Presidential Documents

Title 3—THE PRESIDENT

Letter of May 26, 1970

[AUTHORITY TO ISSUE NATIONAL CONTINGENCY PLAN FOR REMOVAL OF OIL]

THE WHITE HOUSE,
Washington, May 26, 1970.

DEAR CHAIRMAN TRAIN:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, I hereby designate and empower you to exercise the authority conferred upon the President by section 11(c)(2) of the Federal Water Pollution Control Act, as amended (84 Stat. 93), to prepare and publish the National Contingency Plan for removal of oil pursuant to section 11(c).

This document shall be published in the FEDERAL REGISTER.

Sincerely,

Richard Nixon

Honorable Russell E. Train,
Chairman,
Council on Environmental Quality,
Washington, D.C. 20036.

[F.R. Doc. 70-6753; Filed, May 27, 1970; 3:00 p.m.]

Rules and Regulations

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 10330; Amdt. No. 704]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Recent Changes and Additions

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAP's) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAP's for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (358 F.R. 5610).

SIAP's are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20590. Copies of SIAP's adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAP's may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue SW., Washington, D.C. 20590, or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $125 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

Section 97.11 is amended by establishing, revising, or canceling the following L/MF-ADF(NDB)-VOR SIAP's, effective June 25, 1970.

New York, N.Y.—LaGuardia Airport, NDB (ADF) Runway 4, Amendment 29, Revised.
Reading, Pa.—Gen. Carl A. Spaatz Field, NDB (ADF) Runway 36, Amendment 11, Revised.
Windsor Locks, Conn.—Bradley International Airport, NDB (ADF) Runway 6, Amendment 18, Revised.
New York, N.Y.—LaGuardia Airport, VOR-2, Amendment 11, Revised.

Section 97.17 is amended by establishing, revising, or canceling the following ILS SIAP's, effective June 25, 1970.

New York, N.Y.—LaGuardia Airport, LOC (BC) Runway 31, Amendment 3, Revised.
Windsor Locks, Conn.—Bradley International Airport, LOC (BC) Runway 24, Amendment 8, Revised.
New York, N.Y.—LaGuardia Airport, ILS Runway 4, Amendment 26, Revised.
New York, N.Y.—LaGuardia Airport, ILS-13, Amendment 6, Revised.
Reading, Pa.—Gen. Carl A. Spaatz Field, ILS Runway 36, Amendment 15, Revised.
Windsor Locks, Conn.—ILS Runway 6, Amendment 20, Revised.

Section 97.21 is amended by establishing, revising, or canceling the following L/MF SIAP's, effective June 25, 1970.

Nenana, Alaska—Nenana Municipal Airport, LFR-1, Amendment 10, Revised.

Section 97.23 is amended by establishing, revising, or canceling the following VOR-VOR/DME SIAP's, effective June 25, 1970.

Aberdeen, S. Dak.—Aberdeen Municipal Airport, VOR Runway 30, Amendment 9, Revised.
Abilene, Tex.—Abilene Municipal Airport, VOR-1, Amendment 5, Revised.
Allegan, Mich.—Padgham Field, VOR Runway 27, Amendment 2, Revised.
Alliance, Nebr.—Alliance Municipal Airport, VOR Runway 12, Amendment 1, Revised.
Alliance, Nebr.—Alliance Municipal Airport, VOR Runway 30, Amendment 4, Revised.
Baker, Oreg.—Baker Municipal Airport, VOR Runway 12, Amendment 4, Revised.
Bridgeport, Conn.—Bridgeport Municipal Airport, VOR-1 Runway 24, Amendment 7, Revised.
Bridgeport, Conn.—Bridgeport Municipal Airport, VOR-2 Runway 24, Amendment 3, Revised.
Bridgeport, Conn.—Bridgeport Municipal Airport, VOR Runway 6, Amendment 9, Revised.
Brownwood, Tex.—Brownwood Municipal Airport, VOR Runway 17, Amendment 5, Revised.
Casper, Wyo.—Casper Air Terminal, VOR Runway 21, Amendment 9, Revised.
Dothan, Ala.—Dothan Airport, VOR-1, Amendment 4, Revised.
Farmingdale, N.Y.—Republic Airport, VOR-1, Amendment 3, Revised.
Grain Valley, Mo.—East Kansas City Airport, VOR-1, Original, Established.
Hanksville, Utah—Hanksville Airport (FAA - Site 54), VOR-A, Amendment 5, Revised.
Hazleton, Pa.—Hazleton Municipal Airport, VOR Runway 28, Amendment 4, Revised.
Kailua-Kona, Hawaii—Ke-ahole Airport, VOR Runway 17, Original, Established.
Kailua-Kona, Hawaii—Ke-ahole Airport, VOR Runway 35, Original, Established.
LaGrange, Tex.—Rocky Creek Ranch Airport, VOR-1, Amendment 2, Canceled.
Liberty, Tex.—Liberty Air Service Airport, VOR-1, Amendment 2, Canceled.
Mansfield, Mass.—Mansfield Municipal Airport, VOR-1, Amendment 5, Revised.
Millville, N.J.—Millville Municipal Airport, VOR Runway 23, Original, Established.
Minot, N. Dak.—Minot International Airport, VOR Runway 8, Amendment 4, Revised.

Section 97.23 is amended by establishing, revising, or canceling the following VOR-VOR/DME SIAP's, effective June 25, 1970.

Minot, N. Dak.—Minot International Airport, VOR Runway 12, Amendment 4, Revised.
Minot, N. Dak.—Minot International Airport, VOR Runway 26, Amendment 4, Revised.
Minot, N. Dak.—Minot International Airport, VOR Runway 30, Amendment 4, Revised.
Montgomery, Ala.—Dannelly Field, VOR Runway 33, Amendment 15, Revised.
New Haven, Conn.—Tweed-New Haven Airport, VOR Runway 2, Amendment 11, Revised.
Oklahoma City, Okla.—Cimarron Municipal Airport, VOR-1, Amendment 1, Revised.
Oxnard, Calif.—Ventura County Airport, VOR Runway 7, Amendment 3, Revised.
Oxnard, Calif.—Ventura County Airport, VOR Runway 25, Amendment 1, Revised.
Philadelphia, Pa.—North Philadelphia Airport, VOR Runway 24, Amendment 12, Revised.
Vineland, N.J.—Kroelinger Airport, VOR Runway 28, Amendment 3, Revised.
Aberdeen, S. Dak.—Aberdeen Municipal Airport, VOR/DME Runway 12, Amendment 2, Revised.
Baker, Oreg.—Baker Municipal Airport, VOR/DME Runway 12, Amendment 4, Revised.
Casper, Wyo.—Casper Air Terminal, VOR/DME Runway 21, Original, Established.
Harlan, Iowa—Municipal Airport, VOR/DME-1, Original, Established.
Nashville, Tenn.—Nashville Metropolitan Airport, VOR/DME Runway 13, Amendment 1, Revised.
Pine Bluff, Ark.—Grider Field, VOR/DME Runway 35, Amendment 2, Revised.

Section 97.25 is amended by establishing, revising or canceling the following LOC-LDA SIAP's, effective June 25, 1970.

Casper, Wyo.—Casper Air Terminal, LOC (BC) Runway 25, Amendment 8, Revised.
Islip, N.Y.—Long Island-MacArthur Airport, LOC (BC) Runway 24, Original, Established.
Madison, Wis.—Truax Field, LOC (BC) Runway 18, Amendment 2, Revised.
Montgomery, Ala.—Dannelly Field, LOC (BC) Runway 27, Amendment 3, Revised.

Section 97.27 is amended by establishing, revising or canceling the following NDB/ADF SIAP's, effective June 25, 1970.

Allentown, Pa.—Allentown-Bethlehem-Easton Airport, NDB (ADF) Runway 6, Amendment 10, Revised.

Alliance, Nebr.—Alliance Municipal Airport, NDB (ADF) Runway 30, Amendment 2, Revised.
Arkadelphia, Ark.—Arkadelphia Municipal Airport, NDB (ADF) Runway 4, Original, Established.
Baytown, Tex.—Humphrey Airport, NDB (ADF) Runway 31, Original, Established.
Bedford, Mass.—Laurence G. Hanscom Field, NDB (ADF) Runway 11, Amendment 9, Revised.
Blytheville, Ark.—Municipal Airport, NDB (ADF) Runway 17, Amendment 1, Revised.
Casper, Wyo.—Casper Air Terminal, NDB (ADF) Runway 7, Amendment 5, Revised.
Cherokee Village, Ark.—Cherokee Village Airport, NDB (ADF) Runway 4, Original, Established.
Farmingdale, N.Y.—Republic Airport, NDB (ADF) Runway 1, Amendment 8, Revised.
Fremont, Nebr.—Fremont Municipal Airport, NDB (ADF) Runway 13, Original, Established.
Guymon, Okla.—Guymon Municipal Airport, NDB (ADF) Runway 18, Original, Established.
Montgomery, Ala.—Dannelly Field, NDB (ADF) Runway 9, Amendment 9, Revised.
Mt. Pocono, Pa.—Mount Pocono Airport, NDB (ADF)-1, Amendment 5, Revised.
Orangeburg, S.C.—Orangeburg Airport, NDB (ADF) Runway 4, Amendment 1, Revised.
Point Lookout, Mo.—School of the Ozarks Airport, NDB (ADF) Runway 29, Original, Established.
Quakertown, Pa.—Upper Bucks County Airport, NDB (ADF) Runway 29, Amendment 3, Revised.
Titusville, Fla.—TI-CO Airport, NDB (ADF) Runway 18, Original, Established.
Wisconsin Rapids, Wis.—Alexander Field, South Wood County Airport, NDB (ADF) Runway 2, Amendment 2, Revised.
Worcester, Mass.—Worcester Municipal Airport, NDB (ADF) Runway 11, Amendment 4, Revised.

Section 97.29 is amended by establishing, revising, or canceling the following ILS SIAP's effective June 25, 1970.

Allentown, Pa.—Allentown-Bethlehem-Easton Airport, ILS Runway 6, Amendment 13, Revised.
Bedford, Mass.—Laurence G. Hanscom Field, ILS Runway 11, Amendment 12, Revised.
Casper, Wyo.—Casper Air Terminal, ILS Runway 7, Amendment 14, Revised.
Memphis, Tenn.—International Airport, ILS Runway 35, Amendment 10, Revised.
Montgomery, Ala.—Dannelly Field, ILS Runway 9, Amendment 14, Revised.
Pendleton, Oreg.—Pendleton Municipal Airport, ILS Runway 25R, Amendment 12, Revised.
Philadelphia, Pa.—North Philadelphia Airport, ILS Runway 24, Original, Established.
Wilkes-Barre-Scranton, Pa.—Wilkes-Barre-Scranton Airport, ILS Runway 4, Amendment 25, Revised.
Worcester, Mass.—ILS Runway 11, Amendment 4, Revised.

Section 97.31 is amended by establishing, revising, or canceling the following Radar SIAP's, effective June 25, 1970.

Chicago, Ill.—Chicago O'Hare International Airport, Radar-1, Amendment 21, Revised.
Honolulu, Hawaii—Honolulu International Airport, Radar-1, Amendment 8, Revised.

Section 97.33 is amended by establishing, revising, or canceling the following RNAV SIAP's, effective June 25, 1970.

Fullerton, Calif.—Fullerton Municipal Airport, RNAV Runway 24, Original, Established.
Kirksville, Mo.—Clarence Cannon Memorial Airport, RNAV Runway 17, Original, Established.
Kirksville, Mo.—Clarence Cannon Memorial Airport, RNAV Runway 35, Original, Established.
Lancaster, Calif.—General William J. Fox Airfield, RNAV Runway 24, Original, Established.
Longview, Tex.—Gregg County Airport, RNAV Runway 22, Original, Established.
Palm Springs, Calif.—Palm Springs Municipal Airport, RNAV-A, Original, Established.
Torrance, Calif.—Torrance Municipal Airport, RNAV Runway 29R, Original, Established.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958; 49 U.S.C. 1438, 1354, 1421, 1510, Sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c) and 5 U.S.C. 552(a)(1))

Issued in Washington, D.C., on May 21, 1970.

WILLIAM G. SHREVE, Jr.,
Acting Director,
Flight Standards Service.

The incorporation by reference provisions in §§ 97.10 and 97.20 approved by the Director of the Federal Register on May 12, 1969 (35 F.R. 5610).

[F.R. Doc. 70-6593; Filed, May 28, 1970; 8:45 a.m.]

Title 29—LABOR

Chapter XII—Federal Mediation and Conciliation Service

PART 1425—MEDIATION ASSISTANCE IN THE FEDERAL SERVICE

Dispute Mediation

In order to implement the provisions of section 16 of Executive Order 11491, the Federal Mediation and Conciliation Service issued a regulation which was published as Part 1425—*Mediation Assistance in the Federal Service*—in the FEDERAL REGISTER of April 21, 1970 (35 F.R. 6389). Section 1425.2(a) of this regulation sets forth the conditions under which the Service will make its assistance available in a negotiation dispute between Federal agencies and labor organizations. The Service has received numerous inquiries concerning § 1425.2 (a) which indicate that the language therein has led to a misunderstanding of its intent.

It is the intent of the Service to make its services and assistance available to Federal agencies and labor organizations in any negotiation dispute, except as provided in section 11(c) of Executive Order 11491, when the parties have sincerely attempted to work out their differences by hard, earnest and serious negotiation but have not been able to reach agreement. The Service does not wish to delay assistance in such a situation until the parties have referred the matter to higher authority for further negotiations.

In order to clarify the intent of the Service in this matter, I hereby amend § 1425.2(a) by deleting the language therein reading "including referral to higher authority within the agency or the national office of the labor organization." As amended, § 1425.2(a) reads as follows:

§ 1425.2 Functions of the Service under Executive Order 11491.

* * * * *

(a) *Dispute mediation.* The Service may proffer its assistance in any negotiation dispute, except as provided in section 11(c) of Executive Order 11491, when earnest efforts by the parties to reach agreement through direct negotiation have failed to resolve the dispute. When the existence of a negotiation dispute comes to the attention of the Service through a specific request for mediation from one or both of the parties, through notification under the provisions of § 1425.3, or otherwise, the Service will examine the information concerning the dispute and if, in its opinion, the need for mediation exists, the Service will use its best efforts to assist the parties to reach agreement.

(Secs. 202, 203, 61 Stat. 153; 29 U.S.C. 172, 173; sec. 16, E.O. 11491, 34 F.R. 17605, 3 CFR 1969 Comp.)

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

Issued: May 26, 1970.

J. CURTIS COUNTS,
Director.

[F.R. Doc. 70-6670; Filed, May 28, 1970; 8:45 a.m.]

Title 20—EMPLOYEES' BENEFITS

Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Regs. No. 22]

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—General Procedures

FEE SCHEDULE FOR FURNISHING EARNINGS RECORD INFORMATION

Correction

In F.R. Doc. 70-6363 appearing on page 7891 in the issue for Friday, May 22, 1970, in the second line of Type I in § 422.125(e)(2), the word "of" should read "or".

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. Section 1.201–14 is revised; in § 1.701–4 a new classification code "3537" is added under Major Group 35—Machinery, Except Electrical; §1.704–3(a)(1) is revised; the last sentence in paragraph (b) of § 1.908–2 is revised; §§ 1.908–3(a), 1.003–1(c)(7), 1.1003–2, 1.1003–4, 1.1005–1(b)(1), and 1.1202 are revised; in § 1.1206–1(a) the first sentence is revised; §§ 1.1206–2(a) and 1.2001(c)(2) are revised, as follows:

§ 1.201–14 Procuring activity.

Procuring activity includes for the Army: Directorate of Requirements and Procurement, Headquarters, U.S. Army Materiel Command; the U.S. Army Munitions Command; the U.S. Army Missile Command; the U.S. Army Electronics Command; the U.S. Army Mobility Equipment Command; the U.S. Army Tank-Automotive Command; the U.S. Army Aviation Systems Command; the U.S. Army Weapons Command; the U.S. Army Test and Evaluation Command; U.S. Continental Army Command and its subordinate commands consisting of Zone of Interior Armies and Military District of Washington, U.S. Army; U.S. Army, Alaska; U.S. Forces Southern Command, U.S. Army; U.S. Theater Army Support Command, Europe; U.S. Army, Pacific; National Guard Bureau; Office of the Chief of Engineers; Strategic Communications Command; Office of the Chief of Support Services; Office of The Surgeon General; U.S. Army Security Agency; Military Traffic Management and Terminal Service; and the Safeguard System Organization; for the Navy: Each Bureau, the Headquarters, Naval Material Command, the Office of the Deputy Chief of Naval Material (Procurement and Production), the Naval Air Systems Command, the Naval Electronic System Command, the Naval Facilities Engineering Command, the Naval Ordnance Systems Command, the Naval Ship Systems Command, the Naval Supply Systems Command, the Office of Naval Research, the Navy Aviation Supply Office, the Military Sea Transportation Service, and the U.S. Marine Corps; for the Air Force: Hq., USAF (AFSPP); the Air Force Logistics Command; the Air Force Systems Command; the Strategic Air Command; the Tactical Air Command; the Aerospace Defense Command; the Military Airlift Command; the Air Training Command; the Pacific Air Forces, the U.S. Air Forces in Europe; the Alaskan Air Command; for the Defense Supply Agency: the Office of the Deputy Director for Contract Administration Services; the Office of the Executive Director, Procurement and Production; the Defense Supply Centers; and the Defense Personnel Support Center; for the Defense Communications Agency: The Headquarters, Defense Communications Agency; and the Defense Commercial Communications Office; for the Defense Atomic Support Agency: Headquarters, Defense Atomic Support Agency. It also includes any other procuring activity hereafter established. The number and designation of particular procuring activities of any Military Department may be changed by directive of the Secretary.

§ 1.701–4 Manufacturing industry employment size standards.

* * * * *

Classification code	Industry	Employment size standard (number of employees) [1]
	MAJOR GROUP 35—MACHINERY, EXCEPT ELECTRICAL	
3511	Steam engines; steam, gas and hydraulic turbines; and steam, gas, and hydraulic turbine generator set units	1000
3519	Internal combustion engines, not elsewhere classified	1000
3531	Construction machinery and equipment	750
3537	Industrial trucks, tractors, trailers and stackers	750
3562	Ball and roller bearings	750
3572	Typewriters	1000
3573	Electronic computing equipment	1000
3574	Calculating and accounting machines, except electronic computing equipment	1000
3585	Refrigerators; refrigeration machinery, except household; and complete air conditioning units	750

* * * * *

§ 1.704–3 Small business specialists.

(a) * * *

(1) Army—Head of a procuring activity (see § 1.201–4) or his designee;

* * * * *

§ 1.908–2 Development and certain specific production contracts.

* * * * *

(b) *Other development contracts (DD Form 1683).* * * * These evaluation reports shall be retained for a minimum of 3 years.

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

(a) A Contractor Performance Record (CPR) is a factual historical documentation of contract performance data prepared by the cognizant contract administration office on completed or terminated DOD supply contracts. The CPR provides an orderly and uniform method of determining and recording how effectively supply contractors meet their contractual commitments. For each supply contract of $100,000 or more, except those contracts authorized for retention by purchasing offices and those contracts evaluated under § 1.908–2(a), a contract performance record shall be prepared by the cognizant contract administration office utilizing DD Form 1661, Contractor Performance Record (Supply Contracts). These evaluation reports shall be retained for a minimum of 3 years. Subject to the approval of OASD (Installations and Logistics) and if the military departments and defense agencies concerned consider it desirable and make request therefor, certain other supply contracts that do not fall within the foregoing category may be recorded.

* * * * *

§ 1.1003–1 General.

* * * * *

(c) * * *

(7) Procurement of personal and professional services (see § 1.1003–4(b)).

* * * * *

§ 1.1003–2 Time of publicizing.

To allow concerns which are not on current bidders lists ample time to prepare bids, proposals or quotations, purchasing offices should, when feasible, synopsize proposed procurements at least 10 days before the issuance of solicitations, in accordance with § 1.1003–9(b)(8). If this is not feasible or practicable, purchasing offices shall synopsize proposed procurements not later than the date of issuance of solicitations.

§ 1.1003–4 Special synopsis situations.

(a) *Advance notice for research and development.* In order that potential sources may learn of research and development programs, advance notices of the Government's interest in a specific research and development field shall be published in the Commerce Business Daily in accordance with § 1.1003–9(d) so as to give such sources adequate opportunity to submit information for evaluation of their research and development capabilities, except where security considerations prohibit such publication. Each specific procurement of research and development projects shall be publicized in the Commerce Business Daily unless one of the exceptions in §1.1003–1 is applicable or unless an advance notice of the Government's requirements in the particular field, published in the Commerce Business Daily in accordance with § 1.1003–9(d), has been sufficiently specific to permit potential sources to request solicitations for the prospective procurement. (See § 4.103 of this chapter.)

(b) *Procurement of personal and professional services.* Notwithstanding the exception in § 1.1003–1(c)(7), contracting officers shall synopsize personal and professional services when it is feasible and practicable to do so and the best interests of the Government will be served.

§ 1.1005–1 Synopsis of contract awards.

* * * * *

(b) *Preparation and transmittal.* (1) Purchasing offices shall prepare and forward single copies of synopses of contract awards daily, using the same format as prescribed in § 1.1003–9, to the address below, by airmail or ordinary mail, whichever is considered most expeditious.

U.S. Department of Commerce, Commerce Business Daily, Post Office Box 5999, Chicago, Ill. 60680.

* * * * *

§ 1.1202 Mandatory specifications.

(a) Except as provided in paragraph (b) of this section, the following specifications are mandatory for use by the Department of Defense in the procurement of supplies and services covered by such specifications:

(1) Federal specifications, unless determined by the Department of Defense to be inapplicable for its use;

(2) Military specifications approved by the Department of Defense for its use; and

(3) Industry documents adopted by the Department of Defense as listed in the Department of Defense Index of Specifications and Standards.

(b) Federal and Military specifications need not be used for the following unless required by Departmental instructions:

(1) Purchase of items for authorized resale except military clothing;

(2) Purchases for construction when nationally recognized industry and technical source specifications and standards are available (see § 18.107 of this chapter); or

(3) Purchase of items in an amount not to exceed $2,500 (multiple small purchases of less than $2,500 of the same item shall not be made for the purpose of avoiding the use of Federal or Military specifications).

(c) Unless required by Departmental instructions, Federal and Military specifications need not be prepared for use in the below listed procurement actions; however, existing Federal and Military specifications, and adopted industry documents to the extent that they are applicable to the item or service required, shall be used for:

(1) Purchase incident to research and development;

(2) Purchase of items for test or evaluation;

(3) Purchase of laboratory test equipment for use by Government laboratories;

(4) Purchase of one-time procurement items; or

(5) Purchase of items—

(i) For which it is impracticable or uneconomical to prepare a specification (Repetitive use of a purchase description containing the essential characteristics of a specification will be construed as evidence of improper use of this exception.); or

(ii) Where the purchase involves an item which is the product of private development and the provisions of § 1.304 are complied with.

(d) If it is determined, in accordance with the procedures established under the Defense Standardization Program by the Assistant Secretary of Defense (Installations and Logistics), that the specifications listed in paragraph (a) of this section do not meet the particular or essential needs of a bureau, service, or command, then (except as provided in paragraph (b) and (c) of this section) applicable amendments, revisions or new specifications (interim Federal or limited coordination Military) shall be immediately prepared and used.

(e) Whenever a specification is found to be defective, and it is necessary to make interim corrections to the specification to effect a procurement, the activity authorizing the corrections shall take immediate action to advise the specification preparing activity of the changes required.

§ 1.1206–1 General.

(a) A purchase description may be used in lieu of a specification when authorized by § 1.1202(b) and, subject to the restriction on repetitive use in § 1.1202(c)(5), where no applicable specification exists. * * *

* * * * *

§ 1.1206–2 Brand name or equal purchase descriptions.

(a) Purchase descriptions which contain references to one or more brand name products followed by the words "or equal" may be used only when authorized by § 1.1202(b) and in accordance with §§ 1.1206–3 and 1.1206–4. The term "brand name product" means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer, or distributor. Where feasible, all known acceptable brand name products should be referenced. Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced. If modifications to manufacturers' standard products to meet the purchase description requirements are anticipated, a minimum of 30 calendar days shall be allowed between issuance of the solicitation and opening of bids or receipts of proposals: *Provided*, That periods of less than 30 days may be set in cases of urgency.

* * * * *

§ 1.2001 Limitation of cost or funds.

* * * * *

(c) * * *

(2) The contract is not to be further funded, and instruct the contractor to submit a proposal for an adjustment of fee, if any, based on percentage of completion of work performed in relation to the total work required under the contract;

* * * * *

PART 2—PROCUREMENT BY FORMAL ADVERTISING

2. In § 2.201 paragraph (a)(2)(x) is revised and a new paragraph (b)(46) is added; in § 2.202–1 the last sentence is revised, as follows:

§ 2.201 Preparation of invitation for bids.

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

(2) * * *

(x) When shipping weights and dimensions are required to evaluate offers as to transportation costs (see § 19.210 of this chapter), a provision substantially as set forth below shall be included in the solicitation, except that the paragraph relating to the Government's estimated weights and dimensions may be omitted when such estimates cannot reasonably be developed and the file is documented accordingly, prior to the issuance of the solicitation. Solicitations omitting the paragraph relating to the Government's estimated weights and dimensions shall state that the failure to furnish guaranteed shipping weights and dimensions will render offers nonresponsive, unless the contracting officer determines that the shipping weights and dimensions involved would clearly not affect the standing of the bids.

GUARANTEED MAXIMUM SHIPPING WEIGHTS AND DIMENSIONS

Each bid (or proposal) will be evaluated to the destination specified by adding to the f.o.b. origin price all transportation costs to said destination. The guaranteed maximum shipping weights and dimensions of the supplies are required for determination of transportation costs. The bidder (or offeror) is requested to state as part of his offer the weights and dimensions. If separate containers are to be banded and/or skidded into a single shipping unit, details must be described. If delivered supplies exceed the guaranteed maximum shipping weights or dimensions, the contract price shall be reduced by an amount equal to the difference between the transportation costs computed for evaluation purposes based on bidder's (or offeror's) guaranteed maximum shipping weights or dimensions and the transportation costs that should have been used for bid (or proposal) evaluation purposes based on correct shipping data.

Item	Max. shpg. wt. per ctnr. (lbs.)	No. of items per ctnr.	Type of ctnr. (fiber, wood; box, bbl., etc.)	Size of ctnr. (in inches) (L x W x H)	Shpg. character (KD, set-up, nested, etc.)

If the bidder (or offeror) fails to state his guaranteed maximum shipping weight and dimensions for the supplies as requested, the Government will use the estimated weights and dimensions below for evaluation; and the Contractor agrees this will be the basis for any reduction in contract prices as provided in this clause. The Government's estimated weights (and dimensions, if applicable) are as follows:

To permit recoupment when the contractor exceeds the guaranteed maximum(s), the award document will show the weight(s) and dimensions used in the evaluation.

* * * * *

(b) *Construction contracts.* * * *

(46) When Standard Form 19 is used, a statement that if the bid exceeds $10,000, the contract also will contain the clauses set out in § 11.401–1(c) of this chapter (Federal, State, and Local Taxes) and in § 12.804(a) of this chapter (Equal Opportunity) unless exempted by § 12.805 of this chapter.

§ 2.202–1 Bidding time.

* * * For items on Qualified Products Lists, see § 1.1107–1 of this chapter; for construction contracts, see § 18.202(b) of this chapter; and for brand name or equal items, see § 1.1206–2 of this chapter.

PART 3—PROCUREMENT BY NEGOTIATION

3. Section 3.605–6 is revised; in § 3.608–2(b)(1), subdivisions (ii), (vii), and (x) are revised and a new subdivision (xvi) is added; § 3.807–5(a)(3) is revoked; and § 3.809(b)(3) is revised; as follows:

§ 3.605–6 Receipt and acceptance of supplies or services.

Acceptance of supplies or services shall be indicated by signature and date on the appropriate form by the authorized government representative after verification and notation of any exceptions. Use of the DD Form 250 Series, Material Inspection and Receiving Report (MIRR), shall be required by purchasing offices to document receipt and acceptance of supplies or services when the purchase is to be assigned to another activity for administration. A sales slip, delivery ticket, DD Form 1155 or DD Form 250 Series may be used for receipt and acceptance when purchases are retained for administration.

§ 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) Use as a purchase order of not more than $2,500 in the United States, its possessions, and Puerto Rico. * * *

(ii) No clause covering the subject matter of any clause set forth in this subchapter, other than clauses set forth on DD Form 1155r and clauses referred to in subdivisions (iii) through (xvi) of this subparagraph, in §§ 3.608–3, 3.608–4, 14.101–1, 14.302, 14.303, and 14.304 of this chapter are to be used.

* * * * *

(vii) The Material Inspection and Receiving Report (MIRR) clause shall be inserted in the Schedule as provided by § 7.104–62 of this chapter when the purchase is to be assigned to another activity for administration. The clause may also be inserted when otherwise desired by the purchasing office.

* * * * *

(x) The Responsibility for Inspection clause, set forth in § 7.103–24 of this chapter shall be inserted in the Schedule.

* * * * *

(xvi) When required by § 19.213–2 of this chapter, the clause set forth in § 7.104–74 of this chapter shall be added.

§ 3.807–5 Defective cost or pricing data.

(a) * * *

(3) [Revoked.]

* * * * *

§ 3.809 Contract audit as a pricing aid.

* * * * *

(b) * * *

(3) The PCO shall send the request for review and evaluation of the contractor's proposal directly to the ACO, with a copy to the contract auditor. The request shall identify any areas where he desires particular pricing effort, and shall be accompanied by any information, such as the applicable portion of the RFP and the offeror's proposal, essential to evaluation of the proposal. The ACO shall advise the auditor of any additional areas recommended for special emphasis and review. If there are audit work program conflicts involving more than one PCO, priorities should be worked out jointly between the auditor and the ACO. In view of the need for coordination of ACO and audit efforts, the technical representatives and the auditor will normally need to coordinate a program for review of the contractor's proposal. (See § 3.801.) When only an audit report is desired, the request shall be forwarded to the appropriate contract auditor either directly or through the liaison auditor, with a copy to the ACO.

PART 4—SPECIAL TYPES AND METHODS OF PROCUREMENT

4. Sections 4.106–1(b)(2), 4.110(d), and 4.113(d) are revised as follows:

§ 4.106–1 Selection of sources.

* * * * *

(b) *Auditor's reports on contract price proposals.* * * *

(2) In order to cooperate with the Small Business Administration in carrying out its responsibility of assisting small business concerns to obtain contracts for research and development, contracting officers, technical personnel and small business specialists shall, upon request, provide to authorized SBA representatives information necessary to understand the Government's needs concerning research and development programs under consideration for specific future procurement actions. Normally, this information shall be provided to SBA representatives assigned to a purchasing activity, as early as practicable, and shall cover the Government's requirements for each proposed research and development procurement exceeding $10,000. To the maximum extent feasible, SBA shall be afforded a minimum of 15 working days to provide pertinent information concerning qualified potential small business sources developed through its investigation of the capabilities of specific firms in the particular field of research and development covered by such procurements. Full evaluation shall be given to any such information in selecting qualified sources. Sources recommended by SBA for a specific procurement shall be solicited. Exception to the policy of providing SBA a minimum 15-working-day interval to recommend additional qualified small research and development sources for a proposed procurement will be permitted only in those cases where the head of the purchasing activity or his designated representatives advises the SBA representative that such action would result in unjustifiable delay.

* * * * *

§ 4.110 Cost-sharing policy.

* * * * *

(d) It is Department of Defense policy to recoup a share of its investment in nonrecurring costs associated with major defense equipment when such equipment is sold to buyers outside the U.S. Government. This policy is mandatory as to all foreign buyers of such equipment, and may be applied to domestic commercial buyers at the discretion of the Secretary of the Department concerned. To carry out this policy with respect to foreign buyers and to provide for future negotiation of amounts to be recovered by DOD from contractor's direct sales to foreign buyers, the clause in § 7.104–64(a) of this chapter will be included in all contracts for major defense equipment. The clause may also be included in other contract (other than major defense equipment) involving RDT&E expenditures in excess of $10 million when approved by the Secretary concerned. To apply this policy to domestic commercial buyers, the clause in § 7.104–64(b) of this chapter is authorized for use in any of the foregoing contracts (i.e., major defense equipment or RDT&E expenditures in excess of $10 million), subject to approval on a case-by-case basis by the Secretary of the Department concerned. The office within each service department responsible for foreign military sales will recover nonrecurring costs on foreign sales made by foreign governments and international organizations through the U.S. Government.

* * * * *

§ 4.113 Scientific and technical reports.

* * * * *

(d) It is important that the results of research and development contracts be made readily available to Government activities, and to non-Government organizations and persons who have a need to know in accordance with procedures of the Military Departments. Copies of scientific and technical reports resulting from DOD contracts are furnished to the Defense Documentation Center which provides a central service for the interchange of scientific and technical information of value to the Department of

Defense agencies and contractors. These elements may become eligible for such service by registering in accordance with the Defense Supply Agency Manual (DSAM) 4185.3, Registration for Scientific and Technical Information Services of the Department of Defense, available from the Defense Documentation Center, Cameron Station, Alexandria, Va. 22314.

PART 5—INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

5. Section 5.102–2(c) is revised; § 5.102–3 the introductory text is revised and a new paragraph (c) is inserted in the Federal Supply Schedules; the title of Subpart B of this part is changed; §§ 5.200, 5.201, 5.203, 5.205, 5.301(a), 5.302, and 5.703(a) are revised as follows:

§ 5.102–2 Exceptions to mandatory use.

* * * * *

(c) *Abnormal requirements.* When the requirements of the purchasing activity are (1) less than the minimum order limitation or (2) in excess of the maximum order limitation provided in the applicable Federal Supply Schedule, use of the Schedule is not mandatory. However, where requirements for supplies or services exceed the maximum limitations of the applicable Schedule, but are within the DOD–GSA Interagency Purchase Assignments, those items will be procured through the General Services Administration. (See § 5.1201–8.)

§ 5.102–3 Applicability of listed Federal Supply Schedules.

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

* * * * *

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

68	CHEMICALS AND CHEMICAL PRODUCTS, SECTIONS A, B, C AND D	PART III,	Mandatory on DOD Activities located within the specified GSA Geographical Area other than Region 3 except for items procured through Defense Personnel Support Center.
6505	Medical gases		
6830	Industrial gases: Compressed and liquefied		

Subpart 2—Procurement of Supplies From General Services Administration Stores Depots and of Services for Maintenance, Repair, Rehabilitation, and Reclamation From General Services Administration Sources

§ 5.200 Applicability.

This subpart applies to the procurement of supplies available from General Services Administration stores depots for delivery in the United States (exclusive of Alaska and Hawaii) including the satisfaction of overseas requirements when such requirements are routed to facilities in the United States for supply action in accordance with instructions prescribed by the Military Departments. It does not apply to any order which amounts to $25 or less, or to:

(a) Any subsistence or medical item which is under the cognizance of the Defense Personnel Support Center;

(b) Any item which is being purchased for resale; or

(c) Any item used by commissaries for operation and maintenance that is available through local purchase at a price lower than from GSA stores depots.

This subpart also applies to the mandatory use of General Services Administration services and Term Contracts for the maintenance, repair, rehabilitation, and reclamation of all personal property described in § 5.206, in the United States, Puerto Rico, and the Virgin Islands. Services of this type which are available from Federal Prisons Industries and Agencies for the Blind will be procured under the provisions of Subparts D and E of this part.

§ 5.201 Procurement from General Services Administration stores depots.

It is the policy of the Department of Defense that for an item which has been decentralized for local purchase and which is available from the General Services Administration store depots, such items will be ordered from the Depots unless delivery requirements cannot be met. The mandatory provisions of Department of Defense, General Services Administration Interagency Purchase Assignments (§ 5.1201–8) are not applicable to decentralized items which are within these assignments and which are available from the stores depots. Such items will be ordered in accordance with the above stated policy.

§ 5.203 General Services Administration stores depots and regional offices.

The General Services Administration operates stores depots and regional offices located in or near the cities listed below, serving the areas indicated on the back cover page of the "Stores Stock Catalog." The addresses shown are the mailing addresses to which all orders and correspondence should be forwarded.

GSA region	*Address*
1. Boston, Mass.	620 Post Office and Courthouse Building, Boston, Mass. 02109.
2. New York, N.Y.	26 Federal Plaza, New York, N.Y. 10007.
3. Washington, D.C.	General Services Regional Office Building, Seventh and D Streets SW., Washington, D.C. 20407.
4. Atlanta, Ga.	1776 Peachtree Street NW., Atlanta, Ga. 30309.
5. Chicago, Ill.	219 South Dearborn Street, Chicago, Ill. 60604.
6. Kansas City, Mo.	1500 East Bannister Road, Kansas City, Mo. 64131.
7. Fort Worth, Tex.	819 Taylor Street, Fort Worth, Tex. 76102.
8. Denver, Colo.	Denver Federal Center, Building 41, Denver, Colo. 80225.
9. San Francisco, Calif.	49 Fourth Street, San Francisco, Calif. 94103.
10. Auburn, Wash.	General Services Administration Center, Auburn, Wash. 98002.

§ 5.205 Mandatory sources for maintenance, repair, rehabilitation and reclamation of personal property.

General Services Administration regional offices provide facilities for maintenance, repair, rehabilitation and reclamation of Government-owned personal property and, in addition, have Term Contracts with commercial concerns for similar services. These contracts are published as General Services Term Contracts. When requirements exceed the in-house capabilities of a Departmental activity or installation, or it is otherwise required that outside sources be used, it is mandatory that General Services Administration sources for such services be used except when:

(a) The items involved are military weapons systems, specialized military support equipment, or specialized technical or scientific equipment;

(b) Such services are available from the Federal Prison Industries or Agencies for the Blind (see subparts D and E of this part);

(c) The required services are covered by warranty or other preexisting contract;

(d) Delivery requirements for repair and refinishing services cannot be met (the provisions of § 5.102–2 are applicable when determining whether a General Services Administration source can meet the delivery requirements);

(e) The required services are not within the scope of the existing GSA Term Contract or a waiver is first obtained from the GSA regional Property Management and Disposal Service office administering the contract. (Such waivers are not required when the exigency of the procurement will not permit delay. However, telephonic clearances will be given by GSA in appropriate cases.); and

(f) The requiring activity is outside the geographic area covered in the GSA

Term Contract. (Normally, this area extends no more than a 15-mile radius from the contractor's location. Each contract specifies the area covered which may in some cases extend beyond that distance.)

§ 5.301 Federal Supply Service consolidated purchase program.

* * * * *

(a) Items identified in § 5.1201–8 as being covered by the Department of Defense/General Services Administration Interagency Purchase Assignments; and

* * * * *

§ 5.302 DOD–GSA interagency purchase assignments.

Mandatory use of the General Services Administration consolidated purchasing program is required for those centrally managed items covered by the interagency purchase assignments held by the General Services Administration as listed in § 5.1201–8.

§ 5.703 Procuring Helium under Public Law 86–777.

* * * * *

(c) Department of Defense activities will make a determination annually as to whether or not helium in cylinders and trailers will be obtained directly from the Bureau of Mines or through Federal Supply Schedules. If a determination is made that it is more economical to obtain such helium through Federal Supply Schedules, the estimated requirements will be processed to GSA. Once estimated requirements are processed to GSA, the resultant Federal Supply Schedule (FSG 68, Part III, Section G) is mandatory on the requiring activities for the contract period.

PART 6—FOREIGN PURCHASES

6. Sections 6.401–3, 6.401–4, 6.603–1 (b)(4), 6.603–3, 6.603–4, 6.603–5, and 6.605–2 are revised; § 6.705–4 is added, as follows:

§ 6.401–3 Certain supplies of foreign origin.

The following supplies, if of foreign origin and however processed, shall be presumed to have originated from communist (Chinese) areas and shall not be acquired for public use unless (a) such supplies have been lawfully imported into the United States, its possessions, or Puerto Rico, or (b) the supplies are acquired directly from the countries indicated:

Aniseed star	None.
Aniseed oil	None.
Antiques, Chinese type (except Chinese porcelain which qualified under items 766.20–25 of Title I—Tariff Schedules of the United States, Tariff Act of 1930, as amended, and which is decorated with the armorial bearing, crests, monograms, cyphers, or badges of European or American families or societies or bearing motifs based thereon, or with European or American political, memorial, or Masonic scenes or devices, or with European or American figures, ships, or other scenes, or with motifs or inscriptions in English, Latin, or any other European language.)	None.
Bamboo, split	None.
Braids, straw	Italy, Japan.
Bristles, hog (except nondyed European hog bristles)	None.
Brushes, paint and hair pencil, and parts thereof, containing hog bristles more than 1½ inches in total length or more than 1¼ inches in length out of the ferrule.	None.
Carpet wool, Tibetan and Nepalese types	None.
Cashmere	Iran.
Cassia	Indonesia.
Cassia oil	None.
Chinese type:	
Art objects	None.
Beverages	None.
Drugs	None.
Foodstuffs	None.
Garments	None.
Herbs	None.
Ivory articles	None.
Jade articles	None.
Medicines, prepared	None.
Rugs	None.
Tea	Formosa.
Cinnamic aldehyde	None.
Cinnamon oil	Ceylon, Seychelles.
Cornmint oil	Argentina, Brazil.
Eggs, poultry:	
Whole in the shell, preserved	None.
Dried (whole, albumen or yolks)	None.
Embroideries and embroidered articles of types chiefly imported from China prior to Dec. 17, 1950.	None.
Feathers and down, Asiatic, except peacock feathers	Burma, India, Formosa, Thailand, and those areas of Viet-Nam which are not under Communist control.
Firecrackers	None.
Floor coverings, grass, straw and seagrass	Japan.
Fur skins:	
Goat and kid	Argentina, Ethiopia, Iran, Iraq.
Kolinsky	Republic of Korea.
Weasel	Canada.
Gallnuts, except Aleppo gallnuts	None.
Ginger root, candied or otherwise prepared or preserved	None.
Hair, human, Asiatic	None.
Hats, unfinished:	
Manila hemp (abaca)	None.
Palm leaf	Mexico, Philippines.
Straw	Brazil, Dominican Republic, Italy, Japan, Philippines.
Jade stones, cut but not set, suitable for use in jewelry	None.
Menthol, natural and synthetic (except racemic)	Brazil.
Musk	None.
Rutin	None.
Seagrass mats and squares	Japan.
Silk, tussah, muga, eri	None.
Silk piece goods, tussah, muga, eri	None.
Sophera Japonica	None.
Tannic acid, from gallnuts other than Aleppo gallnuts	None.
Tung oil	Argentina, Brazil, Paraguay.
Walnuts, except black or pickled walnuts	France, Iran, Italy, Turkey.
Yak hair	None.

§ 6.401–4 Certain supplies from Hong Kong, Macao, and communist areas.

The following supplies, however processed, which are or were located in or transported from or through Hong Kong, Macao, or any communist area (see § 6.401–2) shall be presumed to have originated from communist (Chinese) areas, and shall not be acquired for public use unless such supplies have been lawfully imported into the United States, its possessions, or Puerto Rico:

Agar-agar.
Bamboo:
  Bags, baskets and other manufactures, except furniture.
  Poles and sticks.
Brocades and brocade articles.
Camphor, natural and synthetic.
Camphor oil, natural and synthetic.
Cane webbing.
Carpet wool.
Carpets.
Castor beans.
Castor oil.
Chinaware.
Citronella oil.
Cotton manufactures.
Cotton waste.
Earthenware.
Embroideries and embroidered articles.
Feather manufactures.
Glass, sheet (window).
Graphite.
Hair, animal.
Hair nets of any material.
Handkerchiefs.
Hardwood manufactures, except bentwood furniture.
Hats, paper.
Hides, buffalo.
Honey.
Ivory manufactures.
Lace and lace articles.
Linen manufactures, except wearing apparel not containing any lace, embroidery or brocade.
Marine products, edible.
Ores and metals:
  Antimony.
  Bismuth.
  Mercury.
  Molybdenum.
  Tin.
  Tungsten.
Peanut oil.
Peanuts.
Pigeons, frozen or otherwise prepared or preserved.
Poultry, frozen or otherwise prepared or preserved.
Ramie.
Rugs.
Seagrass manufactures.
Sesame oil.
Sesame seed.
Shoes, leather soled with non-leather uppers, except ladies' high-heel shoes.
Silk:
  Manufactures except Western style suits and Indian saris.
  Raw.
  Waste.
Skins, deer and goat.
Stones, semiprecious.
Stones, semiprecious, manufactures.
Straw manufactures.
Tapestries.
Tapioca.
Tapioca flour.

§ 6.603–1 Definition.

* * * * *

(b) * * *

(4) Consists of captured enemy war material, materials requisitioned by U.S. forces abroad, or materials rebuilt from other materials owned by, or turned over to U.S. forces, or materials loaned or given to a Military Department of the U.S. Government under exchange agreements with foreign governments.

§ 6.603–3 Contract clauses.

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

DUTY-FREE ENTRY FOR CERTAIN SPECIFIED ITEMS (FEBRUARY 1970)

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

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

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

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

(i) Government prime contract number;

(ii) Indentification of carrier;

(iii) The notation: "United States Department of Defense—Duty-Free Entry To Be Claimed pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, kindly release shipment under section 8.59CR and notify the (1) Commander, Defense Contract Administration Services Region, Detroit, 1580 East Grand Boulevard, Detroit, Mich. 48211 for shipments arriving from Canada; (ii) Commander, Defense Contract Administration Services Region, New York, 60 Hudson Street, New York, N.Y. 10013 for shipments arriving from the European, Middle East, and Africa Areas; (iii) Commander, DCASR, Dallas, Merchandise Mart Building, 500 South Ervay Street, Dallas, Tex. 75201 for shipments arriving from the Caribbean and South America areas; or (iv) Commander, DCASR, San Francisco, 866 Malcolm Road, Burlingame, Calif. 94010 for shipments arriving from Pacific areas, who or whose authorized representative will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate.";

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

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

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

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

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

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

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

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

NOTICE OF IMPORTS—POSSIBLE DUTY-FREE ENTRY (FEBRUARY 1970)

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

before the importation of any supplies pursuant to any such purchase. The notice shall identify (i) the foreign supplies, (ii) the estimated amount of duty payable thereon, and (iii) the country of origin.

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

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

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

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

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

(i) Government prime contract number;

(ii) Identification of carrier;

(iii) The notation: "United States Department of Defense—Duty-Free Entry To Be Claimed pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, kindly release shipment under section 8.59CR and notify the (i) Commander, Defense Contract Administration Services Region, Detroit, 1580 East Grand Boulevard, Detroit, Mich., 48211, for shipments arriving from Canada; (ii) Commander, Defense Contract Administration Service Region, New York, 60 Hudson Street, New York, N.Y. 10013, for shipments arriving from the European, Middle East, and Africa areas; (iii) Commander, DCASR, Dallas, Merchandise Mart Building, 500 South Ervay Street, Dallas, Tex. 75201, for shipments arriving from the Caribbean and South America areas; or (iv) Commander, DCASR, San Francisco, 866 Malcolm Road, Burlingame, Calif. 94010, for shipments arriving from Pacific area, who or whose authorized representative will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate.";

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

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

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

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

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

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

(a) Whenever a prime contract involving foreign supplies contains the clause set forth in § 6.603–3 (a) or (b), the contract administration office designated in the contract shall furnish the appropriate DCSAR information substantially as follows:

To: Commander,
DCASR, _____,
Attention: Transportation Officer.

Contract _____ issued to _____
(*Contractor*)
_____ contains—

☐ ASPR Clause 6-603.3(b), Notice of Imports—Possible Duty-Free Entry.

☐ ASPR Clause 6-603.3(a), Duty-Free Entry for Certain Specified Items which provides for the following supplies to be accorded duty-free entry (NOTE: The contract schedule setting forth these supplies may be furnished in lieu of this listing.):

_____

_____

This contract is expected to be completed by _____.

Signature _____
Title _____

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

(c) When the Government agrees to execute duty-free entry certificates for supplies, in accordance with the clauses set forth in § 6.603–3 or authorized by § 6.605, the contractor shall be notified that the foreign supplier is to include on the bill of lading (or other shipping document) the information required to be inserted on such documents as provided in the clause. Failure to include such information on the bill of lading (or other shipping document) will result in the shipment being treated as a shipment without benefit of free entry under Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States.

(d) The designated Government representative shall retain the memorandum copy of the bill of lading (or other shipping document) pending notification by the District Director of Customs that the shipment has been released. The notification will contain a request for Customs Form 7501, Customs Form 7501A, and the duty-free entry certificate.

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

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

(February 1968)

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

_____
(Name)

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

_____
(Organization)

§ 6.603–5 Immediate release permits.

Immediate release permits, executed on Customs Form 3461 (Application for Special Permit for Delivery of Perishable and Other Articles, Immediate Delivery of Which Is Necessary), entitle all shipments qualifying as "emergency purchases of war material abroad" to be released immediately by the District Directors of Customs at the various ports of entry, prior to and pending the filing of Customs Forms 7501 and 7501A and a duty-free entry certificate. The existence of an immediate release permit on file at a port of entry does not dispense with the necessity of filing Customs Forms 7501 and 7501A and such duty-free entry certificates as are appropriate. Each Department shall designate the individuals responsible for issuance of Immediate Release Permits.

§ 6.605–2 Contract clause.

Every contract in excess of $2,500 except construction contracts, that includes the procurement of end items contained in the list maintained by the Department concerned pursuant to § 6.1035(a) shall include the following clause unless it is reasonably certain that no supplies will be imported from Canada by the contractor or any first- or lower-tier subcontractor in connection with the performance of the contract. The clause shall be included in invitations for bids or requests for proposals that are expected to lead to such a contract.

DUTY-FREE ENTRY—CANADIAN SUPPLIES
(FEBRUARY 1970)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be

included in the contract price on account of duty with respect to—

(i) All end items which constitute "Canadian end products" (as defined in paragraph 6–101 of the Armed Services Procurement Regulation) to be delivered under this contract; and

(ii) All supplies (including, without limitation, raw materials, components and intermediate assemblies) produced or made in Canada which are to be incorporated in the end items to be delivered under this contract: *Provided*, That such end items are made in the United States or Canada;

except supplies imported into the United States prior to the date of this contract, or, in the case of supplies imported by a first- or lower-tier subcontractor hereunder, prior to the date of his subcontract.

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

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

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

(i) Government prime contract number;

(ii) Identification of carrier;

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

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

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

(e) The Contractor agrees to instruct the foreign supplier to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry. The foreign supplier shall also be instructed to forward at the time of shipment, a memorandum copy of the bill of lading (or other shipping document) to the designated Government representative.

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

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

If the procurement covers both listed and unlisted end items, the foregoing clause should be modified so as to limit its application to the listed end items.

§ 6.705–4 Recovery of nonrecurring costs.

See §§ 4.110(d) and 7.104–64(a) of this chapter.

PART 7—CONTRACT CLAUSES

7. Sections 7.104–31, 7.104–62, and 7.104–64(a) are revised; §§ 7.108–3, 7.204–29, 7.303–11, and 7.403–31 are added, as follows:

§ 7.104–31 Duty-free entry.

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

(b) *Duty-free entry for items not identified in the contract.* In accordance with § 6.603–3(b) of this chapter, insert the clause set forth therein.

§ 7.104–62 Material inspection and receiving report.

Insert the following clause in all contracts which anticipate delivery of a separate and distinct object or entity whether separately priced or not.

MATERIAL INSPECTION AND RECEIVING REPORT (DECEMBER 1969)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a Material Inspection and Receiving Report in the manner and to the extent required by ASPR Appendix I, "Material Inspection and Receiving Report."

However, when contract administration is retained by the purchasing office, the clause is not required in the following situations unless the use of a MIRR is desired by the contracting officer:

(a) Procurements effected under Subpart F, Part 3 of this chapter—Small Purchase and Other Simplified Purchase Procedures;

(b) Negotiated subsistence procurements;

(c) Procurements of fresh milk and related fresh dairy products;

(d) Contracts for which the end item is a scientific or technical report;

(e) Research and development procurements not requiring the delivery of separately priced end items;

(f) Base, post, camp or station procurements;

(g) In overseas areas when the contracting officer determines that the preparation and distribution of DD Form 250 by the contractor would be impracticable, the contracting officer shall arrange for the contractor to provide the information necessary for the preparation of the DD Form 250 by the contract administration personnel; and

(h) Procurements for services where hardware is not acquired as an item in the contract, e.g., level of effort type contracts; field service type contracts, etc.

A MIRR is not required when indefinite delivery type contracts are placed by central procurement offices which authorize only base, post, camp or station activities to issue orders: *Provided*, That such contract and orders are not assigned for administration.

§ 7.104–64 Recovery of nonrecurring costs on non-U.S. Government sales of defense equipment.

In accordance with § 4.110(d) of this chapter insert the following clause as appropriate.

(a) *Recovery of nonrecurring costs on foreign commercial sales.*

RECOVERY OF NONRECURRING COSTS ON FOREIGN COMMERCIAL SALES (NOVEMBER 1969)

(a) In the event the Contractor intends to enter into foreign sales or license agreements for the items in this contract or essentially similar items, he shall promptly notify the Contracting Officer. The Contractor agrees that he will adjust this contract by an amount or amounts calculated to reimburse the Government for a pro rata share of its expenditures for nonrecurring costs applicable to the items. In the event that this contract has been finally settled, adjustment shall be accomplished by payment to the Government.

(1) Nonrecurring costs include such costs as research development, test, evaluation, preproduction, facilities, special tooling, special test equipment, production engineering, product improvement, destructive testing, and pilot model production, testing and evaluation.

(2) For each foreign sale or license agreement the amount to be reimbursed to the DOD for the DOD nonrecurring costs shall be determined by dividing the total DOD nonrecurring costs, incurred and projected to be incurred, by the total production quantity of the item, past and projected, including the production quantity for the DOD and multiplying the results by the quantity involved in each such sale or license agreement.

(3) The phrase "foreign sales or license agreements" includes all sales to or license agreements with foreign buyers, including foreign governments and international organizations, directly by U.S. domestic firms.

(b) Notwithstanding the provisions of the clauses of this contract entitled "Patents Rights—(Licenses)" and "Rights in Technical Data," the Contractor agrees that his rights to enter into production for foreign sales of the items or essentially similar items are expressly contingent upon compliance with the provisions of this clause provided that the Secretary of Defense or his designee may waive the Government's rights under this clause, in whole or in part, whenever he determines that such action would be in the best interests of the Government.

* * * * *

§ 7.108–3 Special termination costs.

In accordance with § 8.712 of this chapter insert the following clause.

SPECIAL TERMINATION COSTS (FEBRUARY 1970)

(a) Notwithstanding the clause of this contract entitled "Limitation of Costs/Limitation of Funds," the Contractor shall not include in his estimate of costs incurred or to be incurred, or of the total amount payable by the Government, any amount for

Special Termination Costs, as herein defined, to which the Contractor may be entitled in the event this contract is terminated for the convenience of the Government. The Contractor agrees to perform this contract in such a manner that its claim for such Special Termination Costs will not exceed $_____. The Government shall have no obligation to pay the Contractor any amount for such Special Termination Costs in excess of such amount. Special Termination Costs for the purpose of this contract are defined as costs only in the following categories:

(i) Severance pay as provided in ASPR 15-205.39(b)(ii);

(ii) Reasonable post termination plant maintenance and operation costs, if expressly made allowable under other provisions of this contract;

(iii) Settlement expenses as provided in ASPR 15-205.42(f);

(iv) Cost of return of field service personnel from sites;

(v) Costs in categories (i), (ii), (iii), and (iv) above to which subcontractors may be entitled in the event of termination.

(b) In the event of termination for the convenience of the Goverment, the amount of such Special Termination Costs shall be determined in accordance with the provisions of the contract and this clause shall not be construed as affecting the allowability of such costs in any manner other than limiting the maximum amount payable therefor by the Government.

(c) This clause shall remain in full force and effect until this contract is fully funded.

§ 7.204–29 Special termination costs.

In accordance with § 8.712 of this chapter, insert the clause set forth in § 7.108–3.

§ 7.303–11 Special termination costs.

In accordance with § 8.712 of this chapter, insert the clause set forth in § 7.108–3.

§ 7.403–31 Special termination costs.

In accordance with § 8.712 of this chapter, insert the clause set forth in § 7.108–3.

PART 8—TERMINATION OF CONTRACTS

8. Section 8.307–1(d) is revised; § 8.703 is added; § 8.706 is revised, as follows:

§ 8.307–1 Submission of settlement proposals.

* * * * *

(d) DD Form 831 (see § 8.802–3 and F–200.831) may be used when the total claim is less than $10,000, unless otherwise instructed by the TCO. Claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, must be consolidated wherever possible and must not be divided in such a way as to bring them below $10,000.

* * * * *

§ 8.703 Termination Clause for Cost-Reimbursement Type Subcontracts.

The following termination clause is suggested for use in cost-reimbursement type subcontracts.

SUBCONTRACT TERMINATION CLAUSE—COST-REIMBURSEMENT TYPE

(a) The performance of work under the contract may be terminated by the Buyer in accordance with this clause in whole, or from time to time in part:

(i) Whenever the Seller shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Seller to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of seven days (or such longer periods as the Buyer may allow) after receipt from the Buyer of a notice specifying the default; or

(ii) Whenever for any reason the Buyer shall determine that such termination is in the best interest of the Buyer.

Any such termination shall be effected by delivery to the Seller of a Notice of Termination specifying whether termination is for the default of the Seller or for the convenience of the Buyer, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (i) above, it is determined for any reason that the Seller was not in default pursuant to (i), or that the Seller's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Seller pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Buyer, the Seller shall:

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

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

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

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

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

(vi) Transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the times directed by the Buyer, deliver (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Buyer, and (C), the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Seller has been or will be reimbursed under this contract;

(vii) Use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Buyer, any property of the types referred to in (vi) above: *Provided, however,* That the Seller (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Buyer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Buyer to the Seller under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Buyer may direct;

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

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

The Seller shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this clause.

(c) After receipt of a Notice of Termination, the Seller shall submit to the Buyer his termination claim in the form and with the certification prescribed by the Buyer. Such claim shall be submitted promptly, but in no event later than 6 months from the effective date of termination, unless one or more extensions in writing are granted by the Buyer, upon request of the Seller made in writing within such 6-month period or authorized extension thereof. However, if the Buyer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 6-month period or any extension thereof. Upon failure of the Seller to submit his termination claim within the time allowed, the Buyer may determine, on the basis of information available to him, the amount, if any, due to the Seller by reason of the termination and shall thereupon pay to the Seller the amount so determined.

(d) Subject to the provisions of paragraph (c), the Seller and the Buyer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Seller by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Seller shall be paid the agreed amount.

(e) In the event of the failure of the Seller and the Buyer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to cost and fee, or as to the amount of the fee, to be paid to the Seller in connection with the termination of work pursuant to this clause, the Buyer shall determine, on the basis of information available to him, the amount, if any, due to the Seller by reason of the termination and shall pay to the Seller the amount determined as follows:

(i) If the settlement includes cost and fee—

(A) There shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Seller for the performance of this

contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Buyer: *Provided, however,* That the Seller shall proceed as rapidly as practicable to discontinue such costs;

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

(C) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory: *Provided, however,* That if the termination is for default of the Seller there shall not be included any amounts for the preparation of the Seller's settlement proposal; and

(D) There shall be included therein a portion of the fee payable under the contract determined as follows:

(I) In the event of the termination of this contract for the convenience of the Buyer and not for the default of the Seller, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, less fee payments previously made hereunder; or

(II) In the event of the termination of this contract for the default of the Seller, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Buyer bears to the total number of articles of a like kind called for by this contract;

if the amount determined under this subparagraph (i) is less than the total payment theretofore made to the Seller, the Seller shall repay to the Buyer the excess amount; or

(ii) If the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph (i)(D) above.

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

(g) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Seller and the Buyer, and such adjustment shall be evidenced by an amendment to this contract.

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

§ 8.706 Subcontract termination clause.

The following termination clause is suggested for use in fixed-price subcontracts.

TERMINATION (FEBRUARY 1970)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the buyer in accordance with this clause. Termination of work hereunder shall be effected by delivery to the seller of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination and except as otherwise directed by the buyer, the seller shall:

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

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

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

(iv) Assign to the buyer, in the manner, and to the extent directed by the buyer all of the right, title, and interest of his seller under the orders or subcontracts so terminated;

(v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of the buyer to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) Transfer title and deliver in the manner, to the extent, and at the times directed by the buyer (A) the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the buyer;

(vii) Use his best efforts to sell in the manner, to the extent, at the time, and at the price or prices directed or authorized by the buyer, any property of the types referred to in (vi) above: *Provided, however,* That the seller (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the buyer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the buyer to the seller under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the buyer may direct;

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

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

(c) After receipt of a Notice of Termination, the seller shall submit to the buyer his termination claim, in the form and with the certification prescribed by the buyer. Such claim shall be submitted promptly, but not later than six (6) months from the effective date of termination, unless one or more extensions in writing are granted by the buyer, upon request of seller made in writing within such 6-month period or authorized extensions thereof. However, if the buyer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 6-month period or any extension thereof. Upon failure of the seller to submit his termination claim within the time allowed, the buyer may determine, on the basis of information available to him, the amount, if any, due to the seller in respect to the termination and such determination shall be final. After the buyer has made a determination under this paragraph, he shall pay the seller the amount so determined.

(d) Subject to the provisions of paragraph (c) the seller and the buyer may agree upon the whole or any part of the amount or amounts to be paid to the seller by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done and the buyer shall pay the agreed amount or amounts: *Provided,* That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Nothing in paragraph (e) below prescribing the amount to be paid to the seller in the event of the failure of the seller and the buyer to agree upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the seller pursuant to this paragraph (d).

(e) In the event of the failure of the seller and the buyer to agree as provided in paragraph (d) upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, the buyer shall pay to the seller the amounts determined by the buyer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) For completed supplies accepted by the buyer (or sold or acquired as provided in paragraph (b)(vii) above) and not theretofore paid for, forthwith a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(ii) The total of—

(A) The cost of such work, including initial costs and preparatory expenses allocable thereto, exclusive of any costs attributable to supplies paid or to be paid for under (i) above; and

(B) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b)(v) above, exclusive of the

amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amount shall be included in the cost on account of which payment is made under (A) above; and

(C) A sum, as profit on (A) above, determined by the buyer pursuant to 8-303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the seller would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

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

The total sum to be paid to the seller under (i) and (ii) above shall not exceed the total contract price reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage and except to the extent that the buyer or the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the seller under (i) and (ii) (A) above the fair value as determined by the buyer of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the buyer or to a purchaser pursuant to paragraph (b) (vii).

(f) The obligation of the buyer to make any payments under this clause shall be subject to deductions with respect to (i) all unliquidated advance or other payments on account theretofore made to the seller applicable to the terminated portion of this contract, (ii) any claim which the buyer may have against the seller, in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things retained by the seller or sold, and not otherwise recovered by or credited to the buyer.

(g) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the seller may file with the buyer a request in writing that an equitable adjustment be made in the price or prices specified in the contract for the work in connection with the continued portion not terminated by the Notice of Termination, and the appropriate equitable adjustment shall be made in such price or prices.

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

(i) For the purpose of paragraphs (c) and (e) above, the amounts of the payments to be made by the buyer to the seller shall be determined in conformity with the policies and principles set forth in section VII of the Armed Services Procurement Regulation in effect at the date of this contract. Unless otherwise provided for in this contract, or by applicable statute, the seller, for a period of 3 years after final settlement under the contract shall make available to the buyer and the Government at all reasonable times at the office of the seller all his books, records, documents, or other evidence bearing on the costs and expenses of the seller under the contract and in respect of the termination of work hereunder or, to the extent approved by the Government, photographs, microphotographs, or other authentic reproductions thereof.

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

PART 9—PATENTS, DATA, AND COPYRIGHTS

9. Section 9.107–4(b)(3) is revised, as follows:

§ 9.107–4 Procedures.

* * * * *

(b) *Category I.* * * *

(3) Under Category I(3) in § 9.107–3(a), the contract must be for an end product in a field of science or technology in which, at the time the contract is entered into, there has been little or no significant experience except for work funded by the Government or where the Government has been the principal developer. If the contracting officer determines that the proposed contract is in such a field of science or technology, he then shall determine whether the contractor would likely get a preferred or dominant commercial position in that field if he were permitted to acquire title to inventions made under the contract. It would be inequitable to other commercial manufacturers or sources to permit a contractor to acquire such a preferred or dominant commercial position based principally upon work funded by the Government. When said determination is based on § 9.107–3(a)(3), notice to that effect will be included in the solicitation. If the contractor to whom the award is to be made challenges the applicability of this provision, the contracting officer will review the basis for his determination and provide the contractor with the reason for his conclusion. If the contracting officer and the contractor cannot then resolve the issue, the contracting officer will promptly forward the problem to the head of the procuring activity for resolution. If award of the contract cannot be delayed, the contracting officer may proceed with the procurement pending resolution of the issue, provided the contract contains the Patent Rights (Title) clause set forth in § 9.107–5(a), accompanied by the following statement: "Contractor agrees to accept the Patent Rights Clause which is ultimately determined, by the head of the procuring activity, to be the appropriate one."

* * * * *

PART 10—BONDS, INSURANCE, AND INDEMNIFICATION

10. Sections 10.101–9 and 10.105–2 are revoked, as follows:

§ 10.101–9 Patent infringement bond. [Revoked]

§ 10.105–2 Fidelity and forgery bonds. [Revoked]

PART 12—LABOR

11. Section 12.604 is revised, as follows:

§ 12.604 Eligibility of a bidder or offeror.

(a) *Determination of eligibility and protests concerning.* (1) The initial responsibility for applying the eligibility requirements set forth in § 12.601 and § 12.603 rests with the procuring contracting officer. The Department of Labor does not conduct preaward investigations or render final determinations until the procuring contracting officer has initially determined whether the eligibility requirements have been met.

(2) When the procuring contracting officer has determined that an apparently successful bidder or offeror is ineligible, he shall notify him promptly in writing and inform him:

(i) That he does not meet the eligibility requirements, and the reason therefor;

(ii) That if he wishes to protest such determination, he may submit evidence concerning his eligibility to the contracting officer;

(iii) That if, after review of the evidence submitted by the bidder or offeror, the contracting officer has not changed his position, he will forward the bidder or offeror's protest, together with all pertinent material, to the Administrator of the Wage and Hour and Public Contracts Divisions of the Department of Labor for a final determination, and so notify the bidder or offeror.

(3) When another bidder or offeror challenges the eligibility of the apparently successful bidder or offeror prior to award:

(i) The contracting officer shall notify the protestor promptly in writing:

(*a*) That he may submit evidence concerning the noneligibility to the contracting officer;

(*b*) That after review of such evidence, the contracting officer will make a decision thereon and if the decision is unfavorable to the protester forward the

protest, together with all pertinent material, to the Administrator of the Wage and Hour and Public Contracts Divisions for a final determination;

(ii) The contracting officer shall notify the apparently successful bidder or offeror promptly in writing that his eligibility under the Walsh-Healey Act has been challenged and:

(*a*) That he may submit evidence concerning the matter to the contracting officer;

(*b*) That after review of such evidence, the contracting officer will make a decision thereon and if adverse to the protester, forward the protest, together with all pertinent material, to the Administrator of the Wage and Hour and Public Contracts Divisions for a final determination.

(4) Notification to other bidders or offerors: Bidders or offerors whose bids or offers might become eligible for award should be notified of the protest when an award is to be held up under subparagraph (2) or (3) of this paragraph, and requested to extend their acceptance period, if needed.

(5) If the contracting officer forwards the case to the Department of Labor for review of eligibility under the Walsh-Healey Act, award will be held in abeyance until the contracting officer receives a final determination from the Department of Labor or the contracting officer determines that award should be made because:

(i) The items to be procured are urgently required; or

(ii) Delivery or performance will be unduly delayed by failure to make award promptly; or

(iii) A prompt award will otherwise be advantageous to the Government.

If the contracting officer decides to proceed with the award, he shall give written notice of the decision to proceed to the protester and as appropriate to others concerned.

(6) If an award is made under subparagraph (5) of this paragraph, the contracting officer shall document the file to explain the need for making an award prior to the receipt of a determination from the Department of Labor.

(7) Protests after award: A protest received after award shall be forwarded to the Department of Labor if the contract has not been completed, and the protester so notified. If the contract has been completed, the protester shall be notified that no action will be taken in the protest.

(b) *Additional responsibilities of contracting officers.* When the Walsh-Healey Public Contracts Act is applicable and pursuant to regulations or instructions issued by the Secretary of Labor and in accordance with procedures prescribed by each respective Military Department:

(i) The procuring contracting officer shall:

(*a*) Inform prospective contractors of the applicability of minimum wage determinations; and

(*b*) Report promptly to the ACO any violation of the representation or stipulation required by the Walsh-Healey Act that he becomes aware of.

(ii) The administrative contracting officer shall:

(*a*) Furnish to the contractor a poster (Form PC–13) and a form letter (Form PC–12) explaining the Walsh-Healey Act (forms are available through normal publication supply channels); and

(*b*) Report to the Department of Labor any violation of the representations or stipulations required by the Walsh-Healey Act.

PART 14—PROCUREMENT QUALITY ASSURANCE

12. Sections 14.201(c) and 14.406 are revised, as follows:

§ 14.201 Organization responsible for technical requirements.

* * * * *

(c) The activity responsible for technical requirements may also prepare instructions regarding the type and extent of Government inspections pertaining to contracts for specific supplies or services that are complex or for which unusual requirements have been established. Such instructions shall be kept to a minimum taking into account the policy contained in § 14.403(a). Normally, issuance of these instructions will not be appropriate for standard commercial items except when items having critical characteristics are being purchased. After issuance of these instructions, production problems, product-oriented visits, user experience and input from the contract administration office shall be analyzed periodically to determine whether conditions warrant a change in type and extent of the inspection requirements. Such analysis may result in decreasing or increasing Government inspection. These instructions shall be prepared on a contract-by-contract basis and shall not be issued:

(1) As a substitute for incomplete contract quality requirements;

(2) Where the contract does not impose equal or greater inspection requirements on the contractor;

(3) Encompassing broad or general designations such as "all requirements," "all characteristics," or "all characteristics in the classification of defects;"

(4) On routine administrative procedures; or

(5) Specifying continued inspection requirements when statistically sound sampling will provide an adequate degree of protection.

(d) In the preparation of such instructions, the technical activity shall consider, to the extent available and applicable, such factors as:

(1) The past quality history of the contractor;

(2) The criticality of the materiel procured in relation to its ultimate use considering such factors as reliability, safety and interchangeability;

(3) Problems encountered in the development of the product;

(4) Problems encountered in the acquisition of the same or similar materiel;

(5) Previously generated feedback data from receiving, testing or using activities; and

(6) Other contractor's experience in overcoming manufacturing problems.

When knowledge of the determining factors, which resulted in the requirement for Government inspection, would be useful to the contract administration office in performing the procurement quality assurance function, these factors should be provided to the contract administration office.

§ 14.406 Nonconforming supplies and services.

(a) It is the policy of the Government that supplies or services which do not conform in all respects to the contract requirements should be rejected. Ordinarily, they will be rejected when the failure to conform adversely affects one or more of the following major areas: (1) Performance, (2) durability, (3) reliability, (4) interchangeability, (5) effective use or operations, (6) weight or appearance (where a factor), or (7) health or safety. However, there may be circumstances (e.g., reasons of economy or urgency) when acceptance of such nonconforming supplies or services is in the interests of the Government. Except as provided in paragraph (d) of this section, final decision for acceptance shall be made by the procuring contracting officer based on information furnished by the contract administration office. The information shall be in writing except that in urgent cases it may be furnished orally and confirmed in writing. The information shall include:

(i) Information explaining in what respect the supplies or services fail to conform to the contract requirements;

(ii) If feasible, a request from the contractor for acceptance of the supplies or services;

(iii) Reasons for recommending acceptance or rejection of the supplies or services offered; and

(iv) If acceptance is recommended, what adjustment is deemed appropriate or has been offered by the contractor (if known).

The procuring contracting officer shall, in appropriate cases, obtain the concurrence of the military activity responsible for the technical requirements. In addition, where health factors are involved, concurrence shall also be obtained from the Surgeons General of the Departments.

(b) Contractors ordinarily shall be given an opportunity to correct or replace nonconforming supplies or services if this can be done within the required delivery schedule. Unless the contract provides otherwise, such correction or replacement shall be made without additional cost to the Government. Paragraph (c) of the standard Inspection clause in § 7.103–5(a) of this chapter reserves to the Government the right to charge the contractor the cost of Government reinspection and retests because of prior rejection.

(c) Rejection of nonconforming supplies or services need not be in writing unless (1) the supplies have been rejected at a point other than

the contractor's plant, (2) the contractor persists in offering nonconforming supplies or services for acceptance, or (3) delivery or performance was late without excusable cause. Any written notice of rejection shall state the reasons for rejection. It is important that a notice of rejection be furnished to the contractor promptly, because if timely notice of rejection is not furnished, acceptance may in certain cases be implied as a matter of law.

(d) When nonconformance of supplies or services is minor in that it does not affect (1) performance, (2) durability, (3) reliability, (4) interchangeability, (5) effective use or operation, (6) weight or appearance (where a factor), or (7) health or safety, the contract administration office shall make the determination regarding the acceptance or rejection of such nonconforming supplies or services, except when authority to do so is withheld by the procuring contracting officer. The contract administration office may establish a joint contractor-contract administration office Material Review Board to assist in making this determination. Acceptance of nonconforming supplies which affect (i) performance, (ii) durability, (iii) reliability, (iv) interchangeability, (v) effective use or operation, (vi) weight or appearance (where a factor), or (vii) health or safety is outside the scope of Material Review Board disposition and must be handled as specified by § 14.406(a).

(e) Each contract under which nonconforming supplies or services are accepted under paragraph (a) of this section shall be modified to provide for an equitable price reduction or other consideration. In the case of minor nonconformances, as discussed in paragraph (d) of this section, the contract shall not be modified, except when it appears to the contract administration office that the savings to the contractor in fabricating the nonconforming supplies or performing the nonconforming services exceed the administrative cost to the Government of processing a contract modification (normally $50), or the best interests of the Government otherwise require that the contract be modified.

(f) Repeated tender of nonconforming supplies or services, including those with only minor defects, should be discouraged by appropriate action such as rejecting the supplies or services whenever feasible and documenting the contractor's performance record.

PART 16—PROCUREMENT FORMS

13. Sections 16.101–1(a), 16.102–1(a), and 16.401–2(b) are revised, as follows:

§ 16.101–1 General.

The following contract forms shall be used in effecting procurements of supplies or services by formal advertising:

(a) Solicitation, Offer, and Award (Standard Form 33), its reverse (Representations, Certifications and Acknowledgements) and Information to Offerors (DD Form 1707), which is printed on blue paper and may be reproduced locally, unless such action is precluded by Departmental direction;

* * * * *

§ 16.102–1 Request for Quotation (Standard Form 18) and Information to Quoters (DD Form 1706).

(a) *General.* Standard Form 18 is authorized and DD Form 1706 is prescribed for obtaining price, cost, delivery, and related information from suppliers. DD Form 1706, which is printed on pink paper, may be reproduced locally, unless such action is precluded by Departmental direction.

* * * * *

§ 16.401–2 Conditions for use.

* * * * *

(b) *Contracts estimated to exceed $2,000 but not to exceed $10,000.* Standard Forms 19, 19–A, and 19–B may be used for these construction contracts executed as a result of formal advertising. Standard Form 22 also may be used. In the alternative, the forms prescribed in paragraph (c) of this section may be used. The additional language set forth in paragraph (a) of this section shall be inserted in the bid portion of Standard Form 19 prior to issuance of the invitation. If the successful bid exceeds $10,000 notwithstanding the Government estimate to the contrary, the contract may be executed on the Standard Form 19 but it will be necessary to add the clauses set forth in § 11.401–1(c) of this chapter (Federal, State, and Local Taxes) and in § 12.804(a) of this chapter (Equal Opportunity) unless exempted by § 12.805 of this chapter. A statement to this effect should be included in the invitation; see § 2.201(b)(46) of this chapter. If the Government estimate is so close to $10,000 as to create a good possibility that the successful bid will exceed such amount, or there are other factors which create such possibility, a contracting officer should use the forms prescribed in paragraph (c) of this section for contracts estimated to exceed $10,000.

* * * * *

PART 18—PROCUREMENT OF CONSTRUCTION AND CONTRACTING FOR ARCHITECT-ENGINEER SERVICES

14. Section 18.702–2(a) is revised; in § 18.704–2, (a)(5), (c), (d)(v), (d)(2), (e), (h), and (k) are revised; §§ 18.704–3(b), 18.704–4 (b) and (c), and 18.704–7 (d) are revised, as follows:

§ 18.702–2 Regulations and determination.

(a) *Department of Labor regulations.* Pursuant to the foregoing statutes and Reorganization Plan No. 14 of 1950 (5 U.S.C. 133z–15), the Secretary of Labor has issued regulations (Parts 3 and 5, Subtitle A, Title 29, Code of Federal Regulations) providing for the administration and enforcement of these statutes in construction contracts. Each Department shall comply with the regulations, rulings, interpretations, and decisions of the Department of Labor issued pursuant to the above provisions. If a question arises concerning such compliance, the Department concerned shall attempt to resolve it with the appropriate office of the Department of Labor. In any case where resolution of the question by higher authority is deemed appropriate, such question shall be submitted, for the Army, to the Labor Advisor, Office of the Assistant Secretary of the Army (Installations and Logistics); for the Navy, to the Chief of Naval Material, Attention: Labor Relations Advisor; for the Air Force, to the Director of Procurement Policy, HQ USAF, Attention: AFSPPMA; and, for the Defense Supply Agency, to Headquarters, Defense Supply Agency, Attention: DCAS–HR. Any such questions which are not resolved by the foregoing procedure shall be referred to the Office of the Assistant Secretary of Defense (I&L) for further action.

* * * * *

§ 18.704–2 Wage determinations.

(a) In general. * * *

(5) After bids have been opened in formally advertised procurement, if (i) it becomes apparent that the wage determination will expire before award or (ii) in fact the wage determination does expire before award, the Secretary, or his designee at a level no lower than the head of a procuring activity, may, upon finding that an extension is in the public interest to prevent injustice, undue hardship, or serious impairment of the conduct of Government business, submit a written request to the Associate Administrator, Division of Wage Determinations, Wage and Labor Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, for an extension of the expiration date. If an extension is not requested, or if it is requested and denied, a new determination shall be requested. If the new determination changes the wage rates, the IFB shall be canceled and the procurement readvertised using the new wage rates.

* * * * *

(c) *Responsibility for obtaining and distributing copies of general wage determinations.* Where it is known that a general wage determination has been issued for the area in which the contract will be performed, it shall be requested in writing from the Chief of Engineers, Attention: ENGGC–L, for the Army; from Naval Facilities Engineering Command (Code 021A), for the Navy; from Headquarters, USAF (AFSPPMA), for the Air Force; and from Headquarters, Defense Supply Agency, Attention: DSAH–PL, for the Defense Supply Agency.

(d) *Procedure for requesting area or installation (54A) or individual wage determinations; responsibility for obtaining and distributing copies.* (1) * * *

(v) When it is known that wage patterns for the area involved are not clearly established, the following information concerning public contracts being performed or recently completed in the area

should be furnished, if reasonably available, as an attachment to Form DB–11 to aid the Associate Administrator:

* * * * *

(2) Requests for determinations shall be initiated and forwarded as provided in subdivisions (i) through (iv) of this subparagraph to the Associate Administrator, Division of Wage Determinations, Wage and Labor Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. Requests shall be submitted in time to reach the Associate Administrator at least 30 days in advance of the date selected for issuance of the solicitation. Requests shall not be made to the Associate Administrator by wire or telephone. When, due to an emergency, a wage determination is required immediately, the requiring office may request assistance from the appropriate Departmental office listed in subdivisions (i) through (iv) of this subparagraph.

(i) For the Army—Form DB–11 shall be initiated by the office responsible for the preparation of specifications or the awarding of contracts, and shall be forwarded in quadruplicate to the appropriate District Engineer, except that in the New England Division the request shall be forwarded to the Division Engineer, New England Division, Corps of Engineers. The original of Form DB–11 shall be sent by the District Engineer to the Associate Administrator, and a copy to the Chief of Engineers, Attention: ENGGC–L. When received, the wage determination shall be returned to the requesting office by the Chief of Engineers through the above channels.

(ii) For the Navy—Within the Naval Facilities Engineering Command, requests shall be initiated by the office responsible for the preparation of specifications. The original of Form DB–11 shall be sent to the Associate Administrator, and a copy to the Naval Facilities Engineering Command (Code 021A). When received, the wage determination shall be returned to the requesting office by the Command Headquarters. Requests relating to contracts of other commands or offices should be processed through the Naval Facilities Engineering Command Headquarters.

(iii) For the Air Force—Requests shall be initiated by a civil engineering officer in cases where he is responsible for preparing the construction specifications, and by the contracting officer administering the contract in cases of subcontracts and facilities contracts. The original of Form DB–11 shall be submitted to the Associate Administrator, and a copy to Headquarters, USAF (AFSPPMA). One copy shall be retained in the requesting office's files. When received, the wage determination shall be returned to the requesting office by Headquarters, USAF (AFSPPMA).

(iv) For the Defense Supply Agency—Requests shall be initiated by the office responsible for the preparation of specifications or award of contracts. The original of Form DB–11 shall be sent to the Associate Administrator with a copy to Headquarters, Defense Supply Agency, Executive Director for Procurement and Production, Attention: DSAH–PL. When received, the wage determination shall be returned to the requesting office by the Executive Director of Procurement and Production, DSAH–PL.

(e) *Review of wage determination decisions.* Immediately upon its receipt, the requesting officer shall examine the wage determination and inform the appropriate office indicated in subparagraph (d)(2) of this section of any changes considered to be necessary or appropriate to correct errors. Private parties requesting changes should be advised to submit their requests to the Associate Administrator.

* * * * *

(h) *Contracts awarded without required wage rates.* If a contract is inadvertently awarded without the required wage determination or modification thereto, and such determination either was not issued by the Associate Administrator or has expired or been rescinded, then the contracting officer shall submit through channels a request to the Associate Administrator for an advisory opinion setting forth the wage rates as of the date of award. Upon receipt of the opinion, the contracting officer shall issue a change order replacing or adding the appropriate material, effective retroactively to the date of award.

* * * * *

(k) *Wage determinations appeals.* The Secretary of Labor has established the Wage Appeals Board, one of whose powers is to decide appeals concerning questions of law and fact arising from decisions of the Associate Administrator with regard to wage determinations issued under the Davis-Bacon Act and related minimum wage statutes. The Secretary of the Department concerned, after coordination with the Office of the Assistant Secretary of Defense (Installations and Logistics), may file a petition for review of, or for intervention in, any matter which it appears may appropriately be brought before the Board. Such petitions shall be prepared and submitted in accordance with procedures established for the Wage Appeals Board in 29 CFR Part 7.

§ 18.704–3 Fringe benefits.

* * * * *

(b) Where the wage determination decision specifies fringe benefits payments, the contractor may satisfy his obligation under the clause entitled Davis-Bacon Act by providing wages consisting of any combination of contributions or costs as specified in paragraph (a) of this section, provided that the total cost of such combination is not less than the total of the basic hourly rate and fringe benefits payments prescribed in the wage determination decision for the classification of laborer or mechanic concerned. Wages provided by the contractor, or fringe benefits payments required by the wage determination decision, may include items which are not stated as exact cash amounts. In such cases, the interested parties shall determine the cash equivalent of the cost of such items when necessary to determine whether the wages provided by the contractor satisfy the requirements of the wage determination. In the event the interested parties are unable to agree on the cash equivalent, the contracting officer, in accordance with paragraph (b) of the clause entitled Davis-Bacon Act, shall submit the question for determination to the Associate Administrator, through the appropriate channel specified in § 18.704–2(d)(2). The submission shall include a comparison of the payments, contributions or costs contained in the wage determination decision with those made or proposed by the contractor as equivalent thereto, together with the comments and recommendations of the contracting officer.

* * * * *

§ 18.704–4 Additional classification.

* * * * *

(b) *Approval.* Upon receipt of the request for authorization, the contracting officer shall review it to determine whether it meets the following criteria:

(1) The classification cannot be fitted into one contained in the applicable wage determination;

(2) The classification is generally recognized in the area or construction industry; and

(3) The proposed wage rate, including any fringe benefits, conforms to the wage determination decision contained in the contract.

If the above criteria are met and no interested party objects to the proposed classification, the contracting officer or his representative shall approve the proposal and submit an information copy to the Associate Administrator. If the criteria are not met or the interested parties cannot agree on the proposal, the contracting officer or his representative shall submit the proposal together with available pertinent information and his recommendation to the Associate Administrator for final determination. Upon approval, the contracting officer shall notify the contractor and instruct him to post the approved rate and classification in accordance with § 18.704–2(j).

(c) *Submission.* The completed DD Form 1565 (with information and recommendations where appropriate) shall be forwarded to the Associate Administrator, Division of Wage Determinations, Wage and Labor Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, for information or final determination as required.

§ 18.704–7 Payrolls and statements.

* * * * *

(d) *Preservation.* Payrolls and statements shall be preserved for a period of three years from completion of the contract, and shall be made available at the request of the Associate Administrator at any time during such period.

PART 19—TRANSPORTATION

15. Sections 19.210, 19.212, 19.213–1 (d), and 19.213–2 are revised, as follows:

§ 19.210 Guaranteed shipping weights and dimensions.

When shipping weights and dimensions are required to evaluate offers as to transportation costs, the provision in § 2.201(a)(2)(x) of this chapter shall be included in the solicitation.

§ 19.212 Shipping point(s) used in evaluation of f.o.b. origin bids.

The provision in § 2.201(a)(4)(ix) of this chapter shall be included in solicitations which may result in f.o.b. origin contracts to assure application of appropriate freight costs in evaluating bids or proposals. This provision should be supported by an additional provision as part of the solicitation, to require prospective contractors to specify the location of their actual shipping point(s) (street address, city, State, and zip code) from which supplies will be delivered to the Government in accordance with the contract's f.o.b. origin terms. To assure appropriate rail routing for shipments from or to the contractor's shipping point, each prospective contractor shall alse be required to specify whether his shipping point has a private railroad siding and the name of the rail carrier serving it. When the shipping point does not have a private siding, the name and address of the nearest public rail siding and carrier serving it shall be specified.

§ 19.213–1 Solicitation provisions.

* * * * *

(d) Unless logistics requirements limit the ports of loading to those ports listed in the solicitation, the solicitation shall provide that the bidder or offeror may nominate additional ports (including ports in Alaska and Hawaii) more favorably located to his shipping point, and that these ports shall be considered in the evaluation of bids or proposals: *Provided, however,* That these ports must possess all requisite capabilities of the listed ports in relation to the supplies being procured. Under these cricumstances, the provision under § 2.201(a)(2)(xiv) of this chapter shall be included in the solicitation. When a solicitation provides for bids or offers on the basis of f.o.b. origin only, as described in paragraph B of § 2.201(a)(2)(xiv) of this chapter, paragraph C and the last sentence of paragraph E shall be deleted. When a solicitation provides for bids or offers on the basis of f.o.b. destination only, as described in paragraph C of § 2.201(a)(2)(xiv) of this chapter, the following shall be deleted: Paragraph B, the opening phrase in paragraph C(2) "Unless bids * * * (see B above)" and the first and third blocks pertaining to origin at the end of paragraph E.

* * * * *

§ 19.213–2 Export releases and military standard transportation and movement procedures (MILSTAMP) documentation.

An Export Release must be obtained for certain categories of supplies to be transshipped via a water port of loading to overseas destinations (see § 19.213–1 and § 16.822 of this chapter). Additionally, for all shipments consigned to either air or water terminal transshipment points, a transportation control movement document (TCMD) must be dispatched to the port or terminal in accordance with MILSTAMP procedures. MILSTAMP procedures are designed to be compatible with Export Release procedures for controlling the movement of cargo via water and air terminals. To assure control of export traffic, the clause in § 7.104–74 of the chapter shall be inserted in solicitations and contracts calling for shipment consigned to either air or water terminal transshipment points.

PART 24—DISPOSITION OF PERSONAL PROPERTY IN POSSESSION OF CONTRACTORS

16. In § 24.205–1 a new paragraph (i) is added; § 24.205–3 (b), (c), and (d) are revised; and § 24.205–4(c)(2) is revised, as follows:

§ 24.205–1 General.

* * * * *

(i) Contractor inventory located in foreign countries does not require screening with General Services Administration (GSA) in accordance with §§ 24.205–2 and 24.205–3.

§ 24.205–3 Procedures for industrial plant equipment.

* * * * *

(b) *Screening—first through 30th day.* DIPEC shall screen excess industrial plant equipment against all requirements submitted by Department of Defense activities, including Department of Defense reserve requirements, with priority being given to requirements of the owning Department through the 30th day. DIPEC will issue a DD Form 1149, Shipping Document (Movement Notice), containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions for items selected to the appropriate contract administration office.

(c) *Screening—31st through 75th day.* On the 31st day, DIPEC will forward excess data to the applicable General Services Administration regional office for Federal utilization screening through the 75th day. During the period from the 31st through the 75th day, the General Services Administration will approve requests from any agency of the Government on a "first come-first served" basis and will approve and forward transfer orders containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions to the appropriate contract administration office. The General Services Administration will forward copies of the approved transfer orders to DIPEC.

(d) *Screening—76th through 90th day.* During this period the General Services Administration will provide for the screening of all remaining industrial plant equipment for possible donation. The General Services Administration will receive and approve donation applications for industrial plant equipment and will forward approved donation applications, containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions to the appropriate contract administration office. The General Services Administration will forward copies of the approved donation applications to DIPEC.

* * * * *

§ 24.205–4 Special screening procedures.

* * * * *

(c) *Nuclear materials.* * * *

(2) Excess nuclear material in the categories described above shall be screened with the procuring activity. If there are no requirements, the ultimate method of disposal shall be dependent upon the license issued by the U.S. Atomic Energy Commission or the respective States and pertinent Federal and Service Regulations. Assistance may be solicited on an as needed basis from the following activities having overall knowledge and responsibility for disposal of radioactive material within their respective services:

(i) Army—Commanding General, U.S. Army Materiel Command, Attention: AMCSF, Washington, D.C. 20315.
(ii) Navy—Primary support bureau, command, or office.
(iii) Air Force—San Antonio Air Materiel Area, Attention: SANUTE, Kelly Air Force Base, Tex. 78241.
(iv) Marine Corps—Commandant of the Marine Corps, Code: CSY, Headquarters, USMC, Washington, D.C. 20380.
(v) Defense Supply Agency—Appropriate Defense Supply Center initiating the procurement contract.
(vi) National Aeronautics and Space Administration—Headquarters, National Aeronautics and Space Administration, Code: BDU, Washington, D.C. 20546.

* * * * *

PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGULATIONS

17. In § 30.2 item 311(a) subparagraphs (iv) and (v) are revised; in § 30.3 item 311 subparagraphs (iv) and (v) are revised; in § 30.8 Part 3, Block 2 add a new paragraph (d); in § 30.8 item I–306 the introductory text is revised; also in § 30.8 item I–702 Table 6 is revised, as follows:

§ 30.2 Appendix B—Control of Government property in possession of contractors.

* * * * *

311. *Financial control accounts.* * * *

(iv) Plant equipment, excluding property within subdivision (v) of this paragraph; and

(v) Industrial plant equipment, including items which, though part of a manufacturing system or general purpose components of special test equipment, would otherwise qualify as industrial plant equipment.

* * * * *

§ 30.3 Appendix C—Control of property in possession of nonprofit research and development contractors.

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311. *Financial control accounts, facilities.* * * *

(iv) Plant equipment, excluding property within subdivision (v) of this paragraph; and

(v) Industrial plant equipment, including items which, though part of a manufacturing system or general purpose components of special test equipment, would otherwise qualify as industrial plant equipment.

* * * * *

§ 30.8 Appendix I—Material Inspection and Receiving Report (DD Forms 250, 250c, and 250–1).

PART 3—PREPARATION OF THE DD FORM 250 AND DD FORM 250c

* * * * *

Block 2—Shipment Number.

* * * * *

(d) When commercial invoices are used, see I–306.

I–306 Invoice instructions. Contractors are encouraged to use copies of the MIRR as an invoice, in lieu of a commercial form, but are not required to do so. If commercial forms are used, the related MIRR shipment number(s) shall be identified thereon. Copies of the MIRR used as an invoice are in addition to the standard distribution (I–401). The four invoice copies shall be prepared and forwarded to the payment office as follows:

* * * * *

I–702 Distribution. * * *

TABLE 6—AIR FORCE OVERSEAS THEATER ACCOUNTING OFFICES

Address	*Area served*
AAC (ALDCA–A), APO Seattle 98742.	Alaska.
26 CMBT SPT GP (FGA FMT), APO New York 09012.	Europe, Africa, British Isles, Middle East.
6100 SPT WG (BCPTFA), APO San Francisco 96323.	Japan, Korea, Okinawa.

[Rev. 7, ASPR, Feb. 27, 1970, DPC 77] (Secs. 2202, 2301–2314, 70A Stat. 120, 127–133; 10 U.S.C. 2202, 2301–2314)

For the Adjutant General.

HAROLD SHARON,
Legislative and Precedent Officer, Plans Office, TAGO.

[F.R. Doc. 70–6659; Filed, May 28, 1970; 8:45 a.m.]

Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adustment), Department of Agriculture

SUBCHAPTER C—SPECIAL PROGRAMS

[Amdt. 5]

PART 755—REGIONAL PROGRAMS

Subpart—Appalachian Land Stabilization and Conservation Program

MISCELLANEOUS AMENDMENTS

The regulations governing the Appalachian Land Stabilization and Conservation Program, 30 F.R. 8669, as amended, are hereby further amended as follows:

1. Section 755.1(m) is amended to read as follows:

§ 755.1 Definitions.

* * * * *

(m) "Farm" means that area of land defined as a farm under the regulations governing Reconstitution of Farms, Allotments, and Bases, Part 719 of this chapter, as amended, or, for purposes of contracts entered into pursuant to § 755.20, the land covered by the contract.

* * * * *

2. Section 755.8 is amended by changing the first sentences of paragraphs (a) and (b) to read as follows:

§ 7.55.8 Modification of contract.

(a) If the farm is reconstituted in accordance with the regulations governing Reconstitution of Farms, Allotments, and Bases, Part 719 of this chapter, as amended, or if there is any change in the land covered by a contract entered into pursuant to § 755.20, because of purchase, sale, change of operation, or otherwise, the contract shall be modified. * * *

(b) Except in cases covered by paragraph (a) of this section, if the ownership or operation of the farm or the land covered by the contract changes in such a manner that the contract no longer contains the signatures of persons required to sign the contract as provided in § 755.6, the contract shall be modified to reflect the new interested persons. * * *

* * * * *

3. A new § 755.20 is added to read as follows:

§ 755.20 Rural community development projects.

(a) Notwithstanding any other provision of this subpart, the county committee, in accordance with instructions issued by the Deputy Administrator, may enter into a contract with a State, county, city, town, or subdivision thereof, or a group acting for such a body, which owns, operates, or occupies land in the Appalachian Region. The contracts approved under this section shall be for projects which promote rural community development and conservation of the soil and water resources of the region.

(b) Cost-sharing approved under this section shall not exceed 80 per centum of the cost of carrying out the approved land uses and conservation treatment on 50 acres of land occupied by such owner, operator, or occupier.

(Sec. 203, 79 Stat. 12, 40 U.S.C. App. 203)

Effective date: Upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on May 26, 1970.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 70–6693; Filed, May 28, 1970; 8:47 a.m.]

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Lemon Reg. 429]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.729 Lemon Regulation 429.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on May 26, 1970.

(b) *Order.* (1) The respective quantities of lemons grown in California and