximum contract percentage factor is 100; the minimum contract percentage factor is the contractor's share.

(v) Where the Secretary of the Procuring Department has determined that a fixed-price incentive contract has been awarded as a result of price competition, the above factors shall be increased 10 points for application to such contract, or a higher factor may be applied if the Secretary so determines.

(5) Competitive firm fixed-price contract costs and commercial contract costs may be combined at the option of the contractor.

(6) For purposes of this subpart, a noncompetitive firm fixed-price contract is a firm fixed-price contract or subcontract in excess of $1 million, which was awarded on the basis of certified cost or pricing data (see § 3.807–3). All other firm fixed-price contracts are to be considered as competitive.

(f) A simple computation of a contractor's weighted average share in cost risk is set forth below, based on the stated assumptions:

SIMPLIFIED EXAMPLE OF CWAS COMPUTATION

Type of contract	Prior year's costs incurred	Percentage factor	Contractor's dollar risk
Time and material	$50,000	0	$0
CPFF	200,000	0	0
CPIF	300,000	15	45,000
FPI (118% ceiling, 30% share).	200,000	65	130,000
FFP (competitive)	100,000	100	100,000
Commercial	150,000	100	150,000
Total	1,000,000		425,000

$425,000÷$1,000,000=42.5 CWAS rating.

§ 3.1006 Reporting procedure.

(a) A contractor desiring to have an initial CWAS rating approved by the Department of Defense for any one or more of its profit centers shall prepare a report setting forth the requisite detailed cost-incurred data together with the computed CWAS ratings. The original and two copies of this report should be submitted to the cognizant Administrative Contracting Officer (ACO) or, in the case of a contractor who does not have a Department of Defense prime contract, to his local Defense Contract Administration Services Region (DCASR) office, and a copy should be submitted simultaneously to the Defense Contract Audit Agency (DCAA) auditor concerned. In order to maintain an approved CWAS rating after initial approval, the contractor must submit a similar report annually thereafter as soon after the end of the fiscal year as final results of the fiscal year's operations are available, and in no event later than 105 days after the close of the contractor's fiscal year, unless the ACO grants an extension.

(b) A contractor who desires to have his CWAS rating computed on the sales basis, rather than on the costs incurred basis, shall not submit the report described in paragraph (a) of this section based on sales until he has received authorization in writing from the ACO. To obtain such authorization, the contractor shall submit a request to use the sales basis in writing to the ACO with a copy to the DCAA auditor. The request shall be supported by data and rationale which in the contractor's opinion demonstrate that substantially the same results would be achieved under either the costs incurred or sales basis. The ACO, with the advice of the DCAA auditor, will either authorize or disapprove the contractor's request. Once the sales basis has been authorized, the authorization shall remain in effect until such time as circumstances change and in the opinion of the ACO substantially the same results would no longer be achieved.

(c) If a contractor's CWAS rating computed on a sales basis is five or more points in excess of any applicable threshold, and there is no significant variation between annual inventories, the ACO may presume that computation on a cost basis will not result in any meaningful difference, and in such cases the submission of any other data or justification should be waived.

§ 3.1007 Determination and verification.

The ACO is responsible for reaching an agreement with the contractor on CWAS rating and for approving CWAS ratings. Within 30 days after receipt of the contractor's report, the DCAA auditor shall submit a report to the ACO on the validity of the data and the computation techniques, or else he shall advise the ACO as to the reasons for any delay. The ACO will promptly validate the contractor's CWAS or reach an agreement with the contractor on a revised CWAS rating. If the ACO has not advised the contractor to the contrary within 60 days from receipt of the contractor's report, the proposed CWAS will be considered approved. Assuming the timely submission of the contractor's data, the contractor's CWAS rating for the prior fiscal year will be applied to the current year's operations as it affects relaxation of administrative controls, pending the ACO's determination; but see § 15.201–3 of this chapter for treatment of reasonableness of indirect overhead costs. In lieu of validation by DCAA, the data relative to commercial work and Government firm fixed-price contracts and subcontracts (or in the alternative as agreed upon with the ACO, the total CWAS proposal) will be accepted on the basis of a report thereon by an independent public acountant to the effect that the data involved is stated in accordance with the procedures and requirements set forth in this subpart.

§ 3.1008 Maintenance of records.

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

Subpart K—Acquisition of Automatic Data Processing Equipment

§ 3.1100 Contractor acquisition of automatic data processing equipment (ADPE).

§ 3.1100–1 General.

(a) This section is applicable to all ADPE, as defined in § 1.201–29 of this

chapter, except as components of end items to be delivered to the Government.

(b) If ADPE is purchased for the account of the Government or if title to the ADPE will pass to the Government, the acquisition must be approved as required by Part 13 of this chapter.

§ 3.1100–2 Review of decision to lease.

(a) If the total cost of leasing the ADPE is to be reimbursed under one or more cost reimbursement type contracts, the contracting officer shall, prior to approval of the proposed lease agreement:

(1) Survey the Defense Supply Agency (DSAH–LSR) for availability of excess ADPE which could be issued as GFP (see § 13.301 of this chapter) and which would fulfill the contractor's requirements (including timely availability and technical compatibility);

(2) Determine whether, under § 15.205–48 of this chapter, leasing is the appropriate method of acquisition from the Government's standpoint;

(3) Consider whether the ADPE should be leased under a Federal Supply Schedule Contract (see Subpart I, Part 5 of this chapter);

(4) If the rental of ADPE through a commercial contract is authorized, require the contractor to include a provision in the rental contract stating that the Government will have the initial option to utilize any purchase or other benefits earned through rental payments; and

(5) Obtain approval of the leasing arrangement of the ADPE from the Senior ADPE policy official of the Department or Agency which predominantly generated the requirement for the contract end item; in the case of ADPE to be leased on a noncompetitive basis, the request for approval shall be forwarded to the Assistant Secretary of Defense (Installations and Logistics) through the Senior ADPE policy official referenced above.

(b) If the total cost of leasing ADPE in a single plant, division, or cost center exceeds $500,000 per year and 50 percent or more of the total cost is to be allocated to cost reimbursement type contracts, the administrative contracting officer should arrange for:

(1) An initial review and an annual review thereafter of the contractor's ADPE system for the purpose of evaluating, under § 15.205–48 of this chapter, his existing ADPE capability and the need to continue leasing; and

(2) Submission by the contractor to the ACO of any proposed lease of a new system and any proposed major changes to an existing system, for advance determination of the validity of the stated requirement and the reasonableness of leasing and resulting cost.

(A major change is any addition or substitution of ADPE which will have an annual cost in excess of $25,000.) After the initial review and after each annual review, and also after review of any proposed lease of a new system or major change, the ACO should either enter into an advance understanding with the § 15.107 of this chapter, to provide a basis for concurrence in the proposed lease, or in the alternative notify the contractor of the Government's nonconcurrence and of consequent cost disallowance contemplated under § 15.205–48 of this chapter.

(c) In implementing the above, technical ADP assistance will be provided as necessary to the contracting officer by the Department having the preponderance of interest with the contractor.

PART 4—SPECIAL TYPES AND METHODS OF PROCUREMENT

4. Section 4.116–4(c)(1) is revised and new § 4.118 is added, as follows:

§ 4.116–4 Transfer of title to equipment to nonprofit educational or research institutions.

* * * * *

(c) *Transfer of title.* (1) Contracts with nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research, shall provide, or shall be amended to provide, for transfer to contractors of title to each item of equipment having an acquisition cost of less than $200 and purchased with funds available for grants or contracts for the conduct of basic or applied research. With respect to such equipment already in possession of such contractors, the contracting officer shall vest in the contractor title to all such low cost equipment at the time of amendment of the appropriate contract or as soon as practicable thereafter. With respect to such equipment to be acquired by the contractor for the account of the Government, the contracting officer shall vest in the contractor title to such equipment upon receiving from the contractor a written receipt. The requirements of this section are not applicable to transfers of title that are precluded by controls governing the equipment involved.

* * * * *

§ 4.118 Contractor team arrangements.

(a) *Definition.* A contractor team arrangement is one whereby two or more companies form a partnership or joint venture to act as a potential prime contractor or whereby a potential prime contractor agrees with one or more other companies to act as his subcontractor(s) under a specified Government procurement or program.

(b) *Policy.* There are times when it may be desirable, both from the Government and Industry standpoints, for companies to enter into a team arrangement prior to a Government contract award or thereafter. Team arrangements may be particularly appropriate for engineering and operational system developments, but may be used in other appropriate situations, including production procurement. Team arrangements allow a prime contractor and subcontractor to complement the unique capabilities of each and to offer the Government the best combination of capabilities to achieve the system performance, cost and delivery desired for the system being procured. The Government will recognize the integrity and validity of contractor team arrangements, provided they are identified and company relationships are stated in a proposal. Under a contractor team arrangement, the prime contractor is fully responsible for the performance of the contract. The Government normally will not require or encourage dissolution of contractor team arrangements. These policies do not authorize arrangements in violation of antitrust statutes and do no limit the Government's rights to:

(1) Approve subcontracts in accordance with ASPR requirements;

(2) Determine the responsibility of a prime contractor on the basis of the stated contractor team arrangement;

(3) Provide the selected prime contractor with data rights owned or controlled by the Government; and

(4) Pursue its policies on competitive procurement, subcontracting and component breakout, after initial production procurement or at any other time.

PART 5—INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

5. Sections 5.902 and 5.903–1 are revised to read as follows:

§ 5.902 Limitation.

Contractors shall not be authorized to utilize General Services Administration supply sources (a) in connection with the performance of fixed-price type contracts, even though such contracts provide for price adjustment, escalation, redetermination, or cost-reduction incentive; or (b) for the leasing of equipment to be utilized in the performance of cost-reimbursement type contracts, other than automatic data processing equipment for use only in performance of cost reimbursement contracts where the entire rental cost will be charged to those contracts. Contractors operating under the above types of contracts may, however, if they so desire, utilize GSA supply source listings for price information purposes. Such listings (GSA catalogs and copies of GSA Federal Supply Contracts) as may be readily available in purchasing offices and contract administration offices will be made available for review by contractors for this purpose.

§ 5.903–1 Basic authority.

Contractors shall be authorized to utilize General Services Administration supply sources only (a) where title to property ordered under Federal Supply Schedule contracts will pass to and vest in the Government directly from the Federal Supply Schedule contractor (rather than through the prime contractor), (b) where the contractor will lease automatic data processing equipment under a Federal Supply Schedule contract for use only in performance of cost-reimbursement contracts, and the entire rental cost will be charged to those contracts, or (c) where title to Government-owned property ordered from General Services Administration stores stock will remain in the Government.

PART 7—CONTRACT CLAUSES

6. Section 7.104–51 is revoked and new §§ 7.105–8, 7.105–9, 7.304–8, 7.603–45, 7.604–4, and 7.606–17 are added, as follows:

§ 7.104–51 Commercial warranty. [Revoked]

§ 7.105–8 Material Inspection and Receiving Report.

(See Defense Procurement Circular 54 of June 26, 1967—Item II.)

§ 7.105–9 Commercial warranty.

In accordance with § 1.324–4 of this chapter, an appropriate commercial warranty clause may be inserted.

§ 7.304–8 Warranty.

In accordance with § 1.324 of this chapter, an appropriate warranty clause may be inserted.

§ 7.603–45 N.C. Sales and Use Tax.

In accordance with § 11.302(c) of this chapter, insert the clause set forth in § 11.302(e).

§ 7.604–4 Warranty.

In accordance with § 1.324 of this chapter, an appropriate warranty clause may be inserted.

§ 7.606–17 N.C. Sales and Use Tax.

In accordance with § 11.302(c) of this chapter, insert the clause set forth in § 11.302(e).

7. Section 7.704–22 is revised; in § 7.705–5, the clause heading and clause paragraph (c) are revised; § 7.802–3 is revised; in § 7.802–4, the introductory text and clause paragraph (b) are revised; and in § 7.1301–5, clause paragraph (c) is revised, as follows:

§ 7.704–22 Military security requirements.

In accordance with the instructions in § 7.702–29, insert the contract clause called for therein, except that "ASPR 7-702.4" shall be substituted for "this contract" in the second sentence of paragraph (e).

§ 7.705–5 Labor standards for construction work.

* * * * *

LABOR STANDARDS FOR CONSTRUCTION WORK (OCTOBER 1967)

* * * * *

(c) Upon determination that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, the Contractor shall submit a request for a predetermination of the prevailing wage rates to be made applicable to such work. Upon receipt of such request, the Contracting Officer shall, as soon as possible, obtain a predetermination of the applicable prevailing wage rates and publish such rates and incidental instructions in numbered attachments to this contract. Upon publication thereof, such attachments shall be considered the wage determination decision of the Secretary of Labor referred to in paragraph (a) of the "Davis-Bacon Act" clause. Each such attachment shall indicate to what work the rates set forth therein shall apply, including the period of time within which subcontracts subject to such rates may be issued.

§ 7.802–3 Limitation of Government liability.

LIMITATION OF GOVERNMENT LIABILITY (OCTOBER 1967)

(a) The Contractor is not authorized to make expenditures or to incur obligations, in performance of this contract, which exceed _____ dollars ($_____).

(b) The maximum amount for which the Government shall be liable if this contract is terminated is _____ dollars ($_____).

§ 7.802–4 Payments clauses for letter contracts.

The following clause shall be included in all letter contracts contemplating a cost-type contract except letter contracts for conversion, alteration or repair of ships. See §§ 163.72 and 163–74 of this chapter for the policy with respect to progress payments under letter contracts contemplating a fixed price type contract. When payments are to be made under letter contracts contemplating a fixed price type contract, a Progress Payments clause shall be included in the contract in accordance with § 163.84 of this chapter: *Provided*, That in such letter contracts for construction, the following clause, supplemented by appropriate title, risk of loss and other provisions, shall be included.

PAYMENTS OF ALLOWABLE COSTS PRIOR TO DEFINITIZATION OF CONTRACT (APRIL 1966)

* * * * *

(b) For the purpose of determining the amounts payable to the Contractor hereunder, allowable items of cost shall be determined by the Contracting Officer in accordance with the statement of cost principles set forth in Part _____ of Section XV of the Armed Services Procurement Regulation. In no event shall the total reimbursement made under this paragraph exceed _____[1] percent (_____%[1]) of the maximum amount of the Government's liability otherwise set forth in this letter contract.

§ 7.1301–5 Sanitary conditions.

SANITARY CONDITIONS (APRIL 1967)

* * * * *

(c) The Government shall notify the Contractor in writing of any failure to meet the sanitary standards, including bacteriological requirements, prescribed by this contract. If such failure has not been corrected within three (3) days from the date the Contractor receives said notice, the whole or any part of this contract may be terminated for default or, at the option of the Contracting Officer, the Contractor's right to perform under this contract may be partially or wholly suspended for not less than ten (10) days, and for such longer period of time as the Contracting Officer deems appropriate to permit correction of such failure. A suspension shall not operate to extend the life of this contract and shall not be considered sufficient cause for the extension of any delivery time. During the period of any such suspension, the Government may procure from other sources, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies similar to those specified in the Schedule, and the Contractor shall be liable to the Government for any excess costs for such similar supplies. If the Contractor does not correct the failure to meet the sanitary standards, including bacteriological requirements, within any suspension period specified by the Contracting Officer, the Government may terminate the unexpired portion of this contract for default without allowing additional time for correction, notwithstanding paragraph (a)(ii) of the clause entitled "Default."

* * * * *

[1] Insert seventy percent (70%) or in case of a small business concern, seventy-five percent (75%).

PART 8—TERMINATION OF CONTRACTS

8. New paragraph (e) is added to § 8.505–1, and new § 8.505–4 is added, as follows:

§ 8.505–1 General.

* * * * *

(e) Automatic data processing equipment, including that on lease in which the Government is entitled to rental benefits, shall be screened in accordance with § 8.505–4.

§ 8.505–4 Procedures for automatic data processing equipment (ADPE).

(a) Those items of ADPE as defined in § 1.201–29 of this chapter (regardless of FSC) which are Government-owned or which are leased by the contractor under terms which provide to the Government an option to purchase or other residual interests (including the right to use until expiration of the lease) will be reported to the Defense Supply Agency, Attention: DSAH–LSR, Cameron Station, Alexandria, Va. 22314, on Standard Form 120, "Report of Excess Personal Property" (original and four copies). Normally the time required for acquisition studies required to select replacement equipment makes it possible to project the anticipated release date 180 days before the equipment is available for transfer. ADPE should be reported as soon as it is possible to project the release date. The following minimum reporting schedule shall, however, apply.

(1) Government-owned ADPE will be reported upon receipt of notice of complete termination or when it is determined that the property will no longer be needed on the contract. The release date assigned will be the last day of the plant clearance period or 90 days after the property becomes inactive. In the event of changes in release date, revised reports will be submitted.

(2) Leased ADPE, the total cost of which is charged to one or more cost-reimbursement type contracts, will be reported when it is determined that the property will no longer be needed on the contracts, or a major portion thereof. In order to preclude unnecessary lease costs, the release date established shall not extend ADPE on rental beyond the date it can be released to the lessor. Prompt reporting of leased ADPE is necessary in order to afford an opportunity to reutilize the property and protect the Government's equity.

(b) With respect to leased equipment, the total cost of which is charged to one or more cost-reimbursement type contracts, a quotation shall be requested from the lessor projecting the reduced price at which the equipment may be

purchased based on accumulated rental credits through the anticipated release date. A copy of this quotation should be attached to the Standard Form 120, but submission of the Standard Form 120 should not be delayed pending receipt of this information. If it is not available at that time, it should be provided when received.

(c) The following information will be reported on Standard Form 120:

(1) A complete list of each equipment item, identified by manufacturer's series and model number, and modifications and attachments applied to each component, including identification number if Government-owned; indicate type of maintenance contract, contractor, and monthly cost;

(2) A separate attachment, showing the time in service for each component, average utilization (hours per month) and average down-time per month for the 12-month period immediately preceding the report (if appropriate, a narrative description of any history of repeated equipment failure shall be included);

(3) A list of compilers and other software packages (such as executive routines), engineering drawings and maintenance manuals available with the equipment; and

(4) In the instances of a complete equipment configuration, information regarding power and air conditioning requirements.

(d) The Defense Supply Agency shall control ADPE reported excess.

Shipments shall be made upon receipt of requests approved by DSA.

PART 11—TAXES

9. New § 11.302 is added, as follows:

§ 11.302 N.C. Sales and Use Tax.

(a) A provision of the N.C. Sales and Use Tax Act authorizes counties and incorporated cities and towns in North Carolina to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment which become a part of or are annexed to any building or structure erected, altered, or repaired for such counties and incorporated cities and towns in North Carolina. In United States v. Clayton, 250 F. Supp. 827 (1965) appeals dismissed per curiam 384 U.S. 154, 156 (1966), it was held that the United States is entitled to the benefit of such provision of the N.C. Sales and Use Tax Act, but that the United States must resort to the refund procedure of the Act and the regulations to recover what it is due.

(b) The Act provides that in order to receive the refund authorized thereby claimants must file a written request for refund within 6 months after the close of the fiscal year of the claimant and must substantiate such request for refund by such records, receipts and information as the Commissioner of Revenue may require. The Act further provides that no refunds shall be made on applications not filed within the time allowed thereby and in such manner as the Commissioner may otherwise require. The requirements of the Commissioner are set forth in regulations which, in pertinent part, provide:

To substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, and equipment by its contractor, the claimant must secure from such contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales and/or use taxes paid thereon. In the event the contractor makes several purchases from such contractor certified statements ment must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices and the sales and use taxes paid thereon. Such statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of sales or use tax paid thereon by the contractor. Similar certified statements by his subcontractors must be obtained by the general contractor and furnished to the claimant.

(c) To assure that the United States will be in a position to obtain refunds of North Carolina sales and use taxes to which it is entitled, the clause set forth in paragraph (e) of this section shall be inserted in all construction contracts to be performed in North Carolina, including vessel repair contracts.

(d) The clause set forth in paragraph (e) of this section requires construction contractors, including vessel repair contractors, to submit to contracting officers by August 31 each year certified statements covering N.C. sales and use taxes paid during the 12-month period which ended the preceding June 30. It will be the responsibility of each contracting officer concerned to assure that contractors comply with this requirement and to obtain the annual refund of N.C. sales and use taxes to which his activity may be entitled. The application for refund must be filed each year before December 31 and in the manner and form required by the Commissioner of Revenue of the State of North Carolina. The first refund application to be filed by contracting officers will cover taxes paid during the 12-month period from July 1, 1966, to June 30, 1967. Copies of the form to be used in filing refund claims may be obtained by writing to the State of North Carolina Department of Revenue, Raleigh, N.C. 27602.

(e) Contract clauses:

N.C. Sales and Use Tax (October 1966)

(a) As used throughout this clause, the term "materials" means building materials, supplies, fixtures and equipment which become a part of or are annexed to any building or structure erected, altered, or repaired under this contract.

(b) If this is a fixed-price type contract as defined in the Armed Services Procurement Regulation, the contract price includes N.C. sales and use taxes to be paid with respect to materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement type contract as defined in such regulation, any N.C. sales and use taxes paid by the Contractor with respect to materials shall constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) below:

(i) The Contractor shall furnish the Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of N.C. sales and use taxes paid thereon. In the event the Contractor makes several purchases from the same vendor, such certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices and the N.C. sales and use taxes paid thereon. Such statement shall also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of N.C. sales or use tax paid thereon by the Contractor. The Contractor shall furnish such additional information as the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes.

(ii) The Contractor shall obtain and furnish to the Contracting Officer similar certified statements by its subcontractors.

(d) If this contract is completed before the next July 1, the certified statements to be furnished pursuant to paragraph (c) above shall be submitted within 60 days after completion. If this contract is not completed before the next July 1, such certified statements shall be submitted on or before the 31st day of August of each year and shall cover taxes paid during the 12-month period which ended the preceding June 30.

(e) The certified statements to be furnished pursuant to paragraph (c) above shall be in the following form:

I hereby certify that during the period _____ to _____ (name of contractor or subcontractor) paid N.C. sales and use taxes aggregating $_____ with respect to building materials, supplies, fixtures, and equipment which have become a part of or annexed to a building or structure erected, altered, or repaired by (name of contractor) for the United States of America, and that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the N.C. sales and use taxes paid thereon, and the cost of property withdrawn from warehouse stock and N.C. sales or use taxes paid thereon are as set forth in the attachments hereto.

Note: In ship repair contracts, change paragraph (a) to read as follows:

(a) As used throughout this clause, the term "materials" means materials, supplies, fixtures, and equipment which become a part of or are annexed to any vessel altered or repaired under this contract.

PART 13—GOVERNMENT PROPERTY

10. Section 13.101–8 is revised; new paragraph (g) is added to § 13.301; §§ 13.312 and 13.701(c) are revised; and in § 13.702, the introductory text of paragraph (a) is revised, as follows:

§ 13.101–8 Facilities.

Facilities means industrial property (other than material, special tooling, military property, and special test equipment) for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements, and plant equipment (see § 30.2 of this chapter, item 102.10).

§ 13.301 Providing facilities.

* * * * *

(g) The proposed acquisition of automatic data processing equipment as de-

fined in § 1.201–29 of this chapter shall be:

(1) Submitted on DD Form 1419 through the Administrative Contracting Officer to Headquarters, Defense Supply Agency, Attention: DSAH–LSR, Cameron Station, Alexandria, Va. 22314;

(2) Approved by the Senior ADPE policy official of the Department or Agency which generated the requirement for the contract end item; in the case of ADPE to be acquired on a noncompetitive basis, the request for approval shall be forwarded to the Assistant Secretary of Defense (Installations and Logistics) through the Senior ADPE policy official referenced above.

§ 13.312 Items to be screened by Defense Industrial Plant Equipment Center.

The items to be screened by the Defense Industrial Plant Equipment Center (DIPEC) in accordance with §§ 13.301(f) and 13.306–4 are listed in the following Joint DoD Handbooks:

INDEX OF INDUSTRIAL PLANT EQUIPMENT HANDBOOKS

[NOTE: Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402]

FSC	Title	Army	Navy	Air Force	DSA	Marine Corps
6625	Electrical and Electronic Properties Measuring and Testing Instruments.	SB 708–6625–1.		AFM 78–6.	DSAH 4215.1.	
3220	Woodworking Machines	SB 708–3220–1.	NAVSANDA Pub 5500.	AFM 78–7.	DSAH 4215.2.	MCO 4870.6.
3411–3419, 3441–3449.	Production Equipment Directory D1 Metalworking Machinery 1960 Revision Volumes 1 and 2.[1]					
3411–3419, 3441–3449.	Supplement to Production Equipment Directory D1 Metalworking Machinery 1960 Revision.[1]	SB 708–3400–1.	NAVSANDA Pub 5501.	AFM 78–42.	DSAH 4215.3.	MCO P3870.7.
3431, 3432, 3433, 3436, 3438.	Production Equipment Directory D2 Welding, Heat Cutting, and Metallizing Equipment 1961 Edition.[1]					
3424, 3655, 4430.	Industrial Furnaces and Ovens Volumes 1 and 2.	SB 708–4430–1.	NAVSANDA Pub 5502.	AFM 78–8.	DSAH 4215.4.	MCO P4870.8.
3815, 3910, 3920, 3930, 3950, 3990.	Material Handling Equipment and Lifting Electro-Magnets Volumes 1 and 2.	SB 708–3900–1.	NAVSANDA Pub 5503.	AFM 78–9.	DSAH 4215.5.	MCO P4870.9.
6635	Physical Properties Testing Equipment.	SB 708–6635–1.	NAVSANDA Pub 5504.	AFM 78–10.	DSAH 4215.6.	MCO P4870.10.
3540	Wrapping and Packaging Machinery.	SB 708–3540–1.	NAVSANDA Pub 5505.	AFM 78–11.	DSAH 4215.7.	MCO P4870.11.
3520, 3530, 3625.	Textile Industries Machinery and Industrial Sewing Machines.	SB 708–3500–1.	NAVSANDA Pub 5506.	AFM 78–12.	DSAH 4215.8.	MCO P4870.12.
6120	Distribution and Power Station Transformers.	SB 708–6120–1.	NAVSANDA Pub 5507.	AFM 78–13.	DSAH 4215.9.	MCO P4870.13.
6636	Environmental Chambers	SB 708–6636–1.	NAVSANDA Pub 5508.	AFM 78–14.	DSAH 4215.10.	MCO P4870.14.
6130	Power Conversion Equipment, Electrical.	SB 708–6130–1.	NAVSANDA Pub 5509.	AFM 78–22.	DSAH 4215.11.	MCO P4870.15.
3422, 3426	Rolling Mills, Drawing Machines, and Metal Finishing Equipment.	SB 708–3400–2.	NAVSANDA Pub 5510.	AFM 78–15.	DSAH 4215.12.	MCO P4870.16.
3450, 3460, 5220.	Portable Machine Tools and Toolroom Layout Plates and Tables.	SB 708–3400–3.	NAVSANDA Pub 5511.	AFM 78–16.	DSAH 4215.13.	MCO P4870.17.
4310	Compressors and Vacuum Pumps	SB 708–4310–1.	NAVSANDA Pub 5512.	AFM 78–17.	DSAH 4215.14.	MCO P4870.18.
6680, 6685	Liquid and Gas, Pressure, Temperature, Humidity, and Mechanical Motion Measuring and Controlling Instruments.	SB 708–6600–1.	NAVSANDA Pub 5513.	AFM 78–18.	DSAH 4215.15.	MCO P4870.19.
3635	Crystal and Glass Industries Machinery.	SB 708–3635–1.	NAVSANDA Pub 5514.	AFM 78–19.	DSAH 4215.16.	MCO P4870.20.
4440	Driers, Dehydrators, and Anhydrators.	SB 708–4440–1.	NAVSANDA Pub 5515.	AFM 78–20.	DSAH 4215.17.	MCO P4870.21.
6650, 6670	Scales, Balances, and Optical Instruments.	SB 708–6600–2.	NAVSANDA Pub 5516.	AFM 78–25.	DSAH 4215.18.	MCO P4870.22.
3680	Foundry Equipment	SB 708–3680–1.	NAVSANDA Pub 5517.	AFM 78–23.	DSAH 4115.19.	MCO P4870.23.
4320	Pumps	SB 708–4320–1.	NAVSANDA Pub 5518.	AFM 78–29.	DSAH 4215.20.	MCO P4870.24.

See footnote at end of table.

INDEX OF INDUSTRIAL PLANT EQUIPMENT HANDBOOKS—Continued

[NOTE: Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402]

FSC	Title	Army	Navy	Air Force	DSA	Marine Corps
6675, 6695	Combination and Miscellaneous Instruments Including Dynamometers.	SB 708–6695–1.	NAVSANDA Pub 5519.	AFM 78–30.	DSAH 4215.21.	MCO P4870.25.
6105, 6115, 6125.	Motors, Generators, and Generator Sets, and Rotating Converters.	SB 708–6100–1.	NAVSANDA Pub 5520.	AFM 78–31.	DSAH 4215.22.	MCO P4870.26.
4920	Aircraft Maintenance and Repair Shop Specialized Equipment.	SB 708–4920–1.	NAVSANDA Pub 5521.	AMF 78–33.	DSAH 4215.23.	MCO P4870.27.
4330	Centrifugals, Separators and Filters.	SB 708–4330–1.	NAVSANDA Pub 5522.	AFM 78–27.	DSAH 4215.24.	MCO P4870.28.
4410, 4420	Industrial Boilers, Heat Exchangers, and Steam Condensers.	SB 708–4400–1.	NAVSUP Pub 5524.	AFM 78–24.	DSAH 4215.25.	MCO P4870.29.
6110	Electrical Control Equipment	SB 708–6110–1.	NAVSUP Pub 5525.	AFM 78–40.	DSAH 4215.26.	MCO P4870.30.
4110, 4120	Refrigeration and Air Conditioning Equipment.	SB 708–4100–1.	NAVSUP Pub 5526.	AFM 78–43.	DSAH 4215.27.	MCO P4870.31.
5430	Storage Tanks	SB 708–5430–1.	NAVSUP Pub 5527.	AFM 78–35.	DSAH 4215.28.	MCO P4870.32.
3610, 6710, 6720, 6730, 6740, 6780.	Photocopying and Photographic Equipment.	SB 708–6700–1.	NAVSUP Pub 5528.	AFM 78–32.	DSAH 4215.29.	MCO P4870.34.
6630, 6640	Chemical Analysis and Laboratory Instruments.	SB 708–6600–3.	NAVSUP Pub 5529.	AFM 78–38.	DSAH 4215.30	MCO P4870.35.
4140, 4460, 7910.	Air Purification Equipment, Industrial Fans, Blowers, and Vacuum Cleaners.	SB 708–4100–2.	NAVSUP Pub 5530.	AFM 78–21.	DSAH 4215.31.	MCO P4870.36.
3915	Materials Feeders	SB 708–3915–1.	NAVSUP Pub 5531.	AFM 78–47.	DSAH 4215.32.	MCO P4870.37.
3615, 3660	Pulp and Paper Industries and Size Reduction Machinery.	SB 708–3600–1.	NAVSUP Pub 5532.	AFM 78–44.	DSAH 4215.33.	MCO P4870.38.
3620	Rubber and Plastics Working Machinery.	SB 708–3620–1.	NAVSUP Pub 5534.	AFM 78–28.	DSAH 4215.35.	MCO P4870.40.
3611, 3693	Industrial Marking and Assembly Machines.	SB 708–3600–2.	NAVSUP Pub 5535.	AFM 78–26.	DSAH 4215.36.	MCO P4870.41.
3650	Chemical and Pharmaceutical Products Manufacturing Machinery.	SB 708–3650–1.	NAVSUP Pub 5536.	AFM 78–45.	DSAH 4215.37.	MCO P4870.42.
4940	Miscellaneous Maintenance and Repair Shop Specialized Equipment.	SB 708–4930–1.	NAVSUP Pub 5537.	AFM 78–48.	DSAH 4215.38.	MCO P4870.43.
3690, 4925, 4933.	Specialized Ammunition and Ordnance Machinery.	SB 708–4900–1.	NAVSUP Pub 5538.	AFM 78–49.	DSAH 4215.39.	MCO P4870.44.

[1] Production Equipment Directories D1 and D2 for sale by Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Revisions in IPE Handbook format scheduled for publication in FY 68.

§ 13.701 Applicability.

* * * * *

(c) As usual throughout this subpart, the term "short form contract" shall include small purchases made under Subpart F, Part 3 of this chapter, and short form negotiated supply contracts (see § 16.102–2(c) of this chapter) under which Government property having an acquisition cost of $25,000 or less is to be furnished.

§ 13.702 Government property clause for fixed-price contracts.

(a) Except as provided in paragraph (c) of this section and in § 13.710, the following clause shall be used in fixed-price contracts and short form contracts (except contracts for experimental, developmental, or research work with educational or nonprofit institutions, where no profit to the contractor is contemplated) under which a Department is to furnish to the contractor or the contractor is to acquire, Government property.

* * * * *

11. In § 13.704, the clause heading and clause paragraph (f) are revised; in § 13.706(a), the clause heading and clause paragraph (d) are revised; and in § 13.707(a), the clause heading and clause paragraph (d) are revised, as follows:

§ 13.704 Special tooling clause for fixed-price contracts.

* * * * *

SPECIAL TOOLING (OCTOBER 1967)

* * * * *

(f) *Disposition of Special Tooling.* Within ninety (90) days after receipt of any list or notice under paragraph (c) or (d) hereof, or such further period as may be agreed upon by the parties, the Contracting Officer shall furnish to the Contractor:

(i) A list specifying the particular products, parts, or services for which the Government may require special tooling together with a request that the Contractor transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Government all usable items of special tooling which were used or designed for the manufacture or performance of any designated portion of such products, parts, or services, and which were on hand when production of such products or parts, or performance of such services, ceased;

(ii) An acceptance or rejection of any offer made by the Contractor under paragraph (e) above, or a request for further negotiation with respect thereto;

(iii) A direction to the Contractor to sell, or to dispose of as scrap, for the account of the Government, any or all of the special tooling covered by such list;

(iv) A statement with respect to any or all of the special tooling covered by such list that the Government has no further interest therein and waives its rights therein; or

(v) Any combination of the foregoing, as the circumstances warrant.

The Contractor shall promptly comply with any request by the Contracting Officer under this pargraph to transfer title to any items of special tooling, and shall: (1) immediately prepare such items for shipment by proper packaging, packing, and marking, in accordance with any instructions which may be issued by the Contracting Officer, and shall promptly deliver such items to the Government as directed by the Contracting Officer; or (2) if a storage agreement has been entered into, prepare such items for storage in accordance therewith, as directed by the Contracting Officer. To the extent that compliance with such directions under (iii), (1) or (2) above occasions any cost to the Contractor for which he will not otherwise be compensated, the contract price shall be equitably adjusted in accordance with the procedures of the "Changes" clause hereof. Any items of special tooling so delivered or stored shall be accompanied by such operation sheets or other appropriate data as are necessary to show the manufacturing operations or processes for which such items were used or designed. If the Contracting Officer has requested further negotiations under (ii) of this paragraph, the Contractor agrees that he will enter into such negotiations in good faith with the Contracting Officer. Any items of special tooling which are not disposed of by transfer of title and delivery to the Government, or by acceptance of an offer of the Contractor made under paragraph (e), or of such offer as modified in the course of negotiations, shall be disposed of in the manner set forth in (iii) or (iv) of this paragraph. Any failure of the Contracting Officer to give the directions required under (i)–(v) above within the specified period shall be construed as a direction pursuant to (iii) above.

* * * * *

§ 13.706 Government property clause for fixed-price type contracts with nonprofit institutions.

(a) * * *

GOVERNMENT PROPERTY (FIXED PRICE, NONPROFIT) (OCTOBER 1967)

* * * * *

(d) *Property administration.* The Contractor shall comply with the provisions of Appendix C, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made part of this contract. Material to be furnished by the Government shall be ordered or returned by the Contractor, when required, in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation) as in effect on the date of this contract, which Manual is hereby incorporated by reference and made a part of this contract.

* * * * *

§ 13.707 Government property clause for cost-reimbursement type research and development contracts with nonprofit institutions.

(a) * * *

GOVERNMENT PROPERTY (COST-REIMBURSEMENT, NONPROFIT) (OCTOBER 1967)

* * * * *

(d) *Property administration.* The Contractor shall comply with the provisions of Appendix C, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract. Material to be furnished by the Government shall be ordered or returned by the Contractor, when required, in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation) as in effect on the date of this contract, which Manual is hereby incorporated by reference and made a part of this contract.

* * * * *

PART 14—PROCUREMENT QUALITY ASSURANCE

12. Section 14.407–3 is revised to read as follows:

§ 14.407–3 Selective evaluation at the subcontract level.

Selective evaluation of the contractor's control of his subcontractors may be requested by the contract administration office responsible for the contract in order to provide that office with additional assurance that supplies and services being received from subcontractors conform to quality requirements. Communications between contract administration offices concerning procurement quality assurance actions to be performed shall be through Government channels. Requests for selective evaluation shall indicate Government procurement quality actions to be performed, e.g., specific characteristics, processes and procedures to be verified, tests to be witnessed, and records, reports, and certificates to be evaluated.

PART 15—CONTRACT COST PRINCIPLES AND PROCEDURES

13. New paragraph (j) is added to § 15.107; §§ 15.201–3 and 15.205–6 are revised; the section heading of § 15.205–7 is revised; § 15.205–8 is revised; the section headings of §§ 15.205–9, 15.205–17, 15.205–18, and 15.205–19 are revised, as follows:

§ 15.107 Advance understandings on particular cost items.

* * * * *

(j) Leasing of automatic data processing equipment (ADPE).

§ 15.201–3 Definition of reasonableness.

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

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

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

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

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

(b) *Application of "contractor weighted average share in cost risk" (CWAS).* (1) Except as provided in subparagraphs (2) and (3) of this paragraph, to the extent that the allowability of an indirect cost is based on reasonableness of the nature and amount, the reasonableness shall be determined by reliance upon the approved "contractor weighted average share in cost risk" (CWAS) (see Subpart K Part 3 of this chapter, for the definition of CWAS), computed from data of the year in which the cost was incurred, as follows:

(i) If the profit center within which the cost was incurred has a CWAS rating of 65 points or higher, 35 points or more of which rating were derived from competitive firm fixed-price contracts or commercial sales, the reasonableness of the cost will not be questioned (but see § 3.1004(b) of this chapter); but

(ii) If the profit center within which the cost was incurred has a CWAS rating of 50 or higher but less than 65, the provisions of subdivision (i) of this subparagraph may be applied at the discretion of the administrative contracting officer.

(2) The cost principles contained in §§ 15.205–15.205–48, in certain cases, carry either a (CWAS) or a (CWAS–NA) indicator. Those cost principles (section texts) subject to CWAS are preceded by the indicator (CWAS) and those to which CWAS is not applicable are preceded by the indicator (CWAS–NA). In all cases where cost reasonableness is not determined under CWAS because of its express inapplicability, the determination will be made in accordance with paragraph (a) of this section.

(3) The determination of cost reasonableness will be made in accordance with paragraph (a) of this section in all cases where the contractor could not qualify or does not choose to qualify under CWAS.

(4) Questions involving the charging off of assets or setting up of other than normal yearend accruals or reserves will be considered to be questions of allocability or accounting practices rather than reasonableness.

(5) If the profit center incurs costs (e.g., travel, relocation, personnel compensation) on the basis of prescribed corporate-wide policy uniformly applied to all profit centers, consideration should be given to the corporate CWAS in determining the reasonableness of such locally incurred costs.

(6) The CWAS rating for the company shall be used in testing the reasonableness of corporate type expenses which are allocated to the profit centers. If the contractor has intermediate management organizations, such as Groups, he shall develop a CWAS rating for such intermediate management organizations, which rating shall be applicable to the expenses allocated by such intermediate organizations to the profit centers.

(7) Indirect costs incurred in cost centers which are applied to specific contracts without relation to total profit center operations may be eliminated by the ACO from the application of CWAS.

§ 15.205–6 Compensation for personal services.

(a) *General.* (1) (CWAS) Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance. It includes, but is not limited to, salaries, wages, directors' and executive committee members' fees, bonuses (including stock bonuses), incentive awards, employee stock options, employee insurance, fringe benefits, and contributions to pension, annuity, and management employee incentive compensation plans. Except as otherwise specifically provided in this section, such costs are allowable to the extent that the total compensation of individual employees is reasonable for the services rendered and they are not in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder.

(2) (CWAS) Compensation is reasonable to the extent that the total amount paid or accrued is commensurate with compensation paid under the contractor's established policy and conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area, for similar services. In the administration of this principle, it is recognized that not every compensation case need be subjected in detail to the above tests. Such test need be applied only to those cases in which a general review reveals amounts or types of compensation which appear unreasonable or otherwise out of line. However, certain conditions give rise to the need for special consideration and possible limitation as to allowability for contract cost purposes where amounts appear excessive. Among such conditions are the following:

(i) Compensation to owners of closely held corporations, partners, sole proprietors, or members of the immediate families thereof, or to persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of profits. (CWAS–NA)

(ii) Any change in a contractor's compensation policy resulting in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy. (CWAS)

(iii) The contractor's business is such that his compensation levels are not subject to the restraints normally occurring in the conduct of competitive business. (CWAS)

(3) (CWAS) Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits.

(4) (CWAS) Notwithstanding any other provisions of this section costs of compensation are not allowable to the extent that they result from provisions of labor-management agreements that, as applied to work in the performance of Government contracts, are determined to be unreasonable either because they are unwarranted by the character and circumstances of the work or because they are discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (for example, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (for example, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in individual personnel compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of cost will not be made under this subparagraph unless:

(i) The contractor has been permitted an opportunity to justify the costs, and

(ii) Due consideration has been given to whether unusual conditions pertain to the Government contract work, imposing burdens, hardships, or hazards on the contractor's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(5) In addition to the general requirements set forth in subparagraphs (1) through (4) of this paragraph, certain forms of compensation are subject to further requirements as specified in paragraphs (b) through (i) of this section.

(b) *Salaries and wages.* (CWAS) Salaries and wages for current services include gross compensation paid to employees in the form of cash, products, or services, and are allowable.

(c) *Cash bonuses and incentive compensation.* (CWAS) Incentive compensation for management employees, cash bonuses, suggestion awards, safety awards, and incentive compensation based on production, cost reduction, or efficient performance, are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the contractor and the employees before the services were rendered, or pursuant to an established plan followed by the contractor so consistently as to imply in effect, an agreement to make such payment (but see § 15.107). Bonuses, awards, and incentive compensation when any of them are deferred are allowable to the extent provided in paragraph (f) of this section.

(d) *Bonuses and incentive compensation paid in stock.* (CWAS) Costs of bonuses and incentive compensation paid in the stock of the contractor or of an affiliate are allowable to the extent set forth in paragraph (c) of this section (including the incorporation of the principles of paragraph (f) of this section for deferred bonuses and incentive compensation), subject to the following additional requirements:

(1) Valuation placed on the stock transferred shall be the fair market value at the time of transfer, determined upon the most objective basis available; and

(2) Accruals for the cost of stock prior to the issuance of such stock to the employees shall be subject to adjustment according to the possibilities that the employees will not receive such stock and their interest in the accruals will be forfeited.

Such costs otherwise allowable are subject to adjustment according to the principles set forth in paragraph (f)(3) of this section. (But see § 15.107.)

(e) *Stock options.* (CWAS–NA) The cost of options to employees to purchase stock of the contractor or of an affiliate is unallowable.

(f) *Deferred compensation.* (CWAS–NA). (1) As used herein, deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals. It includes (i) contributions to pension, annuity, stock bonus, and profit sharing plans, (ii) contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans, and (iii) other deferred compensation, whether paid in cash or in stock.

(2) Deferred compensation is allowable to the extent that (i) except for past service pension and retirement costs, it is for services rendered during the contract period; (ii) it is, together with all other compensation paid to the employee, reasonable in amount; (iii) it is paid pursuant to an agreement entered into in good faith between the contractor and employees before the services are rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payments; and (iv) for a plan which is subject to approval by the Internal Revenue Service, it falls within the criteria and standards of the Internal Revenue Code and the regulations of the Internal Revenue Service. (But see § 15.107.)

(3) In determining the cost of deferred compensation allowable under the contract, appropriate adjustments shall be made for credits or gains, including those arising out of both normal and abnormal employee turnover, or any other contingencies that can result in a forfeiture by employees of such deferred compensation. Adjustments shall be made only for forfeitures which directly or indirectly inure to the benefit of the contractor; forfeitures which inure to the benefit of other employees covered by a deferred compensation plan with no reduction in the contractor's costs will not normally give rise to adjustment in contract costs. Adjustments for normal employee turnover shall be based on the contractor's experience and on foreseeable prospects, and shall be reflected in the amount of cost currently allowable. Such adjustments will be unnecessary to the extent that the contractor can demonstrate that his contributions take into account normal forfeitures. Adjustments for possible future abnormal forfeitures shall be effected according to the following rules:

(i) Abnormal forfeitures that are foreseeable and which can be currently evaluated with reasonable accuracy, by actuarial or other sound computation, shall be reflected by an adjustment of current costs otherwise allowable; and

(ii) Abnormal forfeitures, not within subdivision (i) of this subparagraph, may be made the subject of agreement the Government and the contractor either as to an equitable adjustment or a method of determining such adjustment.

(4) In determining whether deferred compensation is for services rendered during the contract period or is for future services, consideration shall be given to conditions imposed upon eventual payment, such as, requirements of continued employment, consultation after retirement, and covenants not to compete.

(g) *Fringe benefits (CWAS).* Fringe benefits are allowances and services provided by the contractor to his employees as compensation in addition to regular wages and salaries. Costs of fringe benefits, such as pay for vacations, holidays, sick leave, military leave, employee insurance, and supplemental unemployment benefit plans are allowable to the extent required by law, employer-employee agreement, or an established policy of the contractor.

(h) *Severance pay (CWAS).* See § 15.205–39.

(i) *Training and education expenses (CWAS).* See § 15.205–44.

(j) *Location allowances (CWAS).* "Location allowances," sometimes called "supplemental pay" or "incentive pay," are allowable to the extent consistent with § 12.105 of this section.

§ 15.205–7 Contingencies (CWAS–NA).

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§ 15.205–8 Contributions and donations (CWAS–NA).

Contributions and donations are unallowable.

§ 15.205–9 Depreciation (CWAS–NA).

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§ 15.205–17 Interest and other financial costs (CWAS–NA).

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§ 15.205–18 Labor relations costs (CWAS).

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§ 15.205–19 Losses on other contracts (CWAS–NA).

* * * * *

14. Section 15.205–20 is revised; the section headings of §§ 15.205–21, 15.205–22, 15.205–23, and 15.205–24 are revised; in § 15.205.25, paragraphs (b), (c), and (d) are revised; and the section headings of §§ 15.205–26, 15.205–28, 15.205–29, and 15.205–30 are revised as follows:

§ 15.205–20 Maintenance and repair costs.

(a) (CWAS) Costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see § 15.205–9):

(1) Normal maintenance and repair costs are allowable;

(2) Extraordinary maintenance and repair costs are allowable, provided such are allocated to the periods to which applicable for purposes of determining contract costs. (But see § 15.107.)

(b) (CWAS–NA) Expenditures for plant and equipment, including rehabilitation thereof, which, according to generally accepted accounting principles as applied under the contractor's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

§ 15.205–21 Manufacturing and production engineering costs (CWAS).

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§ 15.205–22 Material costs (CWAS).

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§ 15.205–23 Organization costs (CWAS–NA).

* * * * *

§ 15.205–24 Other business expenses (CWAS).

* * * * *

§ 15.205–25 Relocation costs.

* * * * *

(b) (CWAS) Subject to paragraph (c) of this section, relocation costs of the type covered in paragraphs (a) (1), (2), (3), and (4) of this section are allowable, provided (1) the move is for the benefit of the employer; (2) reimbursement is in accordance with an established policy or practice consistently followed by the employer, and such policy or practice is designed to motivate employees to relocate promptly and economically; (3) the costs are not otherwise unallowable under the provisions of § 15.205–33, or any other section of this subpart (see § 15.107 as related to large scale contractor relocation); and (4) amounts to be reimbursed shall not exceed the employee's actual (or reasonably estimated) expenses.

(c) (CWAS) Costs otherwise allowable under paragraph (b) of this section are subject to the following additional provisions: (1) the transition period for incurrence of costs of the type covered in paragraph (a) (2) of this section shall be kept to the minimum number of days necessary under the circumstances, but shall not, in any event, exceed a cumulative total of 30 days including advance trip time; and (2) allowance for cost of the type covered in paragraph (a) (3) of this section shall not exceed 8 percent of the sales price of the property sold. Costs of the type covered in paragraph (a) (3) and (4) of this section are allowable only in connection with the relocation of existing employees, and are not allowable for newly recruited employees.

(d) (CWAS–NA): Costs of the type covered in paragraph (a) (5) and (6) of this section are not allowable.

§ 15.205–26 Patent costs (CWAS–NA).

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§ 15.205–28 Plant protection costs (CWAS).

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§ 15.205–29 Plant reconversion costs (CWAS–NA).

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§ 15.205–30 Precontract costs (CWAS–NA).

* * * * *

15. Section 15.205–31 is revised; the section headings of §§ 15.205–32 and

15.205–33 are revised; § 15.205–34 is revised; the section headings of §§ 15.205–35 and 15.205–36 are revised; § 15.205–37 is revised; and the section heading of § 15.205–38 is revised, as follows:

§ 15.205–31 Professional and consultant service costs—legal, accounting, engineering, and other.

(a) (CWAS): Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor are allowable, subject to paragraphs (b), (c), and (d) of this section when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see § 15.205–26).

(b) (CWAS): In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors among others may be relevant:

(1) The nature and scope of the service rendered in relation to the service required;

(2) The necessity of contracting for the service considering the contractor's capability in the particular area;

(3) The past pattern of such costs, particularly in the years prior to the award of Government contracts;

(4) The impact of Government contracts on the contractor's business (i.e., what new problems have arisen);

(5) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government contracts;

(6) Whether the service can be performed more economically by employment rather than by contracting;

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-government contracts;

(8) Adequacy of the contractual agreement for the service (e.g., description of the service; estimate of time required, rate of compensation; termination provisions).

(c) (CWAS): In addition to paragraph (b) of this section, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

(d) (CWAS): Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization, defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the contract. (Also see § 15.205–23.)

§ 15.205–32 Profits and losses on disposition of plant, equipment, or other capital assets (CWAS–NA).

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§ 15.205–33 Recruitment costs (CWAS).

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§ 15.205–34 Rental costs (including sale and leaseback of facilities).

(a) (CWAS) Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations, comparison of rental costs with the amount which the contractor would have received had he owned the facilities.

(b) (CWAS–NA) Charges in the nature of rent between plants, divisions, or organizations under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, and maintenance: *Provided*, That no part of such costs shall duplicate any other allowed costs.

(c) (CWAS–NA) Unless otherwise specifically provided in the contract, rental costs specified in sale and leaseback agreements, incurred by contractors through selling plant facilities to investment organizations, such as insurance companies, or to private investors, and concurrently leasing back the same facilities, are allowable only to the extent that such rentals do not exceed the amount which the contractor would have received had he retained legal title to the facilities.

(d) The allowability of rental costs under unexpired leases in connection with terminations is treated in § 15.205–42(e).

§ 15.205–35 Research and development costs (CWAS–NA) (DPC 7).

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§ 15.205–36 Royalties and other costs for use of patents (CWAS).

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§ 15.205–37 Selling costs.

(a) Selling costs arise in the marketing of the contractor's products and include costs of sales promotions, negotiation, liaison between Government representatives and contractor's personnel, and other related activities.

(b) (CWAS): Selling costs are allowable to the extent they are reasonable and are allocable to Government business (but see §§ 15.107 and 15.205–1). Allocability of selling costs will be determined in the light of reasonable benefit to the Government arising from such activities as technical, consulting, demonstration, and other services which are for purposes such as application or adaptation of the contractor's products to Government use.

(c) (CWAS–NA): Notwithstanding paragraph (b) of this section, salesmen's or agents' compensation, fees, commissions, percentages, or brokerage fees, which are contingent upon the award of contracts, are allowable only when paid to bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

§ 15.205–38 Service and warranty costs (CWAS).

* * * * *

16. Section 15.205–39 is revised; the section heading of § 15.205–40 is revised; § 15.205–41 is revised; the section headings of §§ 15.205–42, 15.205–43, 15.205–44, and 15.205–45 are revised; §§ 15.205–46 and 15.205–47 are revised; and new § 15.205–48 is added, as follows:

§ 15.205–39 Severance pay.

(a) (CWAS): Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by contractors to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that, in each case, it is required by (1) law, (2) employer-employee agreement, (3) established policy that constitutes, in effect, an implied agreement on the contractor's part, or (4) circumstance of the particular employment.

(b) Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant; or, where the contractor provides for accrual of pay for normal severances such method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts accrued are allocated to all work performed in the contractor's plant; (CWAS) and

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence. (CWAS–NA)

§ 15.205–40 Special tooling and special test equipment costs (CWAS–NA).

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§ 15.205–41 Taxes.

(a) (CWAS): Taxes are charges levied by Federal, State, or local governments. They do not include fines and penalties except as otherwise provided herein. In general, taxes (including State and local income taxes) which the contractor is required to pay and which are paid or accrued in accordance with gen-

erally accepted accounting principles are allowable, except for—

(1) Federal income and excess profits taxes; (CWAS–NA)

(2) Taxes in connection with financing, refinancing, or refunding operations (see §15.205–17); (CWAS–NA)

(3) Taxes from which exemptions are available to the contractor directly or available to the contractor based on an exemption afforded the Government except when the contracting officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government; (CWAS–NA)

(4) Special assessments on land which represent capital improvements; (CWAS–NA) and

(5) Taxes on any category of property which is used solely in connection with work other than on Government contracts. (Taxes on property used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained; e.g., taxes on contractor-owned work-in-process which is used solely in connection with non-Government work should be allocated to such work and taxes on contract or owned work-in-process inventory, and Government-owned work-in-process inventory when taxed, used solely in connection with Government work should be charged to such work.) (CWAS)

(b) (CWAS): Taxes otherwise allowable under paragraph (a) of this section, but upon which a claim of illegality or erroneous assessment exists, are allowable: *Provided*, That the contractor prior to payment of such taxes—

(1) Promptly requests instructions from the contracting officer concerning such taxes; and

(2) Takes all action directed by the contracting officer arising out of subparagraph (1) of this paragraph or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, including cooperation with and for the benefit of the Government to (i) determine the legality of such assessment or, (ii) secure a refund of such taxes.

Reasonable costs of any such action undertaken by the contractor at the direction or with the concurrence of the contracting officer are allowable. Interest and penalties incurred by a contractor by reason of the nonpayment of any tax at the direction of the contracting officer or by reason of the failure of the contracting officer to assure timely direction after prompt request therefor, are also allowable.

(c) (CWAS): Any refund of taxes, interest, or penalties, and any payment to the contractor of interest thereon, attributable to taxes, interest, or penalties which were allowed as contract costs, shall be credited or paid to the Government in the manner directed by the Government, provided any interest actually paid or credited to a contractor incident to a refund tax, interest or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the contractor had been reimbursed by the Government for the taxes, interest or penalties.

§ 15.205–42 Termination costs (CWAS–NA).

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§ 15.205–43 Trade, business, technical, and professional activity costs (CWAS).

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§ 15.205–44 Training and educational costs (CWAS).

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§ 15.205–45 Transportation costs (CWAS).

* * * * *

§ 15.205–46 Travel costs.

(a) (CWAS): Travel costs include costs of transportation, lodging, subsistence, and incidental expenses, incurred by contractor personnel in a travel status while on official company business.

(b) (CWAS): Travel costs may be based upon actual costs incurred, or on a per diem or mileage basis in lieu of actual costs, or on a combination of the two, provided the method used does not result in an unreasonable charge.

(c) (CWAS): Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(d) (CWAS): Travel costs directly attributable to specific contract performance are allowable and may be charged to the contract in accordance with the principle of direct costing. (See § 15.202.)

(e) (CWAS): Necessary, reasonable costs of family movements and personnel movements of a special or mass nature are allowable, subject to allocation on the basis of work or time period benefited when appropriate. (But see § 15.107.)

(f) *Air travel (CWAS–NA)*. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class accommodations are not reasonably available to meet necessary mission requirements, such as, where less than first-class accommodations would:

(1) Require circuitous routing,

(2) Require travel during unreasonable hours,

(3) Greatly increase the duration of the flight,

(4) Result in additional costs which would offset the transportation savings,

(5) Offer accommodations which are not reasonably adequate for the physical or medical needs of the traveler.

(g) *Travel via contractor owned, leased, and chartered aircraft (CWAS)*. (1) "Cost of contractor owned, leased, and chartered aircraft," as that phrase is used herein, includes the cost of lease, charter, operation (including personnel), maintenance, depreciation, insurance, and other related costs. This cost is allowable, if reasonable, to the extent the contractor can demonstrate that the use of such aircraft is necessary for the conduct of his business and that the increase in cost, if any, in comparison with alternative means of transportation, is commensurate with the advantages gained.

(2) Some of the factors to consider in determining the necessity for such aircraft are whether:

(i) Scheduled commercial airlines or other suitable less costly travel facilities are available at reasonable times, with reasonable frequency and serving the required destinations conveniently;

(ii) It is likely that critical or emergency situations might arise which could not be accommodated as effectively by scheduled commercial airline or other suitable less costly travel facilities;

(iii) The increased flexibility in scheduling would result in time savings and more effective utilization of key personnel;

(iv) National or industrial security demands privacy for key personnel who must work en route; and

(v) There exists a contract requirement for flight testing of equipment.

(3) When the need for contractor owned, leased or chartered aircraft has been demonstrated, additional factors such as the following shall be considered in determining the reasonableness of costs.

(i) Number, type and size of aircraft needed (involved in this determination are matters such as the number and physical aspects of locations to which flights are required, distances to these locations, number of passengers to be carried and frequency of flights).

(ii) The appropriateness of the method of acquisition, i.e., purchase, lease, or charter.

(iii) Whether, when the contractor has more than one type or size of aircraft, that available aircraft best suited to the requirements of each individual trip was used.

(4) Where the need for contractor owned, leased or chartered aircraft has been demonstrated, optimum use of such aircraft, rather than scheduled commercial service, should be made where a cost advantage will result to the Government.

§ 15.205–47 Economic planning costs.

(a) (CWAS): This category includes costs of generalized long-range management planning which is concerned with the future overall development of the contractor's business and which may take into account the eventual possibility of economic dislocations or fundamental alterations in those markets in which the contractor currently does business.

(b) (CWAS): Economic planning costs are allowable as indirect costs to be properly allocated.

(c) (CWAS–NA): Research and development and engineering costs designed to lead to new products for sale to the general public are not allowable under this provision.

§ 15.205–48 Automatic data processing equipment (ADPE) leasing costs (CWAS).

(a) This section is applicable to all leased ADPE, as defined in § 1.201–29 of this chapter, except as components of an end item to be delivered to the Government. (Allowability of costs related to contractor-owned ADPE are governed by other provisions of this subpart.)

(b) (1) If the contractor leased ADPE but cannot demonstrate, on the basis of the facts existent at the time of the decision to lease or to continue leasing and documented in accordance with paragraph (d) of this section, that leasing will result in less cost to the Government over the anticipated useful life (as those terms are explained in paragraph (c) of this section), then rental costs are allowable only up to the amount that the contractor would be allowed had he purchased the ADPE.

(2) Furthermore, the costs of leasing ADPE are allowable only to the extent that the contractor can annually demonstrate in accordance with paragraph (d) of this section that:

(i) They are reasonable and necessary for the conduct of his business in light of such factors as the contractor's requirements for ADPE, costs of comparable facilities, the various types of leases available and the provisions of the rental agreement;

(ii) They do not give rise to a material equity in the facilities (such as an option to renew or purchase at a bargain rental or price) other than that normally given to industry at large but represent charges only for the current use of the equipment including but not limited to any incidental service costs such as maintenance, insurance, and applicable taxes; and

(iii) If the total cost of leasing the ADPE is to be reimbursed under one or more cost-reimbursement type contracts, or if the total cost of leasing ADPE in a single plant, division, or cost center exceeds $500,000 per year and 50 percent or more of the total leasing cost is to be allocated to cost-reimbursement type contracts, the approval of the contracting officer was obtained for the leasing arrangement (see §§ 3.1100 and 15.107 of this chapter).

(3) Rental costs under a sale and leaseback arrangement shall be allowable only up to the amount the contractor would be allowed had he retained title to the ADPE, except where it is determined that leasing was the appropriate method of acquisition, and the sale and leaseback (i) immediately followed purchase of the ADPE and results in rental to the Government lower than rental under any other reasonably available leasing arrangements, or (ii) is otherwise in the best interests of the Government.

(4) ADPE which is transferred (by purchase or lease) between any divisions, subsidiaries, or affiliates of the contractor under a common control shall be treated in accordance with § 15.205–22(e).

(c) (1) An estimate of the anticipated useful life of the property may represent the application life (utility in a given function), technological life (utility before becoming obsolete in whole or in part), or physical life utility before physically wearing out), depending upon the facts and circumstances and the particular facilities involved. Therefore, each case must be evaluated individually. In estimating anticipated useful life, the contractor may use the application life if he can clearly demonstrate that the facility has utility only in a given function and the duration of the function can be determined. Technological life may be used by the contractor if he can demonstrate that existing facilities must be replaced because of:

(i) Specific program objectives or contract requirements which cannot be accomplished with the existing facilities,

(ii) Cost reductions which will produce identifiable savings in production or overhead costs,

(iii) Increase in workload volume which cannot be accomplished efficiently by modifying or augmenting existing facilities, or

(iv) Consistent pattern of capacity operation (2½–3 shifts) on existing facilities.

Technological advances per se will not justify replacement of existing facilities before the end of their physical life if such existing facilities will be able to satisfy future requirements or demands.

(2) In estimating the least cost to the Government for such useful life, the cumulative costs that would be allowed if the contractor owned the property should be compared with cumulative costs that would be allowed under any of the various types of leasing arrangements available. For the purposes of this comparison, the costs of ADPE include but are not limited to the costs of operation, maintenance, insurance, depreciation, and rental, and the cost of machine services, as applicable.

(d) The contractor's justification, under paragraph (b) of this section, of his leasing decisions shall consist of but is not limited to the following supporting data, prepared prior to acquisition:

(1) Analysis of utilization of existing ADPE;

(2) Application of the criteria in paragraph (b) of this section;

(3) Specific objectives or requirements, generally in the form of a data system study and data system specification;

(4) Solicitation of proposals from from qualified sources based on the data system specification;

(5) Proposals received in response to the solicitation, and reasons for selection of the equipment chosen and for the decision to lease.

The contractor's annual justification, under paragraph (b) of this section, of his decision to retain or change his existing ADPE capability and the need to continue leasing that capability shall consist of but is not limited to current data as specified in subparagraphs (1) through (3) of this paragraph.

PART 16—PROCUREMENT FORMS

17. Sections 16.102–2(c)(2)(xii) and 16.503–6(a) are revised to read as follows:

§ 16.102–2 Award/Contract (Standard Form 26).

* * * * *

(c) * * *

(2) * * *

(xii) A commercial warranty clause may be used in accordance with § 1.324–4 of this chapter.

* * * * *

§ 16.503–6 Modification of master contracts.

(a) Since master contracts prescribe the terms and conditions under which contractors submit bids and competitive quotations for vessel repair work, it is essential that the provisions of all outstanding master contracts be kept uniform. It is also necessary that master contracts be kept up to date and reflect changes in statutes, Executive orders, and procurement regulations applicable to vessel repair work. The DD ASPR Form 731 will be revised periodically, not more frequently than annually, to incorporate all changes made necessary by ASPR revisions unless revision is required by statute or Executive order. All outstanding master contracts shall be replaced using the latest revised form, effective as to all job orders issued on or after 60 days after the promulgation of such revision. Pending revision of DD ASPR Form 731, the clause set forth in § 11.302(e) of this chapter shall be inserted in master contracts in accordance with § 11.302(c).

* * * * *

PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGULATIONS

18. In § 30.8, paragraph I–102 is revised to read as follows:

§ 30.8 Appendix I—Preparation, Reproduction and Distribution of Material Inspection and Receiving Report (MIRR) (DD Forms 250 and 250c).

* * * * *

I–102 Forms supply. Contractors may obtain from the contract administration office, upon request, and at no cost, MIRR forms required for use in connection with Government contracts. Contractors may print their own forms: *Provided,* That the format and dimensions (8½" x 11") are identical to the MIRR forms published by the Government and that the forms are cast to provide for 78 characters per printed image horizontally and 62 lines vertically border to border for the DD Form 250, and 61 lines vertically border to border for the DD Form 250c.

* * * * *

[Rev. 25, ASPR, Oct. 1, 1967] (Sec. 2202, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314)

For the Adjutant General.

J. W. HURD,
Colonel, AGC, Comptroller, TAGO.

[F.R. Doc. 68–236; Filed, Jan. 8, 1968; 8:45 a.m.]

Chapter V—Department of the Army

SUBCHAPTER B—CLAIMS AND ACCOUNTS

PART 536—CLAIMS AGAINST THE UNITED STATES

Claims Under Article 139, Uniform Code of Military Justice

Section 536.25 is revised to read as follows:

§ 536.25 Claims under Article 139, Uniform Code of Military Justice.

(a) *Statutory authority.* The authority for this section is Article 139, Uniform Code of Military Justice (10 U.S.C. 939) which provides for redress of damage to property willfully damaged or destroyed, or wrongfully taken by members of the Armed Forces of the United States.

(b) *Purpose.* This section sets forth the standards to be applied and the procedures to be followed in the processing of claims cognizable under Article 139, Uniform Code of Military Justice.

(c) *Scope.* This section applies to claims for damage to, or loss or destruction of, property owned or in the lawful possession of an individual, a business, a charity, a State or local government, or a service member, that has been willfully damaged or destroyed or wrongfully taken by military personnel of the Army.

(d) *Definitions*—(1) *Willful damage.* Damage which is inflicted intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from damage which is caused thoughtlesly or inadvertently as in simple negligence.

(2) *Wrongful taking.* Any unauthorized taking or withholding of property, not involving breach of contractual or fiduciary relationships, with intent to deprive the owner or person in lawful possession of his property temporarily, permanently, or for an indefinite period.

(3) *Board of officers.* The term "board of officers" as used in this section includes an investigating officer appointed under the provisions of §§ 519.1–519.5 of this chapter.

(e) *Claims payable.* Claims payable under Article 139, Uniform Code of Military Justice, and this section are limited to—

(1) Those for damage to or loss or destruction of property caused by riotous, violent, and disorderly conduct, or acts of depredation, by a member or members of the Army, acts showing such reckless and wanton disregard of the property rights of others that willful damage or destruction may reasonably be implied, and

(2) Claims for property wrongfully taken. A loss through larceny, forgery, embezzlement, fraud, misappropriation, and similar offense is compensable if a wrongful taking of property is involved.

(3) Claims for damage to or loss or destruction of property that result from an act or omission that occurred outside the scope of a member's employment which are cognizable under §§ 536.12–536.24b, 536.26, 536.27, or 536.161–536.171 may be processed under this section, in whole or in part, if specific authority has been obtained from the responsible claims supervisory authority (§ 536.4a), or the Chief, U.S. Army Claims Service.

(f) *Claims not payable.* The following claims are not compensable under this section:

(1) Claims payable under other regulations, except as provided in paragraph (e) (3) of this section.

(2) Claims resulting from simple negligence.

(3) Claims submitted by subrogees.

(4) Claims for personal injury or death.

(5) Any portion of a claim covered by insurance, regardless of whether claim is made against the insurer.

(6) Claims resulting from acts or omissions of military personnel while acting within the scope of their employment.

(7) Claims for damages or losses in which the negligence or fault of the claimant, his employee or his agent contributed to the damage or loss.

(g) *Limitations on application*—(1) *Time limitations.* In order for a claim to be considered under this section, a complaint must be submitted within 60 days of the date of the incident out of which the claim arose, unless the commander acting on the report determines that good cause has been shown for the delay in making complaint. The commander's determination that good cause has not been shown is final.

(2) *Limitation on amount of assessment.* No assessment in excess of $250 will be made against the pay of any one offender for a single act or incident, without approval of The Judge Advocate General or his designee.

(3) *Only direct damages considered.* Assessment will be made only for direct damages. Indirect, remote, or inconsequential damages will not be considered under this section.

(h) *Procedure*—(1) *Action by claimant.* Any person who believes that his property has been willfully damaged or wrongfully taken by a member or members of the Armed Forces of the United States may complain, orally or in writing, to the military organization or unit of the offending member or members or the nearest Army installation. The complaint may be accompanied by a claim for damages. Such claim should be in writing, in triplicate, signed by the claimant or his authorized representative, and asserted in an amount certain. The claim may be regarded as the complaint.

(2) *Voluntary restitution.* In many instances, members of the military services who cause damage through their off-duty activities welcome an opportunity to make restitution without the complainant's demand for compensation becoming a matter of official concern. Nothing in Article 139 or this section prevents an offender from making a mutually satisfactory arrangement with an injured party for restitution. Acceptance by the complainant of payment by the offender or offenders of an amount in full satisfaction and final settlement of the matter bars further recovery under this section. Any amount paid by an offender in partial satisfaction of the claim will be deducted from the amount approved by the commanding officer.

(i) *Conditions of payment.* Prior to payment of any claim within this section, each of the following conditions must be fulfilled:

(1) The claim is in writing and for a definite amount.

(2) The complaint to which the claim relates was presented within 60 days of the incident or good cause for the delay is shown.

(3) The damage to or loss or destruction of the property was not covered by insurance.

(4) The amount of the damage, loss, or destruction has been determined.

(5) The claim relates to propery other than property of the Government.

(6) The claim did not result from simple negligence.

(7) The property was willfully damaged or destroyed, or wrongfully taken by a member or members of the Army.

(8) The claim was not presented by a subrogee.

(9) The negligence or fault of the claimant, his employee or agent, did not contribute to the cause of the incident from which the claim arose.

(10) Payment was recommended by the board of officers and was approved personally by the offender's commanding officer.

(11) The staff judge advocate determined that the proceedings of the board were legally sufficient.

(12) The commanding officer ordered a stoppage of pay.

(13) The assessment against each offender does not exceed $250, except as approved by The Judge Advocate General.

[AR 27–27, Nov. 10, 1967]
(Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012)

For the Adjutant General.

J. W. HURD,
Colonel, AGC, Comptroller, TAGO.

[F.R. Doc. 68–237; Filed, Jan. 8, 1968; 8:46 a.m.]

Title 29—LABOR

Chapter XIV—Equal Employment Opportunity Commission

PART 1602—RECORDS AND REPORTS

Apprenticeship and Labor Organization Reporting and Recordkeeping Requirements

Pursuant to the authority vested in it by section 709(c) of Title VII of the Civil Rights Act of 1964, 78 Stat. 263, 42 U.S.C.A. section 2000e et seq., the Equal Employment Opportunity Commission hereby amends Title 29, Chapter XIV, Part 1602 of the Code of Federal Regulations by changing the words, "Spanish American," in paragraph (b) of § 1602.20 to read "Spanish Surnamed American."

[SEAL] CLIFFORD L. ALEXANDER, Jr.,
Chairman.

JANUARY 3, 1968.

[F.R. Doc. 68–266; Filed, Jan. 8, 1968; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 27]

BONA FIDE SPOT MARKETS AND SPOT MARKETS FOR CONTRACT SETTLEMENT PURPOSES

Notice of Proposed Rule Making

Notice is hereby given, in accordance with the administrative procedure provisions in 5 U.S.C. 553, that the Consumer and Marketing Service is considering amendment of § 27.93 and § 27.94 of the Regulations for Cotton Classification Under Cotton Futures Legislation (7 CFR Part 27, Subpart A) to remove New Orleans, La., and Charleston, S.C., from the list of bona fide spot markets (§ 27.93) and from the list of spot markets for contract settlement purposes (§ 27.94 (a) and (b)), wherever they now appear therein, and add Greenwood, Miss., to § 27.94(a) and Greenville, S.C., to § 27.94(b), pursuant to authority contained in the cotton futures provisions in sections 4862 and 4863 of the Internal Revenue Code of 1954 (68A Stat. 581, 582. 26 U.S.C. 4862. 4863).

Statement of considerations. Cotton is no longer traded in such volume and under such conditions in the New Orleans, La., and Charleston, S.C., markets as cutomarily to reflect accurately the value of spot cotton according to information available to the Department. Reported cotton purchases in New Orleans amounted to 28,800 bales in the 1966–67 crop year and 25,400 in the previous year. Reported purchases in Charleston totaled about 1,000 bales last season compared with 200 the year before. If New Orleans and Charleston are removed from the list of bona fide spot cotton markets they will be replaced on the list of spot markets for contract settlement purposes. Greenwood, Miss., has been recommended by representatives of the cotton industry as a replacement for New Orleans and Greenville, S.C., as a replacement for Charleston on the list of spot markets for contract settlement purposes. Both Greenwood, Miss. and Greenville, S.C., are currently on the list of bona fide spot markets. Reported cotton purchases in Greenwood amounted to 883,100 bales in the 1966–67 crop year and 666,800 in the previous year. Reported purchases in Greenville totaled about 893,200 bales last season compared with 338,400 the year before.

It is proposed that these amendments would be made effective March 1, 1968.

Any person who wishes to submit written data, views, or arguments concerning the proposed amendments may do so by filing them in duplicate with the Office of the Hearing Clerk, U.S. Department of Agriculure, Washington, D.C. 20250, not later than 30 days after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice of rule-making shall be made available for public inspection in said office during regular business hours and in a manner convenient to the public business (7 CFR 1.27).

Done at Washington, D.C., this 4th day of January 1968.

G. R. GRANGE,
Deputy Administrator, Marketing Services.

[F.R. Doc. 68-315; Filed, Jan. 8, 1968; 8:52 a.m.]

[7 CFR Part 907]

HANDLING OF NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Expenses and Rate of Assessment for 1967–68 Fiscal Year

Consideration is being given to the following proposals submitted by the Navel Orange Administrative Committee, established under Marketing Agreement No. 117, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), as the agency to administer the terms and provisions thereof: (1) That the expenses that are reasonable and likely to be incurred by the Navel Orange Administrative Committee during the period from November 1, 1967, through October 31, 1968, will amount to $260,000 and (2) that there be fixed, at $0.02 per carton of oranges, the rate of assessment payable by each handler in accordance with § 907.41 of the aforesaid marketing agreement and order.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals should file same in quadruplicate with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 10th day after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: January 4, 1968.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 68-316; Filed, Jan. 8, 1968; 8:52 a.m.]

[7 CFR Part 929]

[Docket No. AO-341-A2]

HANDLING OF CRANBERRIES GROWN IN CERTAIN STATES

Proposed Amendments to the Marketing Agreement and Order

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), and in accordance with the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held in the town hall, Wareham, Mass., beginning at 9 a.m., local time, February 5, 1968, in the Mount Laurel Room, Holiday Motel, Exit 4, New Jersey Turnpike, Moorestown, N.J., beginning at 10:30 a.m., local time, February 7, 1968, in the Court House Auditorium, Wood County Courthouse, 400 Market Street, Wisconsin Rapids, Wis., beginning at 9 a.m., local time, February 9, 1968, and in the Willapa Grange Hall, Grayland, Wash., beginning at 9 a.m., local time, February 13, 1968, with respect to proposed further amendments of the marketing agreement and Order No. 929 (7 CFR Part 929), hereinafter referred to as the "marketing agreement" and "order," respectively, regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The proposed amendments have not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and to any appropriate modifications thereof.

The following amendments to the marketing agreement and order have been proposed by the Cranberry Marketing Committee, the administrative agency established pursuant to the marketing agreement and order:

1. Revise § 929.6 *Fiscal period* to read as follows:

§ 929.6 **Fiscal period.**

"Fiscal period" is synonymous with "fiscal year" and "crop year" and means the 12-month period beginning September 1 of one year and ending August 31 of the following year.

2. Add a new § 929.13 reading as follows:

§ 929.13 **Base quantity.**

"Base quantity" means the number of pounds of cranberries established for a grower by the committee pursuant to § 929.48.

3. Add a new § 929.14 reading as follows:

§ 929.14 Marketable quantity.

"Marketable quantity" means for a crop year the number of pounds of cranberries necessary to meet the total market demand and to provide for an adequate carryover.

4. Add a new § 929.15 reading as follows:

§ 929.15 Annual allotment.

"Annual allotment" means for a grower in a particular crop year a quantity equivalent to the number of pounds of cranberries determined by multiplying the base quantity of such grower by the allotment percentage established pursuant to § 929.49 for such crop year.

5. Add a new § 929.16 reading as follows:

§ 929.16 Established cranberry acreage.

"Established cranberry acreage" means acreage which is presently producing cranberries on a commercial basis or acreage which has been recently planted or will be planted prior to August 1, 1968, to produce cranberries on a commercial basis.

§ 929.21 [Amended]

6. Amend § 929.21 *Term of office* by deleting therefrom "August 1 and ending on the last day of July" and substituting therefor "September 1 and ending on the following August 31."

§ 929.22 [Amended]

7. Amend § 929.22 *Nomination* by deleting "July 15" therefrom and substituting therefor "July 1."

8. Redesignate § 929.50 as § 929.46 and revise it to read as follows:

§ 929.46 Marketing policy.

(a) Each year prior to May 1 the committee shall estimate the marketable quantity for the following crop year.

(b) Each crop year prior to making any recommendations pursuant to subparagraphs (7) and (8) of this paragraph, or § 929.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the crop year. Such marketing policy shall contain the basis therefor and information relating to:

(1) The estimated total production of cranberries;

(2) The expected general quality of such cranberry production;

(3) The estimated carryover, as of September 1, of frozen cranberries and other cranberry products;

(4) The expected demand conditions for cranberries in different market outlets;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) The recommended desirable total marketable quantity of cranberries, including a recommended adequate carryover into the following crop year of frozen cranberries and other cranberry products;

(8) Regulation pursuant to § 929.52 expected to be recommended by the committee during the crop year together with its recommendations of the free and restricted percentages; and beginning with 1974–75 crop year, the recommended allotment percentage, if any, for the crop year; and

(i) Other factors having a bearing on the marketing of cranberries.

9. Add a new § 929.47 reading as follows:

§ 929.47 Preliminary regulation.

(a) Beginning with the 1968–69 crop year, and continuing for each crop year thereafter through August 31, 1974, no handler shall handle, as the first handler thereof, cranberries purchased by him from a grower or acquired by him for handling for the account of a grower until he has determined the identity of the grower and the quantity of cranberries attributed to such grower. The handler shall furnish such information to the committee at such times and in such forms as the committee, with the approval of the Secretary, may request.

(b) So that each producer may qualify for a base quantity pursuant to § 929.48, the committee shall furnish each producer early in each calendar year, a form to be filed with the committee whereon the producer reports the location of his bog(s), the acreage he intends to harvest for cranberries, and such other information as the committee needs to establish a base quantity for such producer.

10. Add a new § 929.48 reading as follows:

§ 929.48 Base quantities.

(a) *Determination of base quantities.* (1) Upon the Secretary finding not later than March 1, 1974, that the six crop years 1968–69 through 1973–74 constitute a representative period in terms of production of cranberries for market from cranberry producing acreage established prior to August 1, 1968, and the consequent producer sales of such cranberries, a base quantity shall be computed not later than May 1, 1974, for each qualified grower which shall be, except as otherwise provided in subparagraph (3) of this paragraph, a quantity of cranberries equal to that obtained by multiplying the grower's established cranberry acreage as of February 1, 1974, established prior to August 1, 1968, by the average of his average per acre sales for the 2 crop years, within the aforesaid period, during which his greatest sales were made: *Provided,* That if such acreage was not under control of such grower during the entire period 1968–69 through 1973–74, the grower having control on February 1, 1974, shall be issued a base-quantity on the basis of sales made from such acreage.

(2) In accordance with this paragraph (a) and based on reports of handlers, certifications by growers, and other information, the committee shall establish each grower's base quantity and, except as hereinafter provided, assign such base quantity to such grower.

(3) Beginning with January 1, 1966, and through the crop year 1973 if a grower loses cranberry acreage due to unusual circumstance such as any power of eminent domain during the period, he shall be permitted to relocate cranberry acreage within 4 years from time of loss that will produce in units equal to that lost and the committee shall until such relocated acreage reaches maturity compute a base quantity for such grower equal to (i) the amount likely to be produced from the new acreage, as determined by the committee, or (ii) the average quantity marketed from a like acreage in the area of relocation during the 2 crop years of the aforesaid period when such average was highest.

(4) The committee, with the approval of the Secretary, shall adopt rules and regulations as necessary to implement the provisions of this section.

(b) *Additional base quantities.* Each crop year beginning in 1974–75, if it appears that the market demand for cranberries exceeds the aggregate base quantities, the committee shall consider the need for granting, and if appropriate, grant, with the approval of the Secretary, additional base quantities, to either a new grower or to existing growers for the purpose of satisfying the increased market demand for cranberries. Such additional base quantities shall be granted, insofar as practicable, on the following basis:

(1) To increase all existing base quantities; and

(2) To increase the base quantity of existing growers and establish a base quantity for new growers as a result of new acreages to be planted to cranberries to meet new demands.

11. Add a new § 929.49 reading as follows:

§ 929.49 Marketable quantity, allotment percentage, and annual allotment.

(a) *Marketable quantity and allotment percentage.* Beginning with the 1974–75 crop year, if the Secretary finds from the recommendation of the committee or from other available information that limiting the quantity of cranberries that may be purchased from, or handled on behalf of, growers would tend to effectuate the declared policy of the act, he shall determine and establish the marketable quantity for such crop year. The marketable quantity shall be apportioned among growers by applying the allotment percentage to each grower's base quantity, established pursuant to § 929.48. The allotment percentage shall be established by the Secretary and shall equal the marketable quantity divided by the total of all growers' base quantities. Except as provided in paragraph (c) of this section, no handler shall purchase or handle on behalf of any grower cranberries not within such grower's annual allotment. In any crop year beginning with the crop year commencing September 1, 1974, in which the production of cranberries is estimated by the committee to be equal to or less than its recommended marketable quantity, the committee may recommend and the Secretary may increase or suspend the allotment percentage applicable to any year. In the event it is found that the market demand is greater than the marketable quantity previously set, the committee

may recommend and the Secretary may increase such quantity.

(b) *Issuance of annual allotments.* The committee shall require each grower to qualify for his allotment by filing with the committee, on or before February 1, 1974, and by the same date each year thereafter, a CMC form wherein the grower states such information as where he intends to produce his annual allotment, the acreage he intends to harvest, changes in location, if any, and such other information, including a copy of any lease agreement, as is necessary to administer this part. On or before May 1, 1974, and by the same date each year thereafter, the committee shall issue to each grower an annual allotment determined by applying the allotment percentage established pursuant to paragraph (a) of this section to the grower's base quantity.

(c) *Filling deficiencies in annual allotments.* When a grower, beginning in 1974, does not produce cranberries equal to his computed annual allotment, he may (1) fill any deficit in his annual allotment by obtaining cranberries from another grower who has produced a quantity of cranberries in excess of his computed annual allotment, (2) transfer any unused portion of his allotment to another grower, or (3) transfer his unused allotment to a handler who shall allocate the unused allotment to another grower or growers with insufficient allotment. As a condition to any such transfer each grower or handler shall furnish a full report of each such transaction to the committee, including the names of the parties, the quantity involved in the transaction, and such other information as will enable the committee to administer this provision. The committee, with the approval of the Secretary, may modify the provisions with respect to filling deficiencies.

(d) A grower or handler with any deficiency of allotment should notify the committee of such deficiency in order to provide adequate marketable cranberries to meet the market demand.

As a service to growers and handlers, the committee shall act as a clearing house of information of producers with deficits in production and the availability of cranberries in excess of salable. Such information shall be available at the committee office to any producer or handler upon request.

12. Add a new § 929.50 reading as follows:

§ 929.50 Transfers.

(a) *Of location.* A grower may transfer from the acreage to which the cranberries are attributed on which his base quantity was established to other land which he owns or leases, except if he is leasing such base quantity acreage no transfer shall be approved unless the owner of such land consents to the transfer. Notwithstanding the date of August 1, 1968, § 929.48(a), the land to which the grower's annual base quantity has been transferred may be planted at any time. The committee shall, by such means as are provided in § 929.49(b), obtain information as to the location(s) where each grower intends to produce his base quantity.

(b) *To another grower.* A grower may transfer all or part of a base quantity from himself to another grower, but if the transferor is not the owner of the producing acreage, the consent of the owner shall be required prior to the committee's granting an annual allotment on such base quantity. Also, such a transfer shall be recognized only upon the transferor and transferee notifying the committee in writing and the transferee submitting evidence of capability to produce and harvest the annual base quantity referable thereto.

13. Revise paragraph (d) of § 929.68 *Termination* to read as follows:

§ 929.68 Termination.

* * * * *

(d) The Secretary shall conduct a referendum during the month of May 1975, to ascertain whether continuance of this part is favored by the growers as set forth in paragraph (c) of this section. The Secretary shall conduct such a referendum during the month of May of every fourth year thereafter.

The Fruit and Vegetable Division, Consumer and Marketing Service, has proposed that consideration be given to making such other changes in the marketing agreement and order as may be necessary to make the entire marketing agreement and order conform with any amendments thereto that may result from this hearing.

Copies of the notice of hearing may be obtained from the Director, Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated: January 4, 1968.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 68-317; Filed, Jan. 8, 1968; 8:52 a.m.]

[7 CFR Part 1005]

[Docket No. AO 177-A30]

MILK IN TRI-STATE MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Tri-State marketing area.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 10th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Charleston, W. Va., on August 22 and 23, 1967, pursuant to notice thereof which was issued July 12, 1967 (32 F.R. 10449).

The material issues on the record of the hearing relate to:

1. Class I price;
2. Class II price;
3. Butterfat differentials; and
4. Pooling standards.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Class I price.* The Class I price differential for the Charleston-Huntington district should be $1.55 and for the Gallipolis-Scioto and Athens districts, $1.47. The latter two districts would be combined and designated the "Athens-Scioto" district.

The Tri-State Class I price is the basic formula price for the preceding month plus a fixed differential (and plus an additional 20 cents through April 1968), subject to a supply-demand adjustment. The present Class I differentials are $1.60 for the Charleston-Huntington district, $1.50 for the Gallipolis-Scioto district, and $1.40 for the Athens district.

Two cooperatives proposed a Class I differential for all districts of $1.52, the weighted average Class I differential for the entire market for January 1965 through June 1967. Their proposal would not set aside the 20-cent price increase that is now effective through April 1968. Three Charleston-Huntington district handlers also proposed a $1.52 differential for all districts.

The two producer groups, which supply milk primarily to handlers in the Charleston-Huntington district, claimed that the present pricing arrangement is causing such handlers to lose Class I sales to handlers in the lower-price districts. The cooperatives stated that if this situation continues the decreased demand by such handlers for Class I milk will require producers to move their milk to more distant outlets at a greater hauling cost. They argued that a single differential for the market would place Charleston-Huntington handlers in a more favorable competitive position for Class I sales. This position was supported by proponent handlers who testified that the present pricing scheme places them at a competitive disadvantage with competing handlers in the lower-price districts.