1. Section 121.01, Category VIII(1), is amended to read as follows:

§ 121.01 The U.S. munitions list.

* * * * *

CATEGORY VIII—AIRCRAFT, SPACECRAFT, AND ASSOCIATED EQUIPMENT

* * * * *

(1) Inertial systems, and specifically designed components therefor, inherently capable of yielding accuracies of better than 1 to 2 nautical miles per hour circular error of probability (c.e.p.).

* * * * *

2. Section 121.14 is added to read as follows:

§ 121.14 End-items, components, accessories, attachments, and parts.

(a) End-items are defined as assembled whole systems or equipment, ready for its intended use, (1) for which only ammunition, fuel or other energy sources are required to place them in an operating state, and (2) consisting of components and parts, with or without accessories or attachments. (Examples: rifles, tanks, aircraft, transceivers, ships, etc.)

(b) Components are items which are useful only when used in conjunction with an end-item. They are defined as either major or minor: (1) Major components include any assembled elements which form a portion of an end-item without which the end-item is inoperable (examples: airframes, tail sections, engines, transmissions, tank treads, hulls, etc.); and (2) minor components include any assembled elements of a major component.

(c) Accessories and attachments are defined as elements of any components, systems, or products not necessary for the operation of an end-item, but which enhance the usefulness or effectiveness of the end-item. (Examples: riflescopes, special paints, etc.)

(d) Parts are defined as any single unassembled elements of major and minor components, accessories and attachments which are not normally subject to disassembly without destruction or impairment of design use. (Examples: rivets, wire, bolts, etc.)

3. Sections 125.11 (a)(2) and (b)(1) are revised to read as follows:

§ 125.11 General exemptions.

(a) * * *

(2) If it has been approved for public release by any U.S. Government department or agency having authority to classify information or material under Executive Order 11652, as amended, and other applicable Executive Orders, and does not disclose the details of design, production, or manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List.

* * * * *

(b) * * *

(1) No license shall be required for the oral and visual disclosure of unclassified technical data during the course of a plant visit by foreign nationals provided the data is disclosed in connection with a classified plant visit or the visit has the approval of a U.S. Government agency having authority for the classification of information or material under Executive Order 11652, as amended, and other applicable Executive Orders, and the requirements of Section V, paragraph 40(d) of the Industrial Security Manual are met.

* * * * *

(Sec. 414, as amended, 68 Stat. 848; 22 U.S.C. 1934; secs. 101, 105, E.O. 10973, 26 F.R. 10469; sec. 6, Departmental Delegation of Authority No. 104, 26 F.R. 10608, as amended, 27 F.R. 9925; Redelegation of Authority No. 104-3-A, 28 F.R. 7231; Redelegation of Authority No. 104-7, 35 F.R. 3243; Redelegation of Authority No. 104-7-A, 35 F.R. 5423, 5424)

[SEAL] JOHN N. IRWIN II,
Acting Secretary of State.

JULY 12, 1972.

[FR Doc.72-11341 Filed 7-21-72;8:46 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

[CGD 72-11CR]

PART 110—ANCHORAGE REGULATIONS

Neenah Harbor, Neenah, Wis.; Correction

This amendment to the anchorage regulations corrects the description of the special anchorage area established in Neenah Harbor, Neenah, Wis. as published in the FEDERAL REGISTER on June 28, 1972 (37 F.R. 12721). One bearing and distance was inadvertently omitted from the rule. The correct description was contained in the notice of proposed rule making published in the FEDERAL REGISTER on February 1, 1972 (37 F.R. 2447).

Since the notice of proposed rule making contained the correct description further notice is considered unnecessary.

In consideration of the foregoing, § 110.79a of Part 110 of Title 33 of the Code of Federal Regulations is corrected to read as follows:

§ 110.79a Neenah Harbor, Neenah, Wis.

The area of Neenah Harbor south of the main shipping channel within the following boundary: A line beginning at a point bearing 117.5°1,050'' from the point where the southeasterly side of the First Street/Oak Street Bridge crosses the south shoreline of the river; thence 254°162''; thence 146°462''; 164°138''; 123°367''; 068°400''; 044°-400''; thence 320°107''; thence 283°-1,054'' to the point of beginning.

NOTE: An ordinance of the city of Neenah, Wis., requires approval of the Neenah Police Department for the location and type of individual moorings placed in this special anchorage area.

(Sec. 1, 28 Stat. 647, as amended, sec. 6(g)(1)(C), 80 Stat. 937; 33 U.S.C. 258, 49 U.S.C. 1655(g)(1)(C); 49 CFR 1.46(c)(3))

Effective date. This amendment becomes effective on August 1, 1972.

Dated: July 18, 1972.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.72-11371 Filed 7-21-72;8:49 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 9—Atomic Energy Commission

PART 9-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 9-4.51—Research Agreements and Contracts With Educational Institutions

PART 9-16—PROCUREMENT FORMS

Subpart 9-16.50—Contract Outlines

MISCELLANEOUS AMENDMENTS

AECPR Subpart 9-4.51 and AECPR subsections 9-16.5002-8 and 9-16.5002-9 have been extensively revised in accordance with OMB Circulars A-21, revised, and A-101 and to reflect a number of other administrative changes. Specific changes by subpart, section, and subsection are as follows:

SUBPART 9-4.51 RESEARCH AGREEMENTS AND CONTRACTS WITH EDUCATIONAL INSTITUTIONS

(1) Section 9-4.5102 *General.* Language has been added to recognize the Commission's new authority to support research programs related to forms of energy other than atomic.

(2) Section 9-4.5103 *Research program objectives.* Changes have been made and language added to reflect the authority as described in (1) above.

(3) Section 9-4.5105 *Submission of research proposals.* A reference to the Commission's policy on cost sharing has been added.

(4) Section 9-4.5106-3a *Compensation of personal services of professional staff.* The references to "BOB" have been changed to "OMB". Other minor editorial changes have also been made.

(5) Section 9-4.5107-2 *Special research support agreements.* (a) The annual support level below which the SRSA may be used has been increased from $250,000 to $500,000.

(b) The certified statement of costs may be signed by any authorized official of the contractor. The principal investigator is no longer specifically required to sign it.

(c) A reference to the Commission's policy on cost sharing has been added.

(d) Minor editorial changes have been made.

(6) Section 9-4.5107-4 *Cost-type contract.* (a) The annual support level

above which a cost-type contract is generally used has been increased from $250,000 to $500,000.

(b) A reference to the Commission's policy on cost sharing has been added.

(c) The policy that the deviation approvals set out in SRSA contracts are applied to cost-type contracts, "to the extent necessary and appropriate" has been added.

(d) Minor editorial changes have been made.

(7) Section 9-4.5108 *Ownership of property.* This section has been renamed "personal property" and has been rewritten to:

(a) Change the thrust of the policy on granting title to equipment under the Grant Act to more closely parallel the policy set forth in OMB Circular No. A-101;

(b) More clearly define the authority to vest title to equipment and other personal property under the Atomic Energy Act, without contractor contribution;

(c) Add language regarding the requirement for a programmatic determination to vest title to personal property and to define how this will be accomplished for property purchased or fabricated under the contract, for AEC-held property whether purchased or fabricated under the contract, and for GSA-held personal property; and

(d) Add language (subsection § 9-4.-5108-2) regarding the acquisition of and vesting title to excess Government personal property.

(8) Section 9-4.5109-7 *Equipment report.* The definition of equipment has been changed from an anticipated service life of 1 year or more and an acquisition cost of $100 to an anticipated service life of 1 year or more and an acquisition cost of $200 for special research support agreements or $300 ($200 if the contractor prefers) for cost-type contracts.

(9) Section 9-4.5111-1 *Renewal proposals.* (a) Language has been added to instruct contractors to footnote the financial statement to show the estimated amount of outstanding commitments for personal property at the end of the contract period.

(b) A reference to the Commission's policy on cost sharing has been added.

(10) Section 9-4.5112-2 *Responsibilities of AEC Field Offices.* (a) Paragraph (e) has been changed to reference the Atomic Energy Act, rather than contractor contribution, as authority to vest title to personal property.

(b) A sentence has been added to paragraph (e) requiring that the Grant Act be used for vesting title to the maximum extent consistent with the authority contained in that Act.

(11) Section 9-4.5112-3 *Payments under special research support agreements.* (a) Language has been changed to make advance payments mandatory and to base them on the new funds added for the contract period, rather than the AEC support cost.

(b) The letter of credit reference has been updated to cite the Treasury Manual and use of the letter of credit has been emphasized.

(c) The established policy of releasing the withheld amount from a prior contract period upon execution of the contract for the new period has been added to the beginning of paragraph (b).

(d) The obtaining of an appropriate patent clearance has been added as a fourth requirement to be met before final payment is made.

(12) Section 9-4.5112-4 *Payments under cost-type contracts.* The use of the letter of credit has been emphasized.

(13) Section 9-4.5112-5 *AEC approval of deviations in performance and other specified actions.* This subsection has been rearranged and revised in accordance with the policies set forth in OMB Circulars A-21, revised, and A-101.

(a) Contractors do not have to advise the Commission of a continuation of the research work without an approved principal investigator unless there is no approved principal investigator for a period in excess of 3 months. Formerly, such advice was required immediately.

(b) Significant changes in methods or procedures used in performing the research are now to be reported in the first technical progress report issued subsequent to making the changes.

(c) Approval must be obtained for an item of equipment costing $1,000 or more which is not itemized in the contract. This section formerly read "* * * cost in excess of $1,000 or 2 percent of the estimated cost specified in Article A-III of the contract, whichever is greater * * *."

(d) Rather than requiring approval for equipment items which would cause the approved equipment budget to be increased by $500 or more, approval is required if the items would increase the approved equipment budget in excess of 125 percent thereof.

(e) A new requirement has been added regarding approval of expenditures for domestic travel in excess of $500, or 125 percent of the amount shown for domestic travel in the contract, whichever is greater.

(f) As of July 1, 1972, Canada will no longer be considered foreign travel.

(g) A requirement for approval of the acquisition of excess personal property has been added.

(h) The approval requirements listed in this subsection for cost-type contracts now apply only to the extent "necessary and appropriate."

Section 9-16.5002-8 *Outline of special research support agreement with educational institutions.* (1) The prefatory paragraph of the basic document has been revised to delete the date which the contract is entered into.

(2) The basic document has been revised to provide for the use of recitals.

(3) Article III has been revised to provide for a unilateral increase in the support ceiling.

(4) Articles IV and V have been reversed. Article V is now called "Appendices" and Appendix A has been referenced in Article V.

(5) Appendix A has been revised as follows:

(a) Categories of personnel are no longer required to be listed under the salaries and wages line.

(b) A breakdown of travel by foreign and domestic has been added.

(c) "Supplies and materials" and "publications" have been combined with "other" and redesignated "other direct costs."

(d) The source of the AEC support cost amount has been broken down and reflected as the "estimated unexpended balance from the prior period(s)" and "new funds for the current period."

(e) A policy change of basing advance payments on the new funds, rather than the AEC support cost has been cited.

(5) Article B-II—*Inspection reports, records, and accounts.* (a) A footnote has been added regarding the use of commercial cost principles, rather than OMB Circular No. A-21, revised, in the event the contract is used for a not-for-profit institution other than an educational institution or a related research foundation.

(b) Cities regarding "BOB" have been changed to "OMB."

(c) The examination of records article has been cited as the basis for the records retention requirements.

(6) Article B-III—*Publication of results.* The last section of paragraph (b) has been rephrased for the purpose of clarification.

(7) Article B-XI—*Payments.* (a) The language has been changed citing the new funds as the basis for advance payments rather than AEC support costs.

(b) Other minor editorial changes have been made.

(8) Article B-XXI—*Reports and renewal proposals.* (a) The definition of equipment has been changed from $100 to $200.

(b) Minor editorial changes have been made.

(9) Article B-XXII—*Foreign travel.* A definition of foreign travel has been added.

(10) Article B-XXIX—*Determination of support cost.* (a) Language has been added to require the contractor to use either accrual or cash accounting methods in accumulating and reporting costs, but not both.

(b) A requirement for footnoting the renewal proposal to show estimated outstanding commitments for personal property has been added. Also, a space has been provided in Appendix C for inserting the actual outstanding commitments for personal property.

(c) A footnote has been added regarding the use of commercial cost principles if the contract is with a not-for-profit organization other than an educational institution or a related research foundation.

(11) Article XXX—*Additional approvals.* This article has been rearranged and has been revised in accordance with OMB Circulars A-21, revised, and A-101. Details of these changes are described under item 13 of AECPR 9-4.51, above.

(12) Appendix C—*Statement of costs.* (a) This appendix has been rewritten and revised to parallel Appendix A, as described above.

(b) A line to show the difference between the accumulated support ceiling and cumulative support costs has been added.

(c) A space has been provided for inserting the actual outstanding commitments for personal property.

Section 9-16.5002-9 *Outline of cost-type contract for research and development with educational institutions.* (1) The prefatory paragraph of the basic document has been revised to delete the date which the contract is entered into.

(2) The basic document has been revised to provide for the use of recitals.

(3) The dollar definition of equipment in Appendix A has been changed from "$100" to "$200 ($300, if the contractor prefers)."

(4) Article B-2—*Allowable costs.* The reference to AECPR 9-7.5006-11 has been deleted and a new clause is provided in its place.

(5) Article B-4—*Accounts, records, inspection and reports.* (a) A footnote has been added regarding the use of commercial cost principles if the contract is with a not-for-profit organization other than an educational institution or related research foundation.

(b) Note A has been deleted and the substance of it, regarding contractor contribution, has been added to paragraph (a).

(6) Article B-6—*Publication of results.* The last section of paragraph (b) has been rephrased for the purpose of clarification.

(7) Article B-11—*Foreign travel.* A definition of foreign travel has been added to this article.

(8) Article B-33—*Payments.* This article has been rewritten to provide for the use of both AECPR 9-7.5006-23 or -25, depending upon whether advances are to be made. Additionally, if advances are to be made, the use of the letter of credit has been emphasized.

(9) Article B-38—*Controls in the national interest.* This article has been deleted as it no longer applies to off-site research with educational institutions.

1. In AECPR Part 9-4, Special Types and Methods of Procurement, Subpart 9-4.51, Research Agreements and Contracts with Educational Institutions, is revised as follows:

Subpart 9-4.51—Research Agreements and Contracts With Educational Institutions

AUTHORITY: The provisions of this Subpart 9-4.51 issued under section 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; section 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

Subpart 9-4.51 Research Agreements and Contracts With Educational Institutions

§ 9-4.5100 Scope of subpart.

This subpart sets forth policies and procedures applicable to the negotiation and administration of Washington-designated special research support agreements and cost-type contracts for off-site basic research with educational institutions. To the extent applicable, these policies and procedures should also be followed for Washington-designated contracts for off-site applied research with educational institutions, for Field Office contracts for off-site research with educational institutions, for basic or applied research with other "not-for-profit" institutions, and for educational and training activities with educational or other "not-for-profit" institutions. The policy of AEC reimbursing only AEC's share of actual costs up to a ceiling should be reflected in all AEC contracts with educational institutions.

§ 9-4.5101 Definitions.

(a) The term "Washington-designated contract" as used hereafter in this subpart means a special research support agreement or a cost-type contract which results from an authorization to an AEC field office from an AEC headquarters division or office to enter into or continue such a contract on the basis of an approved research proposal.

(b) The term "contractor" means the educational or not-for-profit institution which enters into an agreement or contract with the Atomic Energy Commission for the performance of specified research.

(c) The term "research proposal" means a request by an institution for AEC support of a research project, together with a detailed description of the project and its relationship to the Commission's program, and detailed information as to background and experience of principal investigators, facilities, and environment of the institution, and cost and cost-sharing arrangements, if any.

§ 9-4.5102 General.

The Atomic Energy Commission by statute is permitted to participate in research programs that are related to atomic energy and in programs related to other forms of energy.

§ 9-4.5103 Research program objectives.

(a) Under section 31a of the Atomic Energy Act of 1954, the AEC is directed to exercise its powers in such manner as to insure the continued conduct of research and training activities and to assist in the acquisition of an ever-expanding fund of theoretical and practical knowledge in the following fields:

(1) Nuclear processes;

(2) The theory and production of atomic energy, including processes, materials, and devices related to such production;

(3) Utilization of special nuclear material and radioactive material for medical, biological, agricultural, health, or military purposes;

(4) Utilization of special nuclear materials, atomic energy, and radioactive material, and processes entailed in the utilization or production of atomic energy or such material for all other purposes, including industrial and commercial uses, the generation of usable energy and the demonstration of advances in the commercial or industrial application of atomic energy.

(5) The protection of health and the promotion of safety during research and production activities.

(6) The preservation and enhancement of a viable environment by developing more efficient methods to meet the nation's energy needs.

§ 9-4.5104 Contract objectives.

(a) Washington-designated research contracts are entered into by negotiation (as distinguished from formal advertising) under the authority of section 31c of the Atomic Energy Act of 1954 and section 302(c)(5) of the Federal Property and Administrative Services Act of 1949. In planning, negotiating, and administering such contracts, the objectives of AEC are to:

(1) Assure a continuing flow of new knowledge in fields related to the responsibilities of the AEC;

(2) Respect the traditions of the contracting institution and encourage the quest for new knowledge without restrictions on scientific initiative, to the extent compatible with the laws and the protection of the public interest;

(3) Provide reasonable levels of support which will increase the national capability in energy fields and enable the contracting institution to strengthen its research programs in areas of interest to AEC;

(4) Maintain effective contact with the scientific community so that:

(i) Scientists and students will be encouraged to expand their interests in fields of importance to the AEC program;

(ii) The scientific strength of the country can be brought to bear more effectively on AEC problems;

(iii) The AEC will be continuously aware of developments of value to its activities in the academic communities; and

(iv) An adequate supply of suitably trained scientists will be available for employment within the atomic energy program.

(b) The contractor is responsible for conducting the research and is expected to carry out the project or projects in a manner consistent with agreed-upon contract objectives and requirements; these include the obligation to comply with applicable laws and regulations, including the AEC's regulatory requirements. The contractor is generally expected to follow its normal business practices and to utilize its existing accounting system.

§ 9-4.5105 Submission of research proposals.

(a) Proposals for AEC assistance are usually initiated by scientists interested in doing the research. In some cases, however, the AEC may request investigators to undertake research of particular interest to the AEC. Prior to submitting a proposal, the interested scientist may discuss the project informally, either by letter, telephone, or personal visit with a member of the AEC Headquarters Program Division that has the greatest interest in the work. Also, following an informal discussion, a formal proposal may be requested. The proposal should be submitted to the appropriate AEC Headquarters Program Division and should indicate:

(1) Identity and background of the project;

(2) Objective of the investigation;

(3) Approximate types and number of personnel who would be utilized, and an approximation of the time to be devoted to the project work;

(4) Facilities, equipment, and other wherewithal to be used;

(5) Amount of money sought from AEC which, together with the institution's contributions (if any), would enable the work to be performed; (see AECPR 9-4.56 for policy on cost sharing) and

(6) Whether the institution wishes to establish stipulated salary support amounts as the bases for charges for personal services of any professorial staff members to be utilized on the project. If the institution wishes to establish such stipulated salary support amounts, the proposal should include the following information for each professorial staff member involved:

(i) Academic year salary;

(ii) Other research projects or proposals for which salary is allocated; and

(iii) Any other duties, such as teaching assignments, administrative assignments, supervision of graduate students, or other institutional activities.

(b) Each formal proposal shall be prepared in the manner and form outlined in the "Guide for the Submission of Research Proposals," copies of which may be obtained from the U.S. Atomic Energy Commission, Washington, D.C. 20545. Preliminary inquiries regarding support should be referred to the appropriate AEC Headquarters Division. (See § 9-4.5101(a).)

§ 9-4.5106 Selection, preparation, and award of research contracts.

§ 9-4.5106-1 General.

In order to maintain a comprehensive and well-integrated research program, AEC evaluation of research proposals and selection of educational institutions to conduct scientific research is centralized in AEC Headquarters. However, AEC field offices in close proximity to the contractor are assigned responsibility for handling the final contract arrangements and nontechnical administration of such contracts. See § 9-3.150 for policies and procedures relating to the treatment of proposal information.

§ 9-4.5106-2 Responsibilities.

(a) *Headquarters Program Divisions.* The AEC Headquarters Program Divisions interested in the particular research are responsible for evaluating the technical aspects of proposals and the amount of requested support. Such divisions also review the prospective contractor's cost and other estimates to determine the reasonableness, the propriety, and the advisability of proceeding with the project, as proposed or as the proposal may in effect be amended. Specifically, Directors of AEC headquarters divisions are responsible for:

(1) Selecting and approving research proposals and determining the amount of AEC support;

(2) Reviewing the items in the proposal budget or itemized account of the proposed work, and, if necessary, the assistance of the appropriate AEC field office may be requested;

(3) Determining the ownership of property;

(4) Reviewing and following the technical progress of the work;

(5) Providing contractors with the technical guidance and direction as may be required to meet broad program objectives; and

(6) Keeping the AEC field offices fully informed of technical correspondence and discussions with contractors that may have contractual or nontechnical administrative implications.

(b) *Field Offices.* AEC field offices are responsible for the consumation of contracts with the specified institution in accordance with directives from AEC Headquarters Program Divisions, and administering and making payments under such contracts. Specifically, Managers of AEC field offices are responsible for:

(1) Finalizing and executing the contract (where necessary, obtaining further instructions from the AEC Headquarters Program Division);

(2) Administering the contracts in accordance with their terms and conditions and making payments thereunder;

(3) Providing technical and administrative assistance requested by AEC headquarters division directors.

§ 9-4.5106-3 Review of research proposals.

(a) *Use of consultants.* If, in the judgment of the AEC Headquarters Program Division, an appraisal from representatives of the scientific community is required, reviewers may be selected on the basis of their familiarity with either the field of research or the competence of the investigator.

(b) *Field participation in proposal evaluation.* Occasionally, the AEC Headquarters Program Division may find it necessary in considering research proposals to obtain additional information from the research institution or to visit the site. In some cases, the comments, assistance, or participation of staff members of the appropriate AEC field office will be requested.

(c) *Review of major elements.* At the time it reviews a research proposal, the sponsoring AEC Headquarters Program Division shall review the prospective contractor's budget or itemized account of the proposed work and activities and the materials, equipment, and facilities involved, for the purpose of reaching mutual understanding of the estimated cost of the research to be contracted for and the other major aspects of the contract in contemplation. Questions about the cost elements that require further investigation may be referred to the appropriate AEC field office when the contract is authorized.

§ 9-4.5106-3a Compensation for personal services of professional staff.

(a) In accordance with section B.7 and section J.7 of OMB Circular No. A-21, revised, the proposing institution and the AEC must reach an understanding regarding the basis for charges to the AEC under the contract for personal services of professional staff members. It is AEC policy to use the payroll distribution procedure of section J.7.b, as the basis for charges for personal services of all nonprofessiorial professional staff, and also for professorial staff in those cases in which it is not feasible to establish a stipulated salary support amount during the proposal and award process because detailed plans or knowledge of specific positions or individuals are not available.

(b) In those cases in which the proposing institution and the AEC agree to use a stipulated salary support amount as the basis for charges for personal services of a specified professorial staff member, the sponsoring AEC Headquarters Division shall either:

(1) Establish an appropriate stipulated salary support amount in accordance with the guidelines of OMB Circular No. A-21, revised and provide guidance to the field office regarding the amount of such individual stipulated salary support, or

(2) Request the field office to establish an appropriate stipulated salary support amount in accordance with the guidelines of OMB Circular No. A-21, revised, and within any limitations established by the sponsoring headquarters division. In establishing appropriate stipulated salary support amounts, it will be necessary for the AEC headquarters division or field office to obtain information on the academic year salary of the faculty members involved; the other research projects or proposals for which salary is allocated; and any other duties they may have, such as teaching assignments, administrative assignments, supervision of graduate students, or other institutional activities.

(c) The established stipulated salary support amount shall be provided for in the contract and shall be the basis for charges for personal services of the specified staff member unless there is a significant change in performance by the staff member (see section J.7.e. of OMB Circular No. A-21, revised, for examples of a "significant change"); if a significant change in performance occurs, the institution has the responsibility under OMB Circular No. A-21, revised, to either:

(1) Reduce the charges to the contract proportionately, or

(2) Request an appropriate amendment of the contract to reflect the change in performance.

The contract should provide that if the alternative in subparagraph (1) of this paragraph is followed, the contractor shall notify the Commission of such reduction, with an explanation of the basis of such reduction. In accordance with section J.7.e. of OMB Circular No. A-21, revised, special provision must be made in the contract if summer salaries are to be paid under the stipulated salary support procedure; the contract should provide specifically for any stipulated salary support amount for summer salaries and provide that any research covered by stipulated summer salary support must be carried out during the summer, not during the academic year, and at locations approved in advance by the Commission.

(d) If after the award of a contract the contractor wishes to charge the AEC for the personal services of a professorial staff member for whom a stipulated salary support amount has not been established in the contract, the contractor shall use the payroll distribution procedure of section J.7.b. of OMB Circular No. A-21, revised, as the basis for such charges, except as the parties may otherwise mutually agree in writing.

(e) The stipulated salary support procedure shall not be used as a basis for establishing the amount of a contractor's contribution to the research work. In those cases in which the contractor is required to maintain records in support of a contribution of the cost of professorial staff, the payroll distribution procedure of section J.7.b. of OMB Circular No. A-21, revised, should be used.

(f) The certification required by Appendix C of § 9-16.5002-8 fulfills the certification requirement of section K of OMB Circular No. A-21, revised, for the special research support agreement. In cost-type contracts (§ 9-16.5002-9) the payments article should provide for appropriate certification by the contractor, on payment invoices or vouchers, to meet the requirements of section K.

§ 9-4.5106-4 Notice of selection or rejection.

The proposer shall be notified by the AEC Headquarters Program Division of the decision to support or reject the proposal. In the event of approval, this notification shall advise: (a) That the proposal has been selected for support subject to completion of a satisfactory contract; (b) which AEC field office will negotiate and execute the contract; and (c) that the AEC assumes no obligation until a contract has been executed. A copy of the notice of approval or rejection shall be sent to the AEC field office concerned.

§ 9-4.5106-5 Selection of AEC field office.

When the AEC Headquarters Program Division has determined that a proposal will receive AEC support, an appropriate AEC field office will be requested to make the final contract arrangements with the institution concerned. Usually the AEC field office geographically nearest to the research institution will be selected, but occasionally other factors such an existing contractual relationships, will make the selection of some other AEC field office desirable.

§ 9-4.5106-6 Information to be furnished to Managers of AEC field offices.

The sponsoring AEC Headquarters Program Division shall provide the appropriate AEC field office with an authorizing directive early enough (usually 4 weeks) to permit timely consummation of the contract before the work is scheduled to start. The following shall be furnished:

(a) A copy of the detailed proposal and any modifications;

(b) Copies of correspondence with the research institution that are pertinent to the completion of the contract negotiation or that have some specific significance as to the preliminary review or arrangements made with the institution; and

(c) An authorizing directive (generally Form AEC-481, "Contract Authorization") which:

(1) Authorizes the execution of a specific type of contract for a specified term, with AEC support limited to a specified amount or a specified percentage of costs up to a specified support ceiling;

(2) Summarizes the background of the proposal and any pertinent discussion not reflected in the papers attached to the memorandum;

(3) Indicates the extent to which the scope of the work proposed has been approved;

(4) Indicates the principal investigator and other necessary details;

(5) Indicates the total estimated cost of the research and other major aspects of the contract, by reference to the proposal or otherwise;

(6) Indicates whether title to property to be acquired under the contract is to be vested in the AEC or the contractor;

(7) Indicates whether Restricted Data or other classified information is likely to be used or developed in the course of the work and such classification and security determination as may be appropriate;

(8) Indicates directions for special reports, if any;

(9) Gives such additional information as may assist the Field Office in the finalization of the contract; and

(10) Designates the appropriate organizational unit of AEC Headquarters Program Division and individual that will have technical cognizance over the work under the contract.

§ 9-4.5106-7 Changes in scope and level.

After a contract has been authorized by the AEC Headquarters Program Division, and prior to execution of a contract, the field office shall not approve any significant change in technical scope, funding, specified result, performance, principal investigator, or other major aspect of the work without AEC Headquarters Program Division prior approval.

§ 9-4.5106-8 Notification of contract execution.

Promptly after execution of a contract, the appropriate AEC Headquarters Program Division should be notified of such action.

§ 9-4.5107 Standard contract forms.

§ 9-4.5107-1 General.

Outlines of standard contract forms for special research support agreements and cost-type contracts with educational institutions, for research performed in facilities owned or controlled by the contractor (as distinguished from Government-owned or Government-controlled facilities), are set forth in §§ 9-16.5002-8 and 9-16.5002-9, respectively. It is intended to provide through these documents a vehicle by which research tasks can be accomplished with a minimum of administrative effort. It is therefore important that such contracts be written in such a manner as to assure the complete understanding of the parties as to the job to be performed and the financial and administrative details connected therewith. Of special consideration is the nature of research contracting in contrast to the procurement of supplies or activities of a production nature. It is recognized that wide latitude in the conduct of research by the institutions is generally desirable and the standard contract forms are designed to permit such latitude in the overall establishment of the rights and obligations of the parties.

§ 9–4.5107–2 Special research support agreements.

(a) The special research support agreement outlined in § 9–16.5002–8, is generally used for basic research with educational institutions when the annual AEC support under the agreement does not exceed $500,000. It provides that AEC's monetary obligation will be a specified amount, which is referred to as the support ceiling, or a lower adjusted amount (referred to as the cumulative support cost) if actual costs chargeable to the AEC during the total period of the contract are less than expected. The ceiling on AEC's monetary support will be determined and established as a support ceiling at the outset of the initial contract period, generally an annual period; the initial support ceiling will be the amount of AEC support made available in connection with the initial contract period. In the event the AEC and the Contractor agree to extend the contract for an additional period or periods of performance, the ceiling on AEC's monetary support (support ceiling) would be increased to reflect any increased support by reason of the extended period or periods. The costs chargeable to the AEC (support cost) will be reported for each pertinent period of the contract specified in Appendix A (generally an annual period) in accordance with paragraphs (b) and (c) of this section, and the support cost determined for each such contract period will be accumulated for all periods of contract performance, as will the support ceiling. The monetary obligation of the AEC to the Contractor will not exceed the cumulative support cost or the accumulated support ceiling, whichever is less. Upon termination, or expiration of the total period of performance, the Contractor will refund to the AEC, or make such other disposition as the AEC may direct, any funds advanced by the AEC to the Contractor in excess of the cumulative support cost incurred under the contract. Payment shall be made in consideration for the Contractor's performance of research activities described in the contract and in accordance with the provisions of the contract. The Contractor shall have the right to discontinue performance of research under the contract, upon written notice to the AEC, at any time when or after the total costs chargeable to the AEC equal or exceed the support ceiling. Certain deviations in performance and other actions require AEC approval as stated in § 9–4.5112–5; among other approval requirements, the Contractor must obtain AEC's approval to incur costs for items set forth in Article A–II(a), during the pertinent contract period stated in Appendix A, in excess of 110 percent of the total estimated cost specified in Article A–III for the specified contract period. In those cases in which there is to be proportionate sharing of costs, the percent of the costs to be borne by the AEC will be set forth in Article A–III of the contract (see paragraph (c) of this section).

(b) The Contractor will be required to furnish a certified statement (within 3 months after the expiration of the pertinent contract period set forth in Appendix A—and at the termination or expiration of the contract) signed by an authorized official showing the total cost, support cost, and contractor contribution, if any, for the prior contract period. The format for this report is found in § 9–16.5002–8, Appendix C.

(c) It is expected that in many cases the Contractor will propose to contribute to the cost of the research work (see § 9–4.56 for policy on cost sharing). Such proposed contribution shall be set forth in Appendix A of the contract, either (1) as items under (b) or (c) of Article A–II which will be contributed solely by the Contractor without charge to the AEC, or (2) as a proportionate cost-sharing agreement in Article A–III which will provide that the Contractor will charge AEC only a specified percentage of the actual cost incurred for items under (a) of Article A–II. Proposed Contractor contributions should ordinarily be listed under (b)(1) of Article A–II when (1) the contribution is the principal investigator or other senior personnel who are likely to be involved in the research work to the same extent whether their cost is included in or excluded from proportionate cost sharing, (2) the proposed contribution to the work is being paid for by a third party, e.g., personnel or equipment the cost of which is being reimbursed under another contract or grant from public or private sources, and (3) the proposed contribution does not involve any cash expenditure by the Contractor. Only those items, the cost of which are to be charged to the AEC or proportionately shared by the parties, should be listed under Article A–II(a). Proportionate sharing of the cost of items under Article A–II(a) should be provided for only when the Contractor agrees to pay a specified percentage of the cost of all such items, and when such sharing is expected to be of financial benefit to the AEC. In those cases in which there is to be proportionate cost sharing, the Contractor should generally be encouraged to continue the same sharing ratio throughout the life of the contract so as to provide for ease of administration and to avoid difficulties in determining proper charges to the AEC. When the contract provides for proportionate cost sharing, it should be understood that the AEC will pay only the specified percentage of the actual cost of items under Article A–II(a) incurred during the pertinent contract period specified in Appendix A, up to a maximum of 110 percent of the estimated support cost set forth in Article A–III for the pertinent contract period unless otherwise specifically approved by the AEC, and subject to the support ceiling set forth in Article III.

(d) If the Contractor proposes to contribute the cost of the principal investigator(s) on the project and requests that the contribution be excluded from A–II (b), the contributed time or effort should be shown in A–II(c). In any event, Article A–I should include a statement regarding the approximate percentage of time or effort that the principal investigator(s) expects to devote to the contract work. If the principal investigator(s) is included under A–II(c), the Contractor would not be required to maintain records regarding the amount of effort contributed by the principal investigator, and the Contractor would not be required to certify in accordance with Appendix C of the contract regarding the amount of effort contributed by the principal investigator. The principal investigator may be included in Article A–II(a) for purposes of obtaining AEC reimbursement of hi. costs during the summer months, and excluded from Article A–II(a) for the academic year if the Contractor proposes to contribute the costs for that period. The contract generally will not require the Contractor's commitment that any particular amount of time or effort by the principal investigator(s) or other personnel will be devoted to the work under the contract. In the event a proposed Contractor contribution is included in Article A–II (b)(1), the contract should reflect the nature and extent of the Contractor's intent to contribute the item, and the Contractor shall maintain records adequate to permit the AEC to determine the extent of the contribution. The Contractor shall certify, in accordance with Appendix C of the contract, the extent to which the item or items under Article A–II(b)(1) have been contributed. Government-owned property to be procured, fabricated, or furnished under Article IV or Article B–IX of the contract and other Government-furnished equipment, supplies, materials, or services should be excluded from Article A–II(a) and listed under Article A–II(b)(2).

(e) If the special research support agreement outlined in § 9–16.5002–8 is to be used for not-for-profit organizations other than educational institutions, Article B–XXIX, Determination of Support Cost, should be revised to provide that the AEC's commercial cost principles (AECPR 9–15) will be used in determining actual cost, or the contract provisions may be revised at the direction of the cognizant AEC headquarters division or office to provide for a lump-sum payment to the Contractor in consideration for its performance of particular research at a specified level of effort. The special research support agreement outlined in § 9–16.5002–8 may also be used for supporting research at educational institutions in foreign countries; however, at the discretion of the cognizant AEC headquarters division or field office, the outline of § 9–16.5002–8 may be revised to provide for a lump-sum payment to the foreign institution in consideration for its performance of particular research at a specified level of effort, and to limit approval requirements to those considered consistent with the nature of the support to the foreign institution. All such agreements with foreign institutions should provide that any unused AEC funds available to the foreign institution at the end of the contract term shall be used in a renewal period of the contract, returned to the AEC, or otherwise disposed of, in accordance with AEC instructions.

§ 9–4.5107–3 Cost-type contract.

The cost-type contract for research by educational institutions, outlined in § 9–16.5002–9, is generally used when the annual AEC support under a contract exceeds $500,000, or when the cost of the project cannot be estimated in advance with reasonable accuracy. In many cases the contractor shares in the cost of the work conducted under the contract, although this is not a prerequisite for AEC support (see § 9–4.56 for policy on cost sharing and Article III of § 9–16.5002–9). The contract provides for reimbursement to the contractor of allowable costs incurred, within a specified ceiling, for performance of the research in accordance with the provisions of the contract. Allowable costs are determined in accordance with OMB Circular No. A–21, revised, FBR Subpart 1–15.3, and § 9–15.103. (For cost-type contracts with not-for-profit institutions other than educational institutions or research foundations established by educational institutions, reimbursement of costs is in accordance with the applicable AEC commercial cost principles.) Certain deviations in performance and other actions under the contract require AEC approval as specified in the contract. Such approval requirements will be in accordance with § 9–4.5112–5, to the extent necessary and appropriate.

§ 9–4.5108 Personal property.

§ 9–4.5108–1 Ownership of property.

(a) Pursuant to Public Law 85–934, title to equipment purchased or fabricated with funds provided by AEC under contracts for the conduct of basic or applied scientific research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research, where it is determined to be in furtherance of the objectives of the AEC, may be vested in the contractor.

(b) In addition to the authority referred to in paragraph (a) of this subsection, the Atomic Energy Act authorizes the Commission to vest title to items of equipment and other personal property in a contractor when the transfer serves a programmatic purpose.

(c) A programmatic determination as to vesting title to property shall be obtained from the cognizant program division.

(1) For property to be purchased or fabricated under the contract the programmatic determination will be shown on the pertinent Contract Authorization Form AEC–481 or other appropriate document.

(2) For AEC-held property whether purchased or fabricated under the contract, and for GSA-held property, as outlined in § 9–4.5108–2, the AEC field office will request (in any manner considered appropriate) a programmatic determination of the cognizant Headquarters Program Division.

§ 9–4.5108–2 Acquisition of excess Government personal property.

(a) The utilization of certain items of excess Government personal property by educational institutions is encouraged in the interest of conserving funds otherwise designated for similar items of property in existing research contracts or agreements with such institutions. Excess Government personal property includes all types of equipment and materials, used or new, which are owned by the Federal Government and are no longer needed by the holding Federal agency, but have additional useful life (for policy on ADP equipment, see FPMR 101–32.3). Consistent with GSA regulations (FPMR 101–43.320) excess personal property may be furnished to a contractor (with or without transfer of title) upon authorization by AEC provided a determination is made that the acquisition will result in a reduction in the cost to the Government of the contract or will result in an enhancement in the product or the benefit from the contract. This procedure will not normally be used for the acquisition of general purpose equipment (e.g., desks, typewriters, air conditioners).

(b) Contractors may obtain information concerning the availability of certain kinds of equipment or materials by requesting the cognizant AEC office to have them placed on the GSA mailing list. When an item of equipment or material is selected, the contractor should reserve it by notifying the cognizant GSA office and confirm the reservation in writing. Availability is usually on a first-come, first-served basis, but GSA will give preference in a competing situation to those agencies which do not vest title to property in the contractor. The contractor should then submit a Standard Form 122, Transfer Order Excess Personal Property, to the cognizant AEC office, accompanied by a written justification of need, including the estimated cost of acquisition (e.g., packing, shipping, installation, rehabilitation, etc.), signed by the principal investigator and an authorized administrative official. The written justification shall contain a statement as to whether or not the contractor desires title to the property. If the acquisition is approved, in accordance with § 9–4.5108–1 (c)(2), the AEC office shall forward the SF–122 to the appropriate GSA office with a notation as to whether or not the AEC intends to vest title to the property in the contractor. A copy of the approved SF–122 with the notation regarding the vesting of title shall be returned to the contractor. When the property is received, the contractor shall forward to the AEC office a receipted copy of the SF–122 which lists the items of property.

(c) In those instances where the contractor's acquisition of title has been approved by the AEC, title to the property shall pass to the contractor when the receipted SF–122 is received by the AEC office, pursuant to Article B–IX(b), property items, of § 9–16.5002–8 or Article II, Appendix A of § 9–16.5002–9, as appropriate. Contract funds may be used to pay for all costs of packing, transportation, installation, rehabilitation and/or maintenance, if required.

(d) In those instances where the contractor did not desire title or where the cognizant AEC office has determined that title to the excess property should remain in the Government, the property will be handled as Government property in accordance with Article B–IX of § 9–16.5002–8 or Article B–26 of § 9–16.5002–9, as appropriate.

§ 9–4.5109 Reporting requirements.

§ 9–4.5109–1 Purpose of reports.

Research reports from contractors are necessary to provide AEC, and, where appropriate, the public, with a record showing the progress achieved under projects receiving AEC support. In many instances, the research reports are of value in making information available to scientists working on closely allied problems.

§ 9–4.5109–2 Summary—200 words.

Immediately after a contract is negotiated, a summary of approximately 200 words (SIE form) covering the purpose and scope of the project should be sent by the contractor to the appropriate AEC field office. In connection with each renewal proposal, the 200-word summary should be revised to include the significant results and conclusions of the former years' work and a statement of the scope and objectives of the following year.

§ 9–4.5109–3 Progress reports.

Progress reports should briefly describe the scope of the investigations undertaken and the significant results obtained. They should also explain any significant differences between the actual level of activity (expressed in the various categories of man months, facilities procured, travel performed, etc.) and that contemplated in the contract.

§ 9–4.5109–4 Technical reports.

Technical reports, preprints, and articles prepared for publication during the period covered should be listed with bibliographic references. Reprints of all such material not previously submitted should be appended and material contained in them need not be duplicated in the report.

§ 9–4.5109–5 Special reports.

Special reports or additional progress, status, or topical reports may be requested when needed by the appropriate AEC Headquarters Program Division or AEC field office or may be submitted as deemed necessary by the contractor. For example, brief status reports may be requested when developments are of immediate interest or when a significant point in the investigation has been reached.

§ 9-4.5109-6 **Final report.**

A final report summarizing the entire investigation shall be required from the contractor upon expiration of each contract. Satisfactory completion of a contract will be contingent upon the receipt of this report. The final report should follow the outline agreed upon for progress reports or, when a project has extended over a long period of time, the final report may refer to previously submitted technical reports for details and may be a synopsis of the entire project. Manuscripts prepared for publication should be appended.

§ 9-4.5109-7 **Equipment report.**

(a) An equipment report itemizing equipment having an anticipated service life of 1 year or more and an acquisition cost in excess of $200 for special research support agreements and $300 ($200 if the contractor prefers) for cost-type contractors either purchased or fabricated, when title to such equipment is vested in the contractor, shall be furnished by the contractor immediately following the expiration of the contract year, in accordance with Article B-XXI of the special research support agreement set forth in § 9-16.5002-8 (omit any item covered by Article V, Government Property, of this contract), and in accordance with the requirements of Appendix A-III of the cost-type contract set forth in § 9-16.5002-9. Where the cost of individual pieces of equipment exceeds $1,000, they shall be listed individually. Where individual items cost between $200 and $1,000 for special research support agreements or $300 ($200 if the contractor prefers) and $1,000 for cost-type contracts, they shall also be listed individually to the extent practicable, or grouped in general categories, such as "electronics equipment" or "six motors," with the total dollar amount of such category. The cost of purchased items shall be determined by the actual invoice cost of such items, but the cost of fabricated items may be established by engineering estimates.

(b) In order to satisfy the requirements of the Grant Act (Public Law 85-934), Managers of Field Offices shall forward to the Director, Division of Contracts, not later than March 15 of each year, the original and one copy of each equipment report referred to in paragraph (a) of this section, identifying each item purchased with AEC funds and titled in the contractor under the Grant Act, submitted by contractors for the preceding calendar year.

§ 9-4.5109-8 **Summary and distribution of reports.**

A table summarizing the various types of reports, time for submission, number of copies and distribution is set forth below. The distribution and schedule of reports shall be as prescribed in this table, unless the authorizing program division specifies otherwise. Frequently, an annual progress report and a 200-word summary are sufficient for fundamental research, but additional reporting may be required in many cases. These reports are prepared by the contractor and submitted to the appropriate AEC field office for distribution. The AEC field office shall transmit these reports with a covering memorandum indicating: (a) The other AEC offices receiving the documents, (b) the name of the contractor, and (c) the contract number. Each copy of the documents should bear the contract number.

DISTRIBUTION AND SCHEDULE OF DOCUMENTS

Type	When due	Number of copies for: Field office	Headquarters program division	DTI ext. Oak Ridge [a]	Headquarters patents OGC
1. Summary: 200 words on scope and purpose (S.I.E. Form).	At start of initial contract and each renewal period	1	3		
2. Renewal proposal	Not later than 3 months nor earlier than 6 months before contract expires.	2	4		
3. Annual progress reports [b c]	With renewal proposal, but bound separately	2	4	[a] 1	
4. Other progress reports, brief topical reports, etc. (Desired when significant results develop or when work has direct programmatic impact.) [b c]	As deemed necessary by investigator or as specifically requested by appropriate headquarters division.	2	4	[a] 1	
5. Conference papers [c]	Same as 4 above	2	4	[a] 1	
6. Final report [b c]	When contract is completed	2	2	[a] 1	1

[a] AEC contract administrator informs contractor which types of documents are to be transmitted to DTIE. For each document so identified, contractor sends the additional copy to the contract administrator for transmittal to DTIE, accompanied by one copy of AEC Form 427.

[b] Report shall be prefaced by an informative abstract of no more than 200 words.

[c] § 9-4.5109-4 requires the listing of technical reports, articles, and preprints and the appendage of reprints not previously submitted.

§ 9-4.5110 **Dissemination of results.**

§ 9-4.5110-1 **Prompt dissemination.**

Prompt dissemination of research results to the scientific community is encouraged. Publication in open literature is recognized as the normal and most desirable means for reporting the finding of unclassified fundamental research. Although the AEC reserves the right to utilize, and have others utilize, to the extent it deems appropriate, the reports resulting from research contracts, the AEC will attempt, to the maximum extent reasonably practicable and consistent with the Government's best interest, to permit the institutions and the authors to effect their own publication in established technical journals. (See Part 9-9 for copyright requirements which must be observed.)

§ 9-4.5110-2 **Publication.**

(a) Contractors are urged to publish results through normal publication channels. As a further inducement, page charges or other printing assessments for publishing articles in recognized scientific journals or any additional costs incurred in obtaining a limited supply of reprints of articles will be considered an appropriate budget item under contracts receiving AEC support where:

(1) The document reports work supported by the Government;

(2) The charges are levied impartially on all research papers published by the journal, whether by non-Government or by Government authors;

(3) Payment of such charges is in no sense a condition for acceptance of manuscripts by the journal;

(4) The journals involved are not operated for profit;

(5) The author does not receive an emolument for the research paper.

(b) A credit line should be included in any such publication to indicate that the research has been supported, in whole or in part, by the AEC. A patent check shall be made in advance of release to the public of any material prepared for publication. Generally, however, in the case of most basic research projects, the principal investigator may publish without prior AEC approval, unless he determines that the material being released may disclose an invention. (See paragraph (b) in Appendix B-III of § 9-16.-5002-8 and Appendix B-6 of § 9-16.-5002-9.)

§ 9-4.5111 **Extension of contracts.**

§ 9-4.5111-1 **Renewal proposals.**

(a) Where additional time, beyond the current expiration period, is required to continue or complete the work, the Contractor should submit six copies of a renewal proposal to the AEC field office that has administrative jurisdiction of the existing contract, not later than 3 months nor earlier than 6 months before the date of expiration of the contract.

(b) The renewal proposal should outline and justify a proposed program and budget for the succeeding year, showing in detail the estimated cost of the project, together with an indication of the items for which the Contractor is requesting AEC reimbursement or proportionate cost sharing, the percentage of any such costs to be shared by the Contractor, and any items to be contributed solely by the Contractor (see § 9–4.56 for policy on cost sharing). It should include the same type of information as that required for initial proposals or reference this information to the extent contained in earlier proposals. Any contemplated change in program or scope for the ensuing period should be justified and explained clearly, and the cost estimates and other items should be based upon past experience. Any deviation from the contract during the current period requiring AEC approval as provided for in the contract, which has not received such AEC approval, should be explained in detail, and the AEC's right to approve or disapprove shall be the same as for a request timely made by the Contractor.

(c) The renewal proposal should include a financial statement of the work under the current contract, including:

(1) Total project costs for the current period to date, indicating the amount chargeable to the AEC;

(2) An estimate of the total costs to be incurred during the remainder of the current contract period, indicating the amount chargeable to the AEC;

(3) Under special research support agreements, the anticipated difference, if any, between the accumulated support cost at the end of the current contract period and the cumulative AEC support ceiling; and

(4) A footnote to show the estimated amount of outstanding commitments for property at the end of the current contract period.

§ 9–4.5111–2 Evaluation of requests for renewals.

(a) Requests for renewals are evaluated by the appropriate AEC Headquarters Program Division in the light of:

(1) Progress report submitted by the Contractor;

(2) Research results published in scientific media;

(3) Field visits to the research site by technical personnel;

(4) Contractor's performance; and

(5) Availability of funds and relative importance of projects in relation to other proposed research.

(b) Requests for renewals generally follow the same process of review and evaluation of technical aspects and funding, preparation, and execution of the contract, and administration as a new project, although less use would normally be made of outside consultants. Contracts authorized by AEC Headquarters Program Divisions shall not be extended for a new term or on an interim basis or modified in scope without specific prior authorization from the appropriate AEC Headquarters Program Division, except as provided in § 9–4.5111–3.

§ 9–4.5111–3 Authorization to renew.

(a) When a determination has been made to extend a contract, the sponsoring AEC Headquarters Program Division shall provide the appropriate AEC field office with an authorizing directive early enough (usually about 4 weeks in advance of expiration) to permit an orderly completion of the extension agreement before the expiration date. The authorizing directive should include generally the same type of information provided in the authorization of a new contract, including pertinent information concerning any changes in scope of work, level of funding, scheduled dates for completion of certain phases of work, target dates for submission of reports, etc.

(b) An authorization to renew a special research support agreement shall also state the estimated total cost of items to be included under Article A–II (a) of Appendix A for the renewal period, the percentage of such costs to be reimbursed by the AEC, and the amount of new funds authorized to increase the AEC support ceiling.

(c) The AEC field office that has administrative jurisdiction of an existing contract, may extend the term of an existing contract without authorization from the cognizant Headquarters Program Division, provided that:

(1) Any such extension does not provide for an increase in the AEC's monetary obligation under the contract;

(2) That the scope of work is not revised by such extension;

(3) That such extension is necessary to permit completion of the scope of work authorized by Headquarters, including preparation of required reports; and

(4) That any such extension will not be for a period in excess of 90 days.

§ 9–4.5112 Administration.

§ 9–4.5112–1 Responsibilities of AEC Headquarters Program Divisions.

(a) Technical representatives of AEC Headquarters Program Divisions will make, to the extent practicable, periodic site visits, at least once each year on larger projects, and no less than once every 3 years on smaller projects. A written summary of the results of all visits will be prepared and filed promptly upon return to AEC Headquarters. Copies of such reports shall be forwarded to the appropriate AEC field office whenever they contain information of administrative interest or other information that the AEC Headquarters Program Division determines is pertinent to the assigned responsibilities of the field office. These visits are for the purpose of:

(1) Determining that the research is being performed in accordance with the contract.

(2) Ascertaining that schedules are being met to insure timely submission of interim and final reports.

(3) Determining whether the project has adequate facilities, equipment, and scientific, technical, and other personnel for the specified research.

(4) Ascertaining that any equipment requested for purchase is not reasonably available within the institution.

(5) Assisting the principal investigator to clarify specific technical aspects as work progresses.

(6) Exploring future budget requirements, but without making any commitments either personal or on behalf of the AEC as to future funding level.

(7) Obtaining information regarding the status of work for administrative and technical purposes of the Program Division sponsor.

(b) AEC Headquarters Program Divisions will provide guidance to the AEC field offices in connection with:

(1) Any contractor requests for approval of proposed deviations or other actions requiring AEC approval which are brought to their attention by AEC field offices, or which have been brought to their attention through site visits, progress reports, or other contacts with the contractor;

(2) Increasing the obligational authority under any special research support agreement or cost-type contract;

(3) [Reserved]

(4) Whether or not required contractor reports are satisfactory; and

(5) The renewal or closeout of contracts; instructions in this regard should be provided at least 4 weeks prior to the expiration date of a contract.

§ 9–4.5112–2 Responsibilities of AEC Field Offices.

AEC Field Offices are responsible for the following:

(a) Assisting AEC Headquarters Program Divisions, as requested, in carrying out the functions set forth in § 9–4.5112–1.

(b) Performing the necessary administrative functions required by the terms of the contract, and making payments in accordance with the contract.

(c) [Reserved]

(d) Bringing to the attention of the appropriate AEC Headquarters Divisions:

(1) Any contractor requests for approval which are required by the contract;

(2) [Reserved]

(3) [Reserved]

(4) The upcoming expiration date of a contract whenever required instructions on renewal or closeout have not been received on a timely basis; and

(5) Any request by a contractor to revise an established stipulated salary support amount, and any notification by a contractor that it is reducing the charges to the AEC under the stipulated salary support procedure (see § 9–4.5106–3a (c)).

(e) Determining whether to use the Grant Act (Public Law 85–934) or the Atomic Energy Act of 1954, as amended, as the authority for vesting title to personal property in the contractor when authorized to do so pursuant to § 9–4.5106–6(c)(6). The Grant Act shall be used to the maximum extent consistent with the authority contained therein.

§ 9–4.5112–3 Payments under special research support agreements.

(a) Payments will be made to contractors under a special research support agreement in accordance with the contract provisions (see Article B–XI of § 9–16.5002–8). The letter of credit procedures, as provided for in Treasury

Fiscal Requirements Manual, Part VI, Section 1020, shall be used to the maximum extent feasible when the total of AEC contracts with advance financing at an institution provides for a continuing annual level of support of $250,000 or more. When the total AEC contracts with advance financing provides for an annual level of AEC support of less than $250,000, AEC shall make advance payments covering the first 90 percent of the amount of the new funds as set forth in Article A–III(b) of the contract. The field office may revise Article B–XI of § 9-16.5002-8, regarding the timing and amounts of advance payments, in accordance with the following provisions. The advance payments may be made at times and in amounts determined by the field office, provided that no single payment will exceed 45 percent of the new funds as set forth in Article A–III(b) of the contract for the pertinent contract period except on the basis of a request from the Contractor evidencing that a specified amount is required in connection with expenditures or commitments made under the contract. The timing and amounts of payments should be determined on the basis of limiting the amount of advances to the extent feasible consistent with effective and efficient contract administration and performance of the research, for the purpose of slowing the rate of cash withdrawals from the Treasury and thereby decreasing the financing costs to the Federal Government. In determining the timing and amounts of payments, consideration should be given to funds already available to the Contractor, the expected expenditures under the contract, any information from the Contractor regarding the need for funds, and the administrative cost of additional payments.

(b) If the contract is to be extended for an additional period of performance with additional funding, there may be paid at the time of execution of the extension the amount withheld from the expiring period which when added to the payments already made does not exceed the new funds set forth in A–III(b) for the expiring period. The final payment under both of the procedures referred to in paragraph (a) of this section shall be made on the basis of determinations by the contracting officer that: (1) The required reports are satisfactory; (2) that the research was performed in accordance with the provisions of the contract; (3) that an additional payment is required to reimburse for all costs chargeable to the AEC; and (4) that an appropriate patent clearance has been obtained. If necessary in making the determinations, the contracting officer should obtain advice from the technical personnel of the AEC Headquarters Program Division based upon their visits to and other contacts with the research project during the contract period as well as their technical review of the report. It is expected that the annual progress and final reports and the Contractor's certified cost statements will provide an adequate basis for making the determinations required by subparagraphs (2) and (3) of this paragraph. If the determinations cannot be made on the basis of a consideration of the reports, visits to and other contacts with the research project during the contract period, and the Contractor's certified statements, the contracting officer may invoke the audit provision of the contract. In the event the contracting officer determines that the Contractor has not satisfied the contractual undertakings, appropriate steps shall be taken to protect the Government's interests.

§ 9-4.5112-4 Payments under cost-type contracts.

Payments for allowable costs incurred under cost-type contracts will be made in accordance with the provisions of the contract. Payments will generally be made on the basis of after-the-fact reimbursement of contractor costs upon submission by the contractor of an appropriate monthly invoice or voucher. However, when the total of AEC contracts at an institution provide for a continuing annual level of support of $250,000 or more, the letter of credit procedure, as provided for in Treasury Fiscal Requirements Manual, Part IV, section 1020, shall be used to the maximum extent feasible.

§ 9-4.5112-5 AEC approval of deviations in performance and other specified actions.

(a) Contractors should inform the cognizant AEC field office as soon as possible of contemplated deviations and other proposed actions which require AEC approval. Specific deviations and actions under special research support agreements which require AEC approval include the following:

(1) A change of the principal investigator, co-investigator, or other key people as might be named in the contract or continuation of the research work for any one period in excess of 3 months without direction by an approved principal investigator. The principal investigator may increase or decrease the amount of effort which he devotes to the project without obtaining Commission approval; however, a representative of the institution shall consult with the appropriate AEC Headquarters program representative if the principal investigator plans to, or becomes aware that he will, devote substantially less effort to the work than anticipated in Article A–I. The purpose of such consultation will be to determine what effect, if any, the anticipated change will have on the research work and what modification to the contract, if any, may be appropriate.

(2) A change in the phenomenon or phenomena under study, i.e., broad category of the research under the contract, requires the specific written approval of the AEC; ordinarily, such changes, if approved by the AEC, will be accomplished through a new contract or a mutually agreed to modification. The contractor may change the specific objectives in the research work described in the contract, provided it gives the AEC prompt notification of such changes; and the contractor may continue to follow the new objectives while the AEC determines whether it wishes to continue the program under the changed approach. Significant changes in methods or procedures employed in performing the research should be reported in the first technical progress report issued subsequent to the changes.

(3) Acquisition of:

(i) An item of equipment not itemized in the contract, the cost of which is $1,000 or more. Approval is not required if the equipment is merely a different model of an item listed in the contract; or

(ii) An item or items of equipment the cost of which will cause the total equipment dollar level shown in Article A–II(a) of the contract to be in excess of 125 percent thereof. (If plant and capital equipment funds are provided for the acquisition of equipment, with title to be vested in the Government, the total cost of such shall not exceed the amount provided for such equipment unless prior AEC approval has been obtained.)

(4) Purchase of any general-purpose equipment, such as office furniture, air conditioning, etc., not specifically provided for in Appendix A of the contract.

(5) Incurring costs for items set forth in Article A–II(a), during the pertinent contract period stated in Appendix A, in excess of 110 percent of the total estimated cost specified in Article A–III. Charges to the AEC for any such costs incurred with approval of the AEC shall also be subject to the limitations of Article III.

(6) Any proposed foreign travel (defined as any travel outside of Canada and the United States and its territories and possessions).

(7) Expenditures for domestic travel in excess of $500, or 125 percent of the amount shown in Article A–II(a) for such travel, whichever is greater.

(8) Acquisition of excess personal property.

(9) Such other items as in the judgment of the Program Division or the field office, in specific cases need to be separately identified in the contract. (When plant and capital equipment funds are provided for the acquisition of Government property, the Headquarters Program Divisions may require, in specific cases, that such funds shall be used only for acquiring the equipment designated in the contract unless prior AEC approval has been obtained.)

(b) The AEC field office will present (in any manner considered appropriate) all such requests for approval to the cognizant AEC Headquarters Division for consideration, and will issue such authorizations and modifications under the contract as are necessary and appropriate.

(c) Contractors may be requested by the AEC field office to provide such statements of the project's financial and program status as are believed necessary for considering requests for approval.

(d) The above approval requirements and procedures shall apply to all special research support agreements for basic research with educational institutions.

The Program Division or the field office may include these specific approval requirements in cost-type contracts with educational institutions (§ 9–16.5002–9) to the extent necessary and appropriate. These approval requirements and procedures may also be included in contracts for applied research with educational institutions and for research with other not-for-profit organizations to the extent deemed appropriate by the cognizant AEC Headquarters Division and the AEC field office. In contracts for applied research, paragraph (b) of this section will generally be revised to require AEC prior approval of any change in the specific objectives of the research work.

§ 9–4.5112–6 Auditing.

(a) As a part of the AEC-wide management of the research program accomplished through these contracts, auditing of participating contractors should be carried out by the AEC field office administering the contract. The purpose of this program of audit, provision for which is contained in the contracts is to corroborate that the participating institutions are properly using the funds and personal property provided by the contracts and to point up any changes needed in the contractual arrangements or in related administrative requirements in order to further the effectiveness of the contracts in accomplishing their intended programmatic research purposes. In addition to the general objectives stated above, the principal specific objectives in the audits of special research support agreements should be to determine: (1) That the amounts as submitted in the contractor's certified statement are accurate and were incurred in connection with the contract work; (2) that satisfactory documentary evidence is available in support of the costs incurred; (3) that AEC approval was obtained where required; and (4) that the proportion of total cost charged to AEC is in accordance with the percentage stipulated in the contract. For cost-type contracts, on the other hand, the audit should include a verification by acceptable audit techniques, of the allowability, applicability, and reasonableness of the costs charged to the contract work.

(b) The review of special research support agreements will be made on a selective basis with the selected sample including all special research support agreements where the contracting officer requested that an audit be performed pursuant to the provisions of § 9–4.5112–3(b). The audit of cost-type contracts will be in accordance with the criteria set forth is section 2.024 of the AEC Audit Handbook.

(c) In the event of termination prior to the expiration date of a cost-type contract or special research support agreement unless the costs incurred by the contractor are relatively small or can be otherwise adequately corroborated, an audit should be made to determine the nature of the costs and other relevant data for use in arriving at a termination settlement.

(d) While audit is not a prerequisite to AEC's making payments under a contract, audit is necessary prior to making final payment under cost-type contracts and under any special research support agreement when the contracting officer specifically requests an audit to determine whether the charges to the contract are proper or when other conditions indicate that such an audit is warranted. If any such audits result in findings which may be of value to Headquarters Divisions in their determinations regarding selection and renewal of research projects, such findings should be made available to the cognizant Headquarters Division.

§ 9–4.5112–7 Security.

As a general rule, it is not anticipated that investigators will need access to classified information in the conduct of basic research supported or sponsored by the AEC. When, in the judgment of the principal investigator, information is developed which should be classified, he or the contracting institution will notify the appropriate AEC field office immediately. When in the opinion of the cognizant AEC Headquarters Program Division, the work moves into a classified area, prompt steps should be taken to notify the contractor and the appropriate AEC field office.

§ 9–4.5112–8 Patents.

Article B–VIII(d) of the special research support agreement set forth in § 9–16.5002–8 and Article B–7(d) of the cost-type contract set forth in § 9–16.5002–9 provide for exceptions to the requirement for inclusion of this article in subcontracts, if authorized by the Commission in writing. A letter of exception may be issued, upon request with respect to purchase orders for standard or normal facilities, equipment, materials, and supplies, and other purchase orders for products where the consideration does not include compensation or other allowance for research.

2. In Subpart 9–16.50, Contract Outlines, § 9–16.5002–8, *Outline of special research support agreement with educational institutions*, is revised as follows:

Subpart 9–16.50—Contract Outlines

§ 9–16.5002–8 Outline of special research support agreement with educational institutions.

Contract No. ------

This agreement is effective as of the ------, 19--, between the United States of America (hereinafter referred to as the "Government"), acting through the U.S. Atomic Energy Commission (hereinafter referred to as the "Commission"), and ------------------------ (hereinafter referred to as the "Contractor").

RECITALS

The Commission wishes to have the Contractor perform certain research. This agreement states the terms and conditions under which the Contractor agrees to perform the work.

This agreement is authorized by law, including the Atomic Energy Act of 1954, as amended.

AGREEMENT

Now therefore, the parties hereto agree as follows:

ARTICLE I—THE RESEARCH TO BE PERFORMED

(a) The Contractor shall, to the best of its ability, furnish personnel, facilities, equipment, materials, supplies, and services, except such as are furnished by the Government, necessary for the performance of the research provided for in Appendix A and shall perform the research and report thereon pursuant to the provisions of this contract. It is understood that Appendix A, a guide to the performance of this contract, may be deviated from by the Contractor subject to the specific requirements of this contract.

(b) This work shall be conducted under the direction of ------------------------ or such other member of the Contractor's staff as may be mutually satisfactory to the parties.

NOTE A.—The description of the research in Appendix A may be omitted and Appendix A appropriately modified to incorporate, by pertinent references to the proposal or other documents, the type of data necessary to describe the research as called for by Appendix A; and where there is no cost sharing, other features may be referenced in lieu of insertion in Appendix A. In such cases, the referenced material will be retained as part of the permanent contract file.

ARTICLE II—THE PERIOD FOR PERFORMANCE

The period of performance under this contract shall commence on ------ 19-- and expire on ------ 19--. Performance may be extended for additional periods by the mutual written agreement of the parties. It is presently expected that this contract will be extended by mutual agreement until ------ 19--.[1]

ARTICLE III—CONSIDERATION

(a) In full consideration of the Contractor's performance hereunder, the Commission shall furnish the equipment, supplies, materials, and services, if any, listed in Article A–II(b)(2) and pay the Contractor the sum of $--------, hereinafter called the "Support Ceiling" which sum shall be subject to adjustment as hereinafter provided.

(b) Payments to the Contractor shall equal the "Cumulative Support Cost" of performance of this contract, as the term "Cumulative Support Cost" is defined in Article B–XXIX:[2] *Provided, however*, And

[1] This sentence is optional and may be omitted.

[2] The term cumulative support cost refers to the cost of items under A–II(a) of Appendix A, for the initial contract period plus any extension periods, that may be properly chargeable to the AEC. If proportionate cost sharing is involved, the support cost is the AEC's share of such costs, and it does not include the cost of items excluded from Article A–II(a), such as items to be contributed solely by the Contractor or property to be furnished by the Government. Charges to the AEC will be reported after the conclusion of each contract period set forth in Appendix A (generally an annual period); in addition to the limitations on charges to the AEC provided for by this Article III, charges to the AEC for a specified contract period may not exceed 110 percent of the estimated support cost for that contract period except as approved by the AEC (see Article B–XXX). The estimated support cost for each pertinent period of contract performance will be set forth in Article A–III. If Article A–III of Appendix A provides that the cost of the items listed under Article A–II(a) is to be proportionately shared by the parties, the charges to the AEC shall be determined by applying the AEC's sharing percentage set forth in Article A–III to the cost for items under Article A–II(a) incurred during the specified contract period; such charges to the AEC shall also be subject to the 110 percent limitation mentioned above as well as to the provisions of this Article III.

notwithstanding any other provision of this contract, that the Government's monetary liability under this contract shall not exceed the support ceiling specified in (a) above. The Commission shall not pay more than the support ceiling or an amount equal to the cumulative support cost, whichever is less. The Contractor shall be obligated to perform under this contract throughout the agreed-upon period of performance, and to bear all costs which the Commission has not agreed to pay: *Provided, however,* That the Contractor shall have the right to cease to perform the research provided for in this contract, upon written notice to the Commission to that effect, at any time, when or after the cumulative support cost equals or exceeds the support ceiling.

(c) The support ceiling specified in (a) above may be increased unilaterally by the Commission by written notice to the Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification to this contract). In the event the stated period of contract performance is extended, the support ceiling will be revised to reflect any increased Commission support for the extended period or periods.

(d) Upon termination, or expiration of the total period of performance, the Contractor shall promptly refund to the Commission (or make such disposition as the Commission may in writing direct) any sums paid by the Commission to the Contractor under this contract, through direct payment or under letter of credit, in excess of the cumulative support cost incurred in performance under the contract.

ARTICLE IV—GOVERNMENT PROPERTY

The following items of property procured or fabricated by the Contractor are hereby listed as "Government Property." [List all property and equipment, title to which is to remain in the Government. Insert the word "none" if title to all of the property is to be vested in the Contractor: If title to property procured or fabricated by the Contractor is to remain in the Government, add appropriate provisions for payment for such property from plant and equipment funds. Such funds should be in addition to, and not a part of, the "Support Ceiling" funds provided under Article III.]

ARTICLE V—APPENDICES

Appendix A, Appendix B—General Provisions and Appendix C—Statement of Costs, are hereby attached to and made a part of this contract.

In witness whereof, the parties have executed this contract.

UNITED STATES OF AMERICA
By ________________
____
(Title)
UNITED STATES ATOMIC ENERGY COMMISSION
____
(Contractor)
By ________________
(Title)
____

I, ______________________, certify that I
(Attester)
am the ______________________ of the
(Title)
Contractor named under this contract; that ______________________ who signed this
(Signatory)
contract on behalf of said Contractor was then ______________________ of said Con-
(Title)
tractor; that this contract was duly signed for and on behalf of said Contractor by authority of its governing body and is within the scope of its legal powers.

In witness whereof, I have hereunto affixed my hand and the seal of said Contractor.

[SEAL] ______________________
Contractor ______________________
Contract No.________

APPENDIX A

Contractor ______________________
Contract Number ________

For the contract period ____________ through ____________.

Article A-I. *Research to be performed by Contractor.* [Insert description of research activity and state the approximate percentage of time or effort which the principal investigator(s) expects to devote to the work.]

Article A-II. *Ways and means of performance.* [The listing under (a), (b), and (c) below should be in a form to permit determination of which items of cost are to be chargeable to AEC or proportionately shared, and which items are to be contributed solely by the contractor or solely by the AEC; the listing should also permit application of the approval requirements of the contract. Excessive detail in listing should be avoided.]

(a) Items for which support will be provided as indicated in A-III, below. [Do not include in this paragraph (a) any items which are to be contributed solely by the Contractor, see § 9-4.5107-2(c).]

(1) *Salaries and wages.* [State total dollar amount. If any stipulated salary support amounts for professional staff members are established in accordance with § 9-4.5106-3a, the stipulated amounts, along with any limitations or requirements on the use of such stipulated amounts (see § 9-4.5106-3a(c)) should be provided for in the contract.]

(2) *Equipment to be purchased or fabricated by the Contractor.* [List equipment to be purchased or fabricated by the Contractor and for which title is to remain in the Contractor and state the total dollar amount budgeted for such equipment. Such equipment may be set forth in general classifications as specifically as possible if it is not feasible to list them individually. However, any individual piece of equipment, the estimated cost of which is over $1,000 will be separately identified. Except where the contract may otherwise specifically provide, equipment for the purpose of this paragraph A-II shall mean an item of personal property having a useful life expectancy in excess of 1 year and an acquisition cost in excess of $200.]

(3) *Travel.* (Show amounts for both foreign and domestic. If none, state none.)

Domestic ____________

Foreign ____________

(4) Other direct costs.

(5) Indirect costs based on a predetermined rate of ______ percent. [Show factor or factors of cost to which rate applies—generally direct salaries and wages.]

(b) Items, if any, significant to the performance of this contract, but excluded from computation of Support Cost and from consideration in proportioning costs. (See § 9-4.5107-2(c).)

(1) *Items to be contributed by the Contractor.* In accordance with Article B-II(c), if a proposed Contractor contribution is included in this paragraph (b)(1), the Contractor shall maintain records adequate to permit the Commission to determine the extent of the contribution. If the time or effort of the principal investigator(s) is to be contributed by the Contractor and excluded from A-II(a) and A-II(b), the contributed time or effort should be listed under A-II(c).

(2) *Items to be contributed by the Government.*

(c) Time or effort of principal investigator(s) contributed by Contractor but excluded from computation of Support Cost and from consideration in proportioning costs. [Where covered under A-II(a) or A-II (b)(1) above, state: "None." See § 9-4.5107-2(d).]

Article A-III. The total estimated cost of items under A-II(a) above for the contract period stated in this Appendix A is $________; the Commission will pay ______ percent of the actual costs of these items incurred during the contract period stated in this Appendix A, subject to the provisions of Article III and Article B-XXIX. The estimated AEC support cost for the contract period stated in this Appendix A is $________.

The estimated AEC Support Cost is funded as follows:

(a) Estimated unexpended balance from the prior period(s) $________

(b) New funds for the current period ____________ $________

The new funds being added in A-III(b) constitute the basis for advance payments provided under Article B-XI.

APPENDIX B—GENERAL PROVISIONS

For the contract period ____________ through ____________.

ARTICLE B-I—DEFINITIONS

(a) The term "Commission" means the U.S. Atomic Energy Commission or any duly authorized representative thereof, including the Contracting Officer except for the purpose of deciding an appeal under the article entitled "Disputes."

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government and includes his successors or any duly authorized representative of any such person.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

ARTICLE B-II—INSPECTION, REPORTS, RECORDS, AND ACCOUNTS [1]

(a) The Commission shall have the right to inspect, in such manner and at all reasonable times as it deems appropriate, all activities of the Contractor arising in the course of its undertakings under this contract.

(b) The Contractor shall make progress and other reports in such manner and at such times as specified in Article B-XXI. The Contractor shall also make such other reports to the Commission, with respect to its activities under this contract, as the Commission may reasonably require from time to time.

(c) The Contractor agrees to keep records and books of account, in accordance with generally accepted accounting principles and practices, and consistent with the requirements of OMB Circular No. A-21, revised, as constituted on the effective commencement date of the contract period, covering its costs and expenditures for items included under Article A-II(a) of Appendix A and which are in furtherance of the research work under this contract. In the event a Contractor contribution is listed in Article A-II(b), the Contractor shall maintain records adequate to permit the Commission to determine the extent of the contribution. If professional staff members are

[1] If the contract is for a not-for-profit organization other than an educational institution or a research foundation established by an educational institution, this article should be revised to provide that AEC's commercial cost principles (AECPR Part 9-15) will be used in determining actual cost.

included under Article A-II(b), the Contractor shall maintain records on such personnel in accordance with the payroll distribution procedure of section J.7.b. of OMB Circular No. A-21, revised.

(d) The Commission shall at all reasonable times be afforded access to the premises and to these books and records and to related correspondence, receipts, vouchers, memoranda, and other data of the Contractor; and the Contractor shall preserve such books and papers, without additional compensation therefor, in accordance with the retention requirements referenced in Article B-XVIII, Examination of Records of this Contract.

ARTICLE B-III—PUBLICATION OF RESULTS

(a) Research results obtained under this contract shall be made available to all through normal and accepted channels without restriction except that no restricted data as defined in the Atomic Energy Act of 1954, as amended, or other classified information shall be disclosed to unauthorized persons. Published results shall indicate that the research was supported by the Commission. A copy of each article submitted by the Contractor for publication shall be promptly sent to the Commission. The Contractor shall also inform the Commission when the article is published and furnish ______ copies of the article as finally published.

NOTE: In determining the numbers of copies to be required, reference should be made to § 9-4.5109-8.

(b) It is recognized that during the course of the work hereunder or subsequent thereto, the Contractor, its employees, or its subcontractors, may from time to time desire to publish, within the limit of security requirements, information regarding technical or scientific developments arising in the course of the contract. In order that public disclosure of such information will not adversely affect the patent interest of the Commission, patent approval for release shall be secured from the Commission prior to any such publication.

(In contracts for Theoretical Physics, High Energy Physics, Medium Energy and Neutron Physics, Mathematics, Computer Techniques and Programing, Medical Studies, Biological Studies, Ecological Studies, Meteorology, Solid-State Physics, Geology, Radiation Effects, Theoretical Chemistry, Analytical Chemistry, Crystal Structure, Spectroscopy, Thermodynamics, Chemical Kinetics, Hazards Evaluation, Liquid-State Studies, Cryogenics, Environmental Stream Pollution, and Site Selection, the following provision may be substituted for the last sentence of Article B-III.)

"In order that public disclosure of such information will not adversely affect the patent interest of the Commission, such information shall be withheld from public disclosure if it discloses an invention or discovery; such invention or discovery shall be promptly reported to the Commission for patent review and possible filing of a patent application, and such information shall thereafter be withheld from public disclosure for a period of 4 months unless the Commission approves earlier release."

ARTICLE B-IV—DISCLOSURE OF INFORMATION

Insert § 9-7.5004-22.

ARTICLE B-V—RESPONSIBILITY FOR THE WORK

(a) The Contractor is solely responsible for the conduct of the work.

(b) In instances where the carrying out of the contract work involves a Commission license, the provisions of the pertinent license shall prevail over any inconsistent provisions of this contract.

ARTICLE B-VI—FELLOWSHIPS

The Contractor agrees that, unless the Commission shall give its prior written approval, the Contractor shall not use any of the funds provided by the Commission under this contract to pay the stipend of any appointment for which commensurate services are not rendered under this contract or to pay any part of the stipend of a fellowship of any kind.

ARTICLE B-VII—WRITTEN MATERIAL

(a) The Contractor hereby grants to the Government a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrightable material produced or composed or delivered to the Government or its designees under this contract, including work not first produced or composed by the Contractor in the course of performance under this contract but incorporated in the material produced or composed or delivered under this contract (but only to the extent that the Contractor now has, or prior to final settlement of the contract may have, the right to grant such license to such previously produced or composed work without becoming liable to pay compensation to others solely because of such grant).

(b) The Contractor agrees that except as the Commission may otherwise specifically authorize in writing, the Contractor will not include in any report or other material delivered under this contract, or in any published material relating to the work under this contract, any copyrighted material owned by others which such owners have not consented to have so included.

(c) The Commission will not publish in advance of the Contractor's publication without prior consultation with the Contractor.

ARTICLE B-VIII—PATENTS

Insert § 9-9.5003 modified by deleting paragraphs (d) and (e) and substituting therefor the following paragraph (d):

"(d) Except as otherwise authorized in writing by the Commission, the Contractor will insert in all subcontracts and purchase orders other than purchase orders for standard commercial items, provisions making this article applicable to the subcontract or purchase order. Except as otherwise authorized in writing by the Commission, the Contractor will insert in purchase orders for standard commercial items a provision indemnifying the Government against liability for use of any invention or discovery and for the infringement of any Letters Patent arising by reason of the purchase, use, or disposal by or for the account of the Government of items manufactured or supplied under the purchase order."

ARTICLE B-IX—PROPERTY ITEMS

(a) Except as otherwise provided in this paragraph (a) and paragraph (b) of this Article B-IX, title to all material, supplies, and equipment purchased or otherwise acquired by the Contractor in the performance of its research activities shall be and remain in the Contractor. Said materials, supplies, and equipment shall be used for the benefit of research under this contract and any extensions or successor contracts hereto: *And provided*, There is no interference with said research, shall be made available for use by investigators working on any Federal research agreement at the same location. Subject to these priorities, the materials, supplies, and equipment may be used as the Contractor wishes. Except as otherwise agreed in writing, title to any items of property listed as "Government property" shall pass directly to the Government; such property shall be subject to paragraphs (b), (c), (d), (e), and (f) of this Article B-IX.

(b) Subject to the mutual agreement of the Commission and the Contractor, the Government may furnish the Contractor items of equipment, materials, supplies, or facilities for use by the Contractor in the performance of the contract work; title to these items shall remain in the Government unless otherwise agreed in writing. Such items of property and the items of property listed elsewhere in this contract as Government property, are hereinafter referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government nor shall any such property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(c) To the extent practicable, the Contractor shall cause all items of Government property to be suitably marked with an identifying mark or symbol indicating that the items are the property of the Government. The Contractor shall maintain, at all times and in a manner satisfactory to the Commission, records showing the use and disposition of Government property. Such records shall be subject to Commission inspection at all reasonable times and the Commission shall at all reasonable times have access to the premises wherein any items of Government property are located. Unless otherwise authorized in writing by the Commission, the Contractor shall use Government property only for the purposes of this contract: *Provided, however*, That the Contractor is hereby authorized to use items of equipment constituting Government property for other Federal research agreements to the extent such use: (1) Does not interfere with its work under this contract; (2) is not prohibited by provisions of the other Federal agreements; and (3) is promptly reported by the Contractor to the Commission under this contract.

(d) The Contractor shall promptly notify the Commission of any loss or destruction of or damage to Government property. It is understood that the Contractor shall not be liable for any such loss, destruction, or damage, unless same results from willful misconduct or lack of good faith on the part of any corporate officer of the Contractor, or of one or more of the Contractor's representatives having supervision or direction of all or substantially all of the activities under this contract. If the Contractor is liable for any such loss, destruction, or damage, it shall promptly account therefor to the satisfaction of the Commission; if the Contractor is not liable therefor, and is indemnified, reimbursed, or otherwise compensated for such loss, destruction, or damage, it shall promptly account therefor to the satisfaction of the Commission.

(e) With the written approval of the Commission, the Contractor may sell, transfer, or otherwise dispose of items of Government property to such parties and upon such terms as so approved, or itself acquire title to items of Government property upon such terms as may mutually be agreed upon in writing by the Contractor and the Commission. The proceeds of any such disposition, and any agreed price of any such Contractor acquisition, shall be paid by the Contractor to the Government, or credited on account of Commission payments to be made under this contract, as the Commission may direct. Subject to the other provisions of this contract, the Contractor shall deliver Government property to the Commission upon request (suitably packed and shipped at the Government's expense).

(f) The Contractor shall utilize for the benefit of the work under this contract such items of property available to the Contractor by reason of its activities under other Federal research agreements as are appropriate for utilization under this contract pursuant to the provisions of the pertinent Federal agreements.

ARTICLE B-X—TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

Insert FPR 1-8.704-1.

ARTICLE B-XI—PAYMENTS

(a) The Commission shall make payments to the Contractor with respect to the amount of consideration prescribed in Article III of this contract as follows:

(1) A maximum of 45 percent of the new funds as set forth in Article A-III(b) of this contract following execution of this contract (and following the effectuation of each extended period).

(2) A maximum of an additional 45 percent of the new funds as set forth in Article A-III(b) of this contract upon receipt of a request or requests from the Contractor evidencing that the amount requested is then required in connection with the work under the contract.

NOTE: Subparagraphs (1) and (2) of this paragraph (a) may be revised, as deemed appropriate by the field office, in accordance with § 9-4.5112-3(a).

(3) If, following submission of an annual progress report, the contract is to be extended for an additional period of performance, an additional payment may be made at the time of execution of the extension which, when added to the payments already made under (1) and (2) above for the expiring period, will not exceed the new funds set forth in Article A-III(b) for the expiring period; a concluding payment for the pertinent period, if appropriate, may be made following submission of a certified statement showing the AEC support cost and evidencing the Contractor's performance under the contract.

(4) If the contract is not to be extended, the final payment of the consideration provided for in Article III of this contract shall be made following submission by the Contractor of a final report required by Article B-XXI, in form and content satisfactory to the Commission, and submission of a certified statement showing the AEC support cost and evidencing the Contractor's performance under the contract and compliance by the Contractor with the patent provisions of this contract.

(b) The payments made pursuant to paragraph (a) above shall not prejudice or otherwise affect adversely any of the Government's rights under the contract. For purposes of settlement in the event of termination pursuant to Article B-X hereof, these payments shall not be construed as evidentiary, and any excess payment in the light of Article B-X shall be promptly returned to the Commission.

(c) The Commission, at its option, may invoke the following with respect to any amount of the contract consideration remaining to be paid at any given time:

(1) The Commission shall issue a letter of credit as provided for by Treasury Fiscal Requirements Manual, Part VI, section 1020, under which payments to the Contractor with respect to the amount of consideration provided for in Article III of this contract will be made. The Contractor agrees that the first ninety (90) percent of the new funds as set forth in Article A-III(b) of the contract will be under the letter of credit and will be subject to the submission by the Contractor of a Payment Voucher on Letter of Credit (TUS 5401), in accordance with procedures based upon Treasury Fiscal Requirements Manual, Part VI, section 1020, which are agreed to by the parties. Following submission by the Contractor of a final report provided for in Article B-XXI, in form and content satisfactory to the Commission, and submission of a certified statement showing the total expenditures and evidencing the Contractor's performance under the contract, and upon submission by the Contractor to the Commission of such invoices or vouchers as are satisfactory to the Commission, the Commission shall pay the Contractor the concluding payment of the consideration provided for in Article III of this contract, or said concluding payment will be included under the letter of credit and will be subject to submission by the Contractor of a payment voucher on letter of credit, in accordance with the procedure described above. If, following submission of an annual report, the contract is extended for an additional period of performance, and additional payment may similarly be made at the time of execution of the extension which, when added to the payments already made for the expiring period, will not exceed the new funds as set forth in Article A-III(b) for the expiring period; a concluding payment for the pertinent period, if appropriate, may be made following submission of a certified statement showing the AEC support cost for the pertinent period and evidencing the Contractor's performance under the contract.

(2) The Commission reserves the right to increase, decrease, or cancel the amount covered by the letter of credit, provided that such action is required because of a change in the amount of consideration provided for in Article III or is taken pursuant to paragraph (c)(1) of this article. The issuance and use of a letter of credit and receipt of funds pursuant thereto shall not prejudice or otherwise adversely affect any of the Government's rights under the contract.

ARTICLE B-XII—EQUAL OPPORTUNITY

Insert FPR 1-12.803-2.

ARTICLE B-XIII—CONVICT LABOR

Insert FPR 1-12.203.

ARTICLE B-XIV—CONTRACT WORK HOURS STANDARDS ACT—OVERTIME COMPENSATION

Insert Article set forth in FPR 1-12.303.

ARTICLE B-XV—DISPUTES

Insert FPR 1-7.101-12, modified by substituting "Commission" for "Secretary." (See § 9-7.5004-3.)

ARTICLE B-XVI—OFFICIALS NOT TO BENEFIT

Insert FPR 1-7.101-19.

ARTICLE B-XVII—COVENANT AGAINST CONTINGENT FEES

Insert FPR 1-1.503.

ARTICLE B-XVIII—EXAMINATION OF RECORDS

Insert § 9-7.5004-10.

ARTICLE B-XIX—BUY AMERICAN ACT

Insert FPR 1-7.101-14, modified in accordance with § 9-7.5004-16.

ARTICLE B-XX—ASSIGNMENT; SUBCONTRACTING

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor, except as expressly authorized in writing by the Commission. The Contractor shall not subcontract any research or development work under this contract, except as expressly authorized in writing by the Commission.

ARTICLE B-XXI—REPORTS AND RENEWAL PROPOSALS

The Contractor shall furnish six (6) copies of the following reports and renewal proposals, if any, addressed to appropriate field office.

(a) *Progress report.* The progress report shall briefly describe the scope of investigations undertaken and the significant results obtained. It shall also indicate compliance with the contract requirements and any failures to comply. The report shall indicate the approximate percentage of time or effort which the principal investigator(s) has devoted to the project since the beginning of the current term of the agreement and indicate the amount of effort which is expected to be devoted during the remainder of the current term. Technical reports, preprints, and articles prepared for publication shall be listed with bibliographic references. Reprints of all such material not previously submitted shall be appended and material contained therein need not be duplicated in the report. Progress reports shall be submitted approximately 3 months in advance of the expiration of the current contract term and shall give the Contractor's best estimate of the probable events and occurrences in regard to the remainder of the current contract term. Except as the Commission may otherwise request, no further progress report will be required for any contract year unless there has been a significant change in scientific results or contract compliance between the latest progress report by the Contractor and its actual experience; this shall be reported promptly.

(b) *Final report.* Upon termination or expiration of the total period of performance, the contractor shall submit, promptly, a summary of its activities for the entire period, including a list of publications issued during the total term of the contract and copies of any reprints not previously submitted, as well as a comprehensive evaluation of progress in the area of research supported by the contract.

(c) *Renewal proposals.* A renewal proposal, if any, shall be submitted along with the technical progress report, and each of the two documents shall be separately bound.

(d) *Report of equipment purchased or fabricated.* The Contractor shall itemize equipment having a useful life expectancy in excess of 1 year and an acquisition cost in excess of $200 purchased or fabricated by the Contractor when title to such equipment is vested in the Contractor pursuant to the Grant Act (Public Law 85-934)—omit any items appearing in Article IV and submit a report thereof within 3 months after the expiration of the contract year specified in Article II. Where the cost of individual pieces of equipment exceeds $1,000, they will be listed individually. Where individual items cost $200 to $1,000, they will also be individually listed to the extent practical or grouped in general categories, such as "electronic equipment" or "six motors," with the total dollar amount of such category. The cost of purchased items shall be determined by the actual invoice cost of such items, but the cost of fabricated items may be established by engineering estimates. This report may be submitted in conjunction with the certified statement required by Article B-XXIX of this contract.

ARTICLE B-XXII—FOREIGN TRAVEL

Foreign travel shall be subject to the prior approval of the contracting officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions.

ARTICLE B-XXIII—PRIORITIES, ALLOCATIONS, AND ALLOTMENTS

Insert § 9-7.5006-52.

ARTICLE B–XXIV—UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS

Insert the clause set forth in FPR 1–1.805–3(a) under the conditions and in the manner prescribed in that section.

ARTICLE B–XXV—UTILIZATION OF SMALL BUSINESS CONCERNS

Insert the clause set forth in FPR 1–1.710–3(a) under the conditions and in the manner prescribed in that section.

ARTICLE B–XXVI—UTILIZATION OF MINORITY BUSINESS ENTERPRISES

Insert the clause set forth in FPR 1–1.1310–2(a) under the conditions and in the manner prescribed in that section.

ARTICLE B–XXVII—SOVIET-BLOC CONTROLS

Insert the clause set forth in § 9–7.5006–53.

ARTICLE B–XXVIII—LIST OF EMPLOYMENT OPENINGS

Insert the clause set forth in FPR 1–12.1102–2.

ARTICLE B–XXIX—DETERMINATION OF SUPPORT COSTS [1]

(a) The term "support cost" as used in this contract means the Commission's share [2] of the sum of costs incurred by the Contractor for items included under Article A–II(a) of Appendix A which are in furtherance of the work hereunder, which are incurred in accordance with the provisions of this contract, and which are reported to the AEC in accordance with (b) below. The term "cumulative support cost" as used in this contract means the total of the support cost incurred during the initial contract period plus any extension periods of the contract.

(b) Within 3 months after the end of each contract period set forth in Appendix A, and within 3 months after the termination or expiration of the total period of performance, the Contractor shall furnish a certified statement, executed by an official of the Contractor showing the Contractor's cost, and evidencing its performance under the contract, during the contract term just completed. The statement shall show all costs incurred during the pertinent contract term set forth in Appendix A for items under Article A–II(a) of Appendix A, including the Contractor's share, if any, of such costs, and show the extent of the Contractor's contribution of items listed under Article A–II (b)(1) of Appendix A. Costs included in the certified statement may include the following: Expenditures of cash; the cost of material and supplies transferred from stores inventory; and the amount due the Contractor for indirect costs in accordance with the rate and factor or factors shown in Appendix A of the contract for the pertinent contract period. The costs for the pertinent contract period shall be consistent with the principles of OMB Circular No. A–21, revised, as constituted on the effective commencement date of said period. The certified statement shall be in the form set forth in Appendix C.

(c) The certified statement should be in agreement with the institution's financial records and shall reflect only expenditures actually made during the period covered, including transfers from inventory. It shall not include commitments, as a part of such expenditures, for goods or services on order, but not received or those received but not paid for unless the Contractor is operating under an established and consistently applied system of accrual accounting. If this is the case, the certified statement shall be so footnoted. A combination of accrual and cash accounting for cost accumulation and reporting purposes shall not be used. The renewal proposal budget should be footnoted to show the estimated amount of outstanding commitments for property at the end of the current contract period. The certified statement contains a space in which should be inserted the actual amount of outstanding commitments for property at the end of the period covered by the statement. This commitment amount is for information only and is not a part of the expenditure calculation. The Contractor understands that the Commission expects to rely on this certified statement for determining the support cost for the pertinent contract period. With respect to any period in which proportionate cost sharing is applicable, the support cost for the pertinent period will be determined by applying the percentage figure included in Article A–III for the pertinent period, to the certified cost of items included under Article A–II(a) incurred during the pertinent contract period. All charges to the AEC shall be subject to the approval requirements of this contract. The Contractor is expected to maintain auditable records as contemplated by Article B–II(c) to substantiate the costs incurred for items under Article A–II(a) and to show the extent of the Contractor's contribution of items listed under Article A–II(b)(1).

ARTICLE B–XXX—ADDITIONAL APPROVALS

(a) In addition to such approvals as are specifically required by other provisions of this contract, the Contractor shall obtain the Commission's approval for:

(1) A change of the principal investigator, co-investigator, or other key people as might be named in this contract or continuation of the research work for any one period in excess of 3 months without direction by an approved principal investigator. The principal investigator may increase or decrease the amount of effort which he devotes to the project without obtaining Commission approval; however, a representative of the institution shall consult with the appropriate AEC Headquarters program representative if the principal investigator plans to, or becomes aware that he will devote substantially less effort to the work than anticipated in Article A–I. The purpose of such consultation will be to determine what effect, if any, the anticipated change will have on the research work and what modification to the contract, if any, may be appropriate.

(2) No change in the phenomenon or phenomena under study; i.e., broad category of the research under the contract shall be made without the specific written approval of the AEC; ordinarily, such changes, if approved by the AEC, will be accomplished through a new contract or a mutually agreed to modification. The Contractor may change the specific objectives in the research work described in the contract: *Provided*, It gives the AEC prompt notification of such changes; and the Contractor may continue to follow the new objectives while the Commission determines whether it wishes to continue the program under the changed approach. Significant changes in methods or procedures employed in performing the research should be reported in the first technical progress report issued subsequent to the changes.

(3) Acquisition of:

(i) An item of equipment not itemized in Appendix A, the cost of which is $1,000 or more. Approval is not required if the equipment is merely a different model of an item listed in Appendix A; or

(ii) An item or items of equipment the cost of which will cause the total equipment dollar level shown in Article A–II(a) of the contract to be in excess of 125 percent thereof (if plant and capital equipment funds are provided for the acquisition of equipment with title to be vested in the Government, the total cost of such shall not exceed the amount provided for such equipment unless prior AEC approval has been obtained).

(4) Purchase of any general-purpose equipment, such as office furniture, air conditioning, etc., not specifically provided for in Appendix A.

(5) Incurring costs for items set forth in Article A–II(a), during the pertinent contract period stated in Appendix A, in excess of 110 percent of the total estimated cost specified in Article A–III. Charges to the Commission for any such costs incurred with the approval of the Commission shall also be subject to the limitations of Article III.

(6) Any proposed foreign travel (see Article B–XXII).

(7) Expenditures for domestic travel in excess of $500, or 125 percent of the amount shown in Article A–II(a) for such travel, whichever is greater.

(8) Acquisition of excess personal property.

APPENDIX C

U.S. ATOMIC ENERGY COMMISSION

STATEMENT OF COSTS

1. Name and address of Contractor: ______

____

2. Contract number: ___________________

3. Beginning and ending date of pertinent contract period: ________________________

____

4. Costs incurred during the pertinent contract period. [List only those costs which are to be reimbursed by the AEC or proportionately shared by the parties in accordance with Article A–II(a) and Article A–III.]

Cost categories [1]	*Amount*
a. Salaries and wages________	$_______
b. Equipment _______________	_______
[List separately the cost of each piece of equipment separately listed in Appendix A to the contract or for which separate approval was obtained from AEC.]	
c. Travel [show amounts for both foreign and domestic. If none, state none.]	$_______
Domestic _________________	_______
Foreign __________________	_______
d. Other direct costs________	_______
e. Total direct expenditures___	_______
f. Indirect charges__________	$_______
[Indicate percent and expenditures to which percent is applied.]	
5. Total costs for items under Article A–II(a) for pertinent contract period_________________	_______

[1] The listing of categories should be consistent with the itemization in Appendix A.

[1] If the contract is for a not-for-profit organization other than an educational institution or a research foundation established by an educational institution, this article should be revised to provide that the AEC's commercial cost principles (AECPR Part 9–15) will be used in determining actual cost.

[2] In those cases in which there is no proportionate sharing of costs, the Commission's "share" will be 100 percent. With respect to any period in which proportionate cost sharing is applicable pursuant to Article A–III, it is understood that the support cost for that specified period will equal the stipulated percent of the sum of costs incurred by the Contractor during the stated period for items under A–II(a) of Appendix A, not to exceed 110 percent of the estimated support cost set forth in Article A–III for that contract period except as otherwise approved by the AEC.

6. Support cost for the pertinent contract period set forth in Appendix A, as defined in Article B-XXIX of the contract, chargeable to AEC for the pertinent contract period (percent of total costs using percent shown in Article A-III of Appendix A for pertinent period of contract________	________
7. Cumulative support cost (support cost under this statement plus support cost for previous periods of the contract)___	________
8. Accumulated support ceiling in Article III of the contract____	$________
9. The difference between lines 7 and 8________________________	________
10. Provide information regarding contributions by the Contractor of items listed in Article A-II(b) of Appendix A during pertinent contract period. State the extent of the Contractor's actual contribution, the measure of such contributions should be in the same terms as the Contractor's commitment under Article A-II(b), e.g., time, dollar, etc. ________________________	________
11. Actual outstanding commitments for property at the end of the period covered by this statement ____________________	________

I hereby certify that this report is true and correct to the best of my knowledge and belief and that the costs listed herein were incurred in connection with the performance of the research provided for under this contract and in accordance with the terms and conditions set forth therein.

____
(Name and Title of an authorized representative)

____________________ (Signature) ________ (Date)

3. In Subpart 9-16.50, Contract Outlines, § 9-16.5002-9, *Outline of cost-type contract for research and development with educational institutions,* is revised as follows:

§ 9-16.5002-9 Outline of cost-type contract for research and development with educational institutions.

Contract No. ______

This contract is effective as of the ____ day of ________, 19__, by and between the United States of America (hereinafter referred to as the "Government") as represented by the U.S. Atomic Energy Commission (hereinafter referred to as the "Commission"), and ________________________ (hereinafter referred to as the "Contractor").

RECITALS

The Commission wishes to have the Contractor perform certain research. This contract states the terms and conditions under which the Contractor agrees to perform the work.

This contract is authorized by law, including the Atomic Energy Act of 1954, as amended. [Additional recitals may be added as appropriate.]

AGREEMENT

Now, therefore, the parties hereto agree as follows:

ARTICLE I—THE RESEARCH TO BE PERFORMED

The Contractor shall to the best of its ability furnish personnel, facilities, equipment, materials, supplies, and services (except such as are furnished by the Government) necessary for the performance of the research provided for in Appendix "A" attached hereto and made a part hereof and shall perform the research and report thereon pursuant to the provisions of this contract.

ARTICLE II—THE PERIOD OF PERFORMANCE

The period for performance under this contract shall commence on ______________ ________, 19____, and expire on ________ ______________: *Provided, however,* That this period may be extended for additional periods by written agreement of the parties.

When authorized or directed by the appropriate Headquarters Program Division, one of the following alternative Articles II may be substituted for the above:

ARTICLE II—THE PERIOD OF PERFORMANCE

ALTERNATE A

It is presently estimated that the term of the contract (as modified by Modification No. ______) will run through ____________ ____________, 19____, and the Contractor agrees based on this estimate to submit its recommendations each year respecting the work program for the subsequent year, as elsewhere in this contract provided for. Neither party guarantees the correctness of this estimate, and, in any event, it is agreed that the period of performance will expire at the end of ______________________, 19____ (note that this will be a yearly period), or on any aniversary of said date during the said estimated term, if the parties do not mutually agree in writing to extend the period of performance for an additional yearly period.

ALTERNATE B

It is presently estimated that the term of the contract (as modified by Modification No. ____________) will run through ______ ________________, 19____, and the Contractor agrees based on this estimate to submit its recommendations each year respecting the work program for the subsequent year, as elsewhere in this contract provided for. Neither party guarantees the correctness of this estimate, and, in any event, it is agreed that the period of performance will expire at the end of ______________________, 19____ (note that this will be a yearly period), or an any anniversary of said date during the said estimated term, unless the Commission, at its option, by written notice to the Contractor prior to the expiration of the pertinent period, extends the period of performance for an additional yearly period.

ARTICLE III—CONSIDERATION

Payment for allowable costs, as hereinafter provided, shall constitute complete compensation to the Contractor for the performance of the research described in Article I (NOTE A).

NOTE A: If and as an individual transaction requires, either or both of the following features will be incorporated in the contract:

a. Specific mention of the contributions to be made by the Contractor, with the contract provisions indicating that the contributions are to be measured against the allowable cost system or otherwise pursuant to a defined yardstick.

b. Specific exclusion from allowable costs of the particular items that the parties agree shall not be reimbursable to the Contractor.

ARTICLE IV—OBLIGATION OF FUNDS, ESTIMATES OF COST

Insert § 9-7.5006-14, appropriately revised to reflect the no-fee position of educational institutions.

ARTICLE V—KEY PERSONNEL

The key personnel referred to in Article ____, Appendix "B" are as follows:

____
____

ARTICLE VI—GENERAL CONTRACT PROVISIONS

Appendix "B," attached hereto and made a part hereof, sets forth additional general contract provisions of this contract.

In witness whereof, the parties have executed this contract.

UNITED STATES OF AMERICA
By ____________________
____
(Title)
UNITED STATES ATOMIC ENERGY COMMISSION

____
(Contractor)
____________ By ____________________
____________ ____________________
(Title)

I, ________________________, certify that I (Attester) am the ________________________ of the Con- (Title) tractor named under this contract; that ________________________ who signed this (Signatory) contract on behalf of said Contractor who was then ____________ of said Contractor; that (Title) this contract was duly signed for and on behalf of said Contractor by authority of its governing body and is within the scope of its legal powers.

In witness whereof, I have hereunto affixed my hand and the seal of said Contractor.

[SEAL] ________________________

APPENDIX A

Contractor: ________________________.
Contract No. ____________.

I. *Research to be performed.* Insert description of research activity.

II. *Equipment,* title to which is to be vested in the Contractor. Title to the following equipment shall vest and remain in the Contractor. Title to additional items of equipment may be vested in the Contractor if approved in writing by the Contracting Officer. (List all equipment to be purchased or fabricated by the Contractor, where it is known at the time the contract is executed that title to such equipment will vest in and remain in the Contractor. Where the estimated cost of individual pieces of equipment exceeds $1,000, they will be listed individually. Where individual pieces cost between $300 ($200 if the Contractor prefers) and $1,000, they shall also be listed individually to the extent practicable, or grouped in general categories, such as "electronic equipment" or "six motors," with the total dollar amount of such category. Insert the word "none" if title to all property is to be vested in the Government.)

III. *Reports.* Set forth reporting and report distribution requirements, including reports of equipment having a useful life expectancy in excess of 1 year and an acquisition cost in excess of $300 ($200 if the Contractor prefers) purchased or fabricated by the Contractor where title is to be vested in the Contractor. Where the cost of individual pieces of equipment exceeds $1,000 they will be listed individually. Where individual items cost $300 ($200 if the Contractor prefers) to $1,000, they will also be individually listed to the extent practicable, or grouped in general categories, such as "electronic equipment" or "six motors," with the total dollar amount of such category. The cost of purchased items shall be determined by the actual invoice cost of such items, but the cost of fabricated items may be established by engineering estimates.

Reproduction of final reports shall be performed consistent with Government printing and binding regulations.

APPENDIX B

Contractor: ________________________.
Contract No. ____________.

General Contract Provisions

ARTICLE B-1—DEFINITIONS

Insert § 9-7.5005-4.

ARTICLE B-2—ALLOWABLE COSTS

(a) The Commission shall pay to the Contractor for performance of this contract the allowable direct costs incident to its performance plus the allowable portion of the allowable indirect costs of the Contractor as determined in accordance with:

(1) Subpart 1-15.3 of the Federal Procurement Regulations (41 CFR 1-15.3) as that text is amended by amendments to OMB Circular No. A-21, revised as of the date of commencement of the contract period or, with respect to periods of extension of contract performance, as of the date of commencement of the pertinent extension period;

(2) OMB Circular No. A-88, as it may be amended from time to time; and

(3) The terms of this contract.

(b) In addition to other costs declared to be unallowable, the salary or other compensation (and expenses related thereto) of any individual employed under the contract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with the Commission shall be unallowable, except to the extent that cash payment therefor is required pursuant to the provisions of the contract or procedures of the Commission applicable to the borrowing of such an individual from another cost-type contractor.

ARTICLE B-3—STIPENDS AND FELLOWSHIPS

The Contractor agrees that, unless the Commission shall give its prior written approval, the Contractor shall not use any of the funds supplied by the Commission under this contract to pay the stipend of any appointment for which commensurate services are not rendered under this contract or to pay any part of the stipend of a fellowship of any kind.

ARTICLE B-4—ACCOUNTS, RECORDS, INSPECTION AND REPORTS [1]

(a) *Accounts.* The Contractor shall maintain accounts, records, documents, and other evidence showing and supporting all allowable costs, including the Contractor's contribution, if any, incurred, revenues or other applicable credits, and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to the Commission and in accordance with generally accepted accounting principles consistently applied and consistent with the requirements of OMB Circular No. A-21, revised, as constituted on the effective commencement date of the contract period.

(b) *Inspection and audit of accounts and records.* All books of account and records relating to this contract shall be subject to inspection and audit by the Commission at all reasonable times, before and during the period of retention provided for in (d) below, and the Contractor shall afford the Commission proper facilities for such inspection and audit.

(c) *Audit of subcontractors' records.* The Contractor also agrees with respect to any subcontracts (including lump-sum or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor or vendor of any tier, that such subcontracts will permit the conduct of an audit by the Government and by the Contractor of the cost of the subcontract in a manner satisfactory to the Contracting Officer, or in the case of lower tier subcontracts have the audit conducted by the next higher tier subcontractor or vendor in a manner satisfactory to the Contractor and the Contracting Officer, except where the Contracting Officer elects to waive such audit or to approve other arrangements for the conduct of the audit. The Government agrees to perform such audits, to the extent it deems audit necessary, provided the Contractor gives the Contracting Officer timely notice in writing of the fact that it is unable to perform such audit with its own forces.

(d) *Disposition of records.* Except as agreed upon by the Government, and the Contractor, all financial and cost reports, books of account and supporting documents, and other data evidencing cost allowable and revenues and other applicable credits under this contract in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three (3) years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.

(e) *Reports.* The Contractor shall make progress and other reports in such manner and at such times as specified in Appendix A. In addition, the Contractor shall furnish such other progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.

(f) *Inspections.* The Commission shall have the right to inspect the work and activities of the Contractor under this contract, in such manner and at all reasonable times as it shall deem appropriate.

(g) *Subcontracts.* The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through this paragraph (g) of this clause in all subcontracts (including lump-sum or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(h) *Conferences.* The Contractor shall confer with the Commission at mutually agreeable times and places in regard to the Contractor's activities under the contract.

ARTICLE B-5—DISCLOSURE OF INFORMATION

Insert § 9-7.5004-22.

ARTICLE B-6—PUBLICATION OF RESULTS

(a) Research results obtained under this contract shall be made available to all through normal and accepted channels without restriction except that no restricted data as defined in the Atomic Energy Act of 1954 or other classified information shall be disclosed to unauthorized persons. Such publication shall indicate that the research was supported by the Commission. A copy of each article submitted by the Contractor for publication shall be promptly sent to the Commission. The Contractor shall also inform the Commission when the article is published and furnish a copy of the article as finally published.

(b) It is recognized that during the course of the work hereunder or subsequent thereto, the Contractor, its employees, or its subcontractors may, from time to time, desire to publish, within the limit of security requirements, information regarding technical or scientific developments arising in the course of the contracts. In order that public disclosure of such information will not adversely affect the patent interest of the Commission, patent approval for release shall be secured from the Commission prior to any such publication. Note A.

NOTE A.—In contracts for theoretical physics, high energy physics, medium energy and neutron physics, mathematics, computer techniques and programing, medical studies, biological studies, ecological studies, meteorology, solid state physics, geology, radiation effect, theoretical chemistry, analytical chemistry, crystal structure, spectroscopy, thermodynamics, chemical kinetics, hazards evaluation, liquid state studies, cryogenics, environmental stream pollution, and site selection the following provision may be substituted for last sentence of Article B-6 above:

"In order that public disclosure of such information will not adversely affect the patent interest of the Commission, such information shall be withheld from public disclosure if it discloses an invention or discovery; such invention or discovery shall be promptly reported to the Commission for patent review and possible filing of a patent application, and such information shall thereafter be withheld from public disclosure for a period of 4 months unless the Commission approves earlier release.

ARTICLE B-7—PATENTS

Insert § 9-9.5003 modified by deleting paragraphs (d) and (e) and substituting therefor the following paragraph:

(d) Except as otherwise authorized in writing by the Commission, the Contractor will insert in all subcontracts and purchase orders, other than purchase orders for standard commercial supplies, provisions making this article applicable to the subcontract or the purchase order. Except as otherwise authorized in writing by the Commission, the Contractor will insert in purchase orders for standard commercial supplies a provision indemnifying the Government against liability for the use of any invention or discovery and for the infringement of any Letters Patent arising by reason of the purchase, use, or disposal by or for the account of the Government of items manufactured or supplied under the purchase order.

ARTICLE B-8—WRITTEN MATERIAL

(a) The Contractor hereby grants to the Government a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrightable material produced or composed or delivered to the Government or its designees under this contract, including work not first produced or composed by the Contractor in the course of performance under this contract but incorporated in the material produced or composed or delivered under this contract (but only to the extent that the Contractor now has, or prior to final settlement of the contract may have, the right to grant such license to such previously produced or composed work without becoming liable to pay compensation to others solely because of such grant).

(b) The Contractor agrees that, except as the Commission may otherwise specifically authorize in writing, the Contractor will not include in any report or other material delivered under this contract, or in any published material relating to the work under this contract, any copyrighted material owned by others which such owners have not consented to have so included.

(c) The Commission will not publish in advance of the Contractor's publication without prior consultation with the Contractor.

[1] If the contract is for a not-for-profit organization other than a research foundation established by an educational institution, this Article should be revised to provide that AEC's commercial cost principles (AECPR Part 9-15) will be used in determining actual cost.

ARTICLE B-9—ASSIGNMENT

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor, except as expressly authorized in writing by the Commission.

ARTICLE B-10—TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT

Insert FPR 1-8.704-1.

ARTICLE B-11—FOREIGN TRAVEL

Foreign travel shall be subject to the prior approval of the Contracting Officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions.

ARTICLE B-12—CONVICT LABOR

Insert FPR 1-12.203.

ARTICLE B-13—COVENANT AGAINST CONTINGENT FEES

Insert § 9-7.5004-2.

ARTICLE B-14—DISPUTES

Insert FPR 1-7.101-12, modified by substituting "Commission" for "Secretary." (See § 9-7.5004-3.)

ARTICLE B-15—EQUAL OPPORTUNITY

Insert FPR 1-7.101-18.

ARTICLE B-16—OFFICIALS NOT TO BENEFIT

Insert FPR 1-7.101-19.

ARTICLE B-17—SAFETY, HEALTH, AND FIRE PROTECTION

When applicable under criteria set forth in Note A of § 9-7.5006-47 insert the clause set forth in § 9-7.5006-47 modified by omission of the last sentence.

ARTICLE B-18—PERMITS

Insert § 9-7.5006-48 modified by substituting "Except as the parties hereto may otherwise mutually agree" for "Except as otherwise directed by the Contracting Officer."

ARTICLE B-19—EXAMINATION OF RECORDS

Insert § 9-7.5004-10.

ARTICLE B-20—CONTRACT WORK HOURS STANDARDS ACT—OVERTIME COMPENSATION

Insert article in FPR 1-12.303 with the modification necessary if § 9-12.103-51 applies.

ARTICLE B-21—BUY AMERICAN ACT

Insert FPR 1-7.101-14, modified in accordance with § 9-7.5004-16.

ARTICLE B-22—LITIGATION AND CLAIMS

(a) *Initiation of litigation*. If the Government requires the Contractor to initiate litigation, including proceedings before administrative agencies, in connection with this contract, the Contractor shall proceed with the litigation in good faith as directed from time to time by the Contracting Officer: *Provided, however*, That in those instances in which such an assignment would be legally effective and enable the litigation or proceeding to be instituted and carried on for the Government's purposes the Contractor shall have the right to assign the cause to the Government for the latter's initiation or prosecution. In the latter case, the Contractor shall cooperate fully with the Government and provide such assistance as the Government shall request in the prosecution of the litigation.

(b) *Defense and settlement of claims*. The Contractor shall give the Contracting Officer immediate notice in writing (1) of any action, including any proceeding before an administrative agency, filed against the Contractor, arising out of the performance of this contract and which would, if successful, constitute a directly allowable cost and (2) of any claim against the Contractor the cost and expense of which is an allowable cost under the article entitled "Allowable Costs." Except as otherwise directed by the Contracting Officer, in writing, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claims. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim, shall effect at the Contracting Officer's request an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claims against the Contractor, and, if required by the Contracting Officer, shall authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action: *Provided, however*, To the extent not inconsistent with the Government's interests, the Contractor may, at his own expense, be associated with the representatives of the Government in settlement or defense of any such claim or action. If the settlement or defense of an action or claim against the Contractor is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith; and in such event the defense of the action shall be at the expense of the Government: *Provided, however*, That the Government shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence. The Contractor's "charitable defense" (i.e., such defense as is available to the Contractor as a matter of law because of the Contractor's eleemosynary character) shall not be asserted if the assertion of such a defense contravenes the Contractor's established policy.

ARTICLE B-23—BONDS AND INSURANCE

Insert § 9-7.5006-51 modified by adding the following sentence: "Nothing herein shall preclude the Contractor from obtaining or maintaining insurance at its own cost and expense to cover any insurable interest it may have in such 'Government-owned property.' "

ARTICLE B-24—DRAWINGS, DESIGNS, SPECIFICATIONS

Insert § 9-7.5006-13 modified by adding the following sentence: "These are excepted from the purview of this Article."

ARTICLE B-25—KEY PERSONNEL

It having been determined that the individuals, if any, whose names appear elsewhere in this contract as "key personnel," or other persons mutually acceptable as persons of substantially equal abilities and qualifications are necessary for the successful performance of this contract, the Contractor agrees, insofar as it is able, to make available such employees or persons for the performance of the work under this contract. Whenever for any reason, one or more of the aforementioned employees is unavailable for performance of the work under the contract, the Contractor shall use its best efforts to replace such employee with an employee of substantially equal abilities and qualifications who is satisfactory to the Contracting Officer.

ARTICLE B-26—PROPERTY

(a) *Furnishing of Government property*. The Government reserves the right to furnish any property, and such services as may be mutually agreed upon, for the performance of the work.

(b) *Title to property*. Title to all property furnished by the Government shall remain in the Government except as otherwise provided in this article. Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, the cost of which is allowable as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect and in lieu of and prior to the Contractor's inspection and acceptance or rejection to accept or reject any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon: (i) Issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government under this paragraph, is hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(c) *Identification*. To the extend directed by the Contracting Officer, the Contractor shall identify Government property coming into the Contractor's possession or custody by making or segregating in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government.

(d) *Disposition*. The Contractor shall make such disposition of Government property which has come into the possession or custody of the Contractor under this contract as the Contracting Officer shall direct. When authorized in writing by the Contracting Officer during the progress of the work or upon completion or termination of this contract, the Contractor may, upon such terms and conditions as the Contracting Officer may approve, sell or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the amount of the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs allowable under this contract, or shall be otherwise credited to account of the Government, as the Contracting Officer may direct. Upon completion of the work or the termination of this contract the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all Government property which has come into the possession or custody of the Contractor under this contract.

(e) *Protection of Government property—classified materials*. The Contractor shall take all reasonable precautions, as directed by the Contracting Officer, or in the absence of such directions in accordance with sound practice, to safeguard and protect Government property in the Contractor's possession or custody. Special measures shall be taken by the Contractor in the protection of and accounting for any classified or special materials involved in the performance of this contract, in accordance with the regulations and requirements of the Commission.

(f) *Risk of loss of Government property.* The Contractor shall not be liable for loss or destruction of or damage to Government property in the Contractor's possession unless such loss, destruction, or damage results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, or unless such loss, destruction, or damage results from a failure on the part of the Contractor's managerial personnel, to take all reasonable steps to comply with any appropriate written directives of the Contracting Officer to safeguard such property under paragraph (e) hereof. The term "Contractor's managerial personnel" as used herein means [insert appropriate definition].

(g) *Steps to be taken in event of loss.* Upon the happening of any loss or destruction of or damage to Government property in the possession or custody of the Contractor, the Contractor shall immediately inform the Contracting Officer of the occasion and extent thereof, shall take all reasonable steps to protect the property remaining, and shall repair or replace the lost, destroyed, or damaged property if and as directed by the Contracting Officer, but shall take no action prejudicial to the right of the Government to recover therefor and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) *Government property for Government use only.* Government property shall be used only for the performance of this contract, except as otherwise approved by the Contracting Officer.

ARTICLE B-27—SUBCONTRACTS AND PURCHASE ORDERS

The Contractor shall not subcontract any part of the research and development effort without the written approval of the Contracting Officer. Purchase orders shall not be entered into by the Contractor for items whose purchase is expressly prohibited by the written direction of the Contracting Officer. The Government reserves the right, at any time, to require that the Contractor submit any or all other contractual arrangements, including, but not limited to, subcontracts, purchase orders or classes of purchase orders, for approval, and provide information concerning methods, practices, and procedures used or proposed to be used in subcontracting and purchasing. The Contractor shall use methods, practices, or procedures in subcontracting and purchasing which are acceptable to the Contracting Officer. Subcontracts and purchase orders shall be made in the name of the Contractor, shall not bind nor purport to bind the Government, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation properly to supervise and coordinate the work of subcontractors) and shall be in such form and contain such provisions as are required by this contract or as the Contracting Officer may prescribe.

ARTICLE B-28—UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS

Insert the clause set forth in FPR 1-1.805-3(a) under the conditions and in the manner prescribed in that section.

ARTICLE B-29—LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

Insert the clause set forth in FPR 1-1.805-3(b) under the conditions and in the manner prescribed in that section.

ARTICLE B-30—UTILIZATION OF SMALL BUSINESS CONCERNS

Insert the clause set forth in FPR 1-1.710-3(a) under the conditions and in the manner prescribed in that section.

ARTICLE B-31—SMALL BUSINESS SUBCONTRACTING PROGRAM

Insert the clause set forth in FPR 1-1.710-3 (b) under the conditions and in the manner prescribed in that section.

ARTICLE B-32—COMMISSION LICENSE

In instances where the carrying out of the contract work involves a Commission license, the provisions of the pertinent license shall prevail over any inconsistent provisions of this contract.

ARTICLE B-33—PAYMENTS

Insert § 9-7.5006-23 or § 9-7.5006-25, as appropriate, modified to reflect the no-fee position of educational institutions. An additional paragraph should be added to provide for appropriate certification by the Contractor, on payment invoices or vouchers, to meet the requirements of section K of OMB Circular No. A-21, revised. If advance payments are to be made, the letter of credit procedure as provided for in Treasury Fiscal Requirements Manual, Part VI, Section 1020, will be used to the maximum extent feasible.

ARTICLE B-34—PRIORITIES, ALLOCATIONS, AND ALLOTMENTS

Insert § 9-7.5006-52.

ARTICLE 13-35—TAXES

(a) The Contractor agrees to notify the Commission of any State or local tax, fee, or charge levied or purported to be levied on or collected from the Contractor with respect to the contract work or any transaction thereunder and constituting an allowable item of cost if due and payable, but which, in the opinion of the Contractor or under the position of the Commission as communicated to the Contractor, is inapplicable or invalid; and the Contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized by the Commission. Any State or local tax, fee, or charge paid with the approval of the Commission or on the basis of advice from the Commission that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

(b) The Contractor agrees to take such action as may be required or approved by the Commission to cause any such tax, fee, or charge referred to above to be paid under protest and to take such actions as may be required or approved by the Commission to seek recovery of any payment made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the Contractor in any proceeding for the recovery thereof or to sue for recovery in the name of the Contractor. If the Commission directs the Contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the Contractor for a tax, fee, or charge he has refrained from paying in accordance with this Article, [the procedures and requirements of Article ______ "Litigation and Claims," shall apply] [1] and the costs and expenses incurred by the Contractor shall be allowable items of cost, as provided in this contract, together with the amount of any judgment rendered against the Contractor.

(c) The Government shall save the Contractor harmless from penalties and interest incurred through compliance with this article.

ARTICLE B-36—SOVIET-BLOC CONTROLS

Insert the clause set forth in § 9-7.5006-53.

ARTICLE B-37—CONSULTANT OR OTHER COMPARABLE EMPLOYMENT SERVICES OF CONTRACTOR EMPLOYEES

Insert clause set forth in either paragraph (a) or (b) of § 9-7.5006-45 as appropriate.

ARTICLE B-38—SOURCE AND SPECIAL NUCLEAR MATERIALS

Source and special nuclear material involved in the performance of the work under this contract shall be obtained and handled in accordance with the Commission's requirements and procedures.

ARTICLE B-39—NUCLEAR REACTOR SAFETY

Insert clause set forth in § 9-7.5006-36 when required by that section.

When the estimated cost of the contract is $250,000 or more add the following article.

ARTICLE B-40—CONDUCT OF EMPLOYEES [2]

The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to his employees as may be necessary. The Contractor shall establish such standards and procedures as are necessary to implement effectively the provisions set forth in Atomic Energy Commission Procurement Regulation § 9-12.54 and such standards and procedures shall be subject to the approval of the Contracting Officer.

ARTICLE B-41—ADDITIONAL APPROVALS

In addition to such approvals as are specifically required by other provisions of this contract, the Contractor shall obtain the Commission's approval for:

(Insert appropriate additional approval requirements in accordance with § 9-4.5112-5.)

ARTICLE B-42—UTILIZATION OF MINORITY BUSINESS ENTERPRISES

Insert the clause set forth in FPR 1-1.1310-2(a) under the conditions and in the manner prescribed in that section.

ARTICLE B-43—MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM

Insert the clause set forth in FPR 1-1.1310-2(b) under the conditions and in the manner prescribed in that section.

ARTICLE B-44—LIST OF EMPLOYMENT OPENINGS

Insert the clause set forth in FPR 1-12.1102-2.

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[1] When the contract does not include a Litigation and Claims article, substitute the following for the phrase enclosed by brackets: "The Contractor shall comply with the procedures and requirements of the Commission."

[2] This article is included only in contracts within the scope of Subpart 9-12.54. In the case of contracts not within the scope of Subpart 9-12.54 but where AEC has major investments in facilities, see the clause set forth in § 9-7.5006-55.

Effective date. These amendments are to become effective on September 1, 1972, but may be observed sooner.

Dated at Germantown, Md., this 18th day of July 1972.

For the U.S. Atomic Energy Commission.

JOSEPH L. SMITH,
Director, Division of Contracts.

[FR Doc.72-11361 Filed 7-21-72;8:48 am]

Chapter 101—Federal Property Management Regulations

SUBCHAPTER D—PUBLIC BUILDINGS AND SPACE

PART 101-18—ACQUISITION OF REAL PROPERTY

Uniform Acquisition and Relocation Assistance Practices

A proposal was published in the FEDERAL REGISTER, April 21, 1972, 37 F.R. 7905, to amend 41 CFR 101-18—Acquisition of Real Property, to establish agency policy for acquiring real property and for providing services and payments to persons displaced from real property in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646.

Comments on the published proposal were received from two organizations. The comments related to (1) providing advance relocation assistance payments in hardship cases, (2) reimbursing displaced residential occupants for expenses incurred in searching for replacement dwellings, (3) specifying the exact condition that must exist before GSA would be authorized to proceed with a project prior to making a positive determination regarding the availability of adequate replacement housing, and (4) insuring that comparable replacement dwellings are available 30 days in advance of the time a person is required to vacate a dwelling acquired by GSA.

The suggestion that advance relocation payments be made in hardship cases has been incorporated into the regulations at § 101-18.308-7. The suggestion that individuals and families be reimbursed for expenses incurred in searching for replacement dwellings was rejected as such payments are not authorized by Public Law 91-646. The suggestion that GSA specify the exact conditions under which it may waive the requirement for making a positive housing finding was not adopted as all such conditions cannot be forecast and the ability of the agency to perform its mission in emergency and other extraordinary situations could be impaired. The suggestion that GSA require the availability of comparable replacement housing 30 days in advance of a person's displacement instead of within a reasonable time as specified in the published proposal is rejected as in some circumstances 30 days is not sufficient relocation time and to the maximum extent possible GSA will give all displaced persons 90 days notice in advance of their displacement.

This amendment, in addition to providing for advance relocation payments in hardship cases, specifies an 18-month time limit for filing relocation claims under Public Law 91-646 and makes several editorial changes to the proposal published in the FEDERAL REGISTER on April 21, 1972. The regulations follow:

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, establishes uniform policies for acquiring real property for Federal and federally assisted programs and provides for the fair and equitable treatment of persons displaced from real property by such programs. This amendment to Part 101-18 of the Federal Property Management Regulations sets forth the regulations to be followed by the General Services Administration in administering the provisions of Public Law 91-646.

The table of contents for Part 101-18 is amended by adding new Subparts 101-18.2 and 101-18.3 and by reserving Subparts 101-18.4—101-18.49, as follows:

Subpart 101-18.2—Acquisition By Purchase or Condemnation

Subpart 101-18.3—Relocation Assistance and Payments

Subparts 101-18.4—101-18.49 [Reserved]

AUTHORITY: The provisions of Subparts 101-18.2 and 101-18.3 are issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101-18.2—Acquisition By Purchase or Condemnation

§ 101-18.200 Scope of subpart.

This subpart sets forth the policies and procedures governing the acquisition of real property by the General Services Administration (GSA) for its programs and projects in the United States, the Commonwealth of Puerto Rico, any territory or possession of the United States, and the Trust Territory of the Pacific Islands.

§ 101-18.201 Purpose.

These regulations implement title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and will serve to:

(a) Encourage and expedite the acquisition of real property by agreements with owners;

(b) Avoid litigation where possible and relieve congestion in the courts;

(c) Insure consistent treatment of owners in the many Federal programs; and

(d) Promote public confidence in Federal land acquisition practices.

§ 101-18.202 Authority.

The provisions of this subpart are issued under provisions of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377, 40 U.S.C. 471; the Public Buildings Act of 1959, as amended, 40 U.S.C. 601-615; and Public Law 91-646, approved January 2, 1971, 84 Stat. 1894.

§ 101-18.203 Definitions.

For the purposes of this subpart, the following terms shall have the meanings set forth in this section.

§ 101-18.203-1 Act.

"Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), approved January 2, 1971.

§ 101-18.203-2 Uneconomic remnant.

"Uneconomic remnant" means that portion of an ownership remaining after acquisition, the retention of which provides no benefit to the owner because of loss or difficulty of access, a changed highest and best use, remoteness, or any other reason resulting in burdening the owner thereof with expenses or responsibilities not commensurate with retention of such ownership.

§ 101-18.204 Basic acquisition policy.

GSA, to the greatest extent practicable, will:

(a) Make every reasonable effort to acquire expeditiously real property by negotiation.

(b) Appraise real property before the initiation of negotiations and give the owner or his designated representative an opportunity to accompany the appraiser during his inspection of the property.

(c) Establish, prior to the initiation of negotiations for real property, an amount estimated to be the just compensation therefor and make a prompt offer to acquire the property for the full amount so established. GSA will provide the owner of the real property to be acquired with a written statement of, and a summary of the basis for, the amount established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property will be separately stated. The summary statement to be furnished the owner will include the following:

(1) Identification of the real property and the estate or interest therein to be acquired;

(2) Identification of the buildings, structures, and other improvements considered to be part of the real property for which the offer of just compensation is made;

(3) A statement that GSA's determination of just compensation is based on the estimated fair market value of the property to be acquired. If only part of the property is to be acquired or the interest to be acquired is less than the full interest of the owner, the statement will explain the basis for the determination of the just compensation;

(4) A statement that GSA's determination of just compensation is not less than its approved appraisal of the property; and

(5) A statement that any increase or decrease in the fair market value of the real property, prior to the date of valuation, caused by the public improvement or project for which the real property is to be acquired, or by the likelihood that the real property would be acquired for such improvement or project, other than that due to physical deterioration within the reasonable control of the owner, has been disregarded in making the determination of just compensation for the property.

(d) Acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property. This includes buildings, structures, or other improvements that GSA requires removed from the real property or that GSA determines will affect adversely the proposed use of the real property. If any buildings, structures, or other improvements comprising part of the real property are the property of a tenant who has the right or obligation to remove them at the expiration of his term, the total just compensation for the real property, including the property of the tenant, will be determined and the tenant will be paid the greater of the:

(1) Fair market value of the buildings, structures, or other improvements to be removed from the property; or

(2) Contributive fair market value of the tenant's improvements to the fair market value of the entirety, which value should not be less than the value of his improvements for removal from the real property. Payment under this paragraph (d) of this section will not be a duplication of any payment otherwise authorized by law. No payment will be made unless the landowner disclaims all interests in the tenant's improvements and the tenant in consideration for such payment shall assign, transfer, and release to the Government all his right, title, and interest in and to such improvements. The tenant may reject payment under this paragraph (d) of this section and obtain payment for his property interests in accordance with other applicable laws.

(e) Obtain only one appraisal on each parcel, tract, etc., of real property to be acquired unless GSA determines that circumstances require an additional appraisal or appraisals.

(f) Maintain records to verify that the landowner or his designated representative(s) was given an opportunity to accomapny the appraiser during the inspection of the real property.

(g) Pay an owner or tenant or deposit such payment in the registry of the court before requiring him to surrender his property. To the maximum extent practicable, owners and tenants will be given at least 90 days' notice of displacement before being required to move from real property acquired by GSA. If permitted by GSA to remain in possession for a short period of time after Government acquisition, the rental charged for this occupancy will not be more that the fair rental value of the property to a short-term occupier.

(h) Not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his property. Offer to acquire the entire property where the acquisition of a part of a property will leave the owner with an uneconomic remnant.

§ 101-18.205 Expenses incidental to transfer.

GSA will amend its real property purchase contract forms to provide for reimbursement to vendors in amounts deemed by GSA to be fair and reasonable for the following expenses:

(a) Recording fees, transfer taxes, and similar expenses incidental to conveying the real property;

(b) Penalty cost for prepayment of any preexisting recorded mortgage entered into in good faith encumbering said real property; and

(c) The pro rata portion of real property taxes paid by the vendor for periods subsequent to the day title vests in the United States.

§ 101-18.206 Litigation expenses.

GSA will plan for and take into consideration the possible liability for the payment of litigation expenses of a condemnee as provided for in section 304 of the Act.

Subpart 101-18.3—Relocation Assistance and Payments

§ 101-18.300 Scope of subpart.

This subpart contains the regulations governing relocation assistance practices, procedures, and payments by GSA in the acquisition of real property for its programs and projects pursuant to Subpart 101-18.2.

§ 101-18.301 Purpose.

These regulations implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and will serve to insure uniform, fair, and equitable treatment of persons displaced from their homes, businesses, or farms by Federal or federally assisted programs designed for the benefit of the public as a whole and to safeguard against abuse of any of the underlying purposes, provisions, and policies of the Act.

§ 101-18.302 Authority.

The provisions of this subpart are issued under provisions of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377, 40 U.S.C. 471; the Public Buildings Act of 1959, as amended, 73 Stat. 479, 40 U.S.C. 601-615; and Public Law 91-646, 84 Stat. 1894, approved January 2, 1971.

§ 101-18.303 Definitions.

For the purpose of this subpart, the following terms shall have the meanings set forth in this section.

§ 101-18.303-1 Act.

"Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), approved January 2, 1971.

§ 101-18.303-2 Federal agency.

"Federal agency" means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority); any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency); the Architect of the Capitol; and the Federal Reserve banks and branches thereof.

§ 101–18.303–3 Person.

"Person" means any individual, partnership, corporation, or association.

§ 101–18.303–4 Displaced person.

(a) "Displaced person" means any person who on or after January 2, 1971, moves from real property or moves his personal property from real property as a result of:

(1) The acquisition of such real property by GSA in whole or in part; or

(2) Receipt from GSA of a written notice of displacement under a program or project undertaken by a Federal agency or with Federal financial assistance.

(b) For purposes of receiving moving and related expense payments and receiving relocation advisory assistance, a displaced person also is a person meeting the provisions of this section who conducts a business or farm operation on such real property.

(c) For purposes of qualifying for relocation benefits as provided in this Subpart 101–18.3, a displaced person is a person who moves as the result of the notice referenced in § 101–18.303–4(a)(2) regardless of whether his real property is actually acquired.

§ 101–18.303–5 Business.

"Business" means any lawful activity except a farm operation conducted primarily:

(a) For the purchase, sale, lease, or rental of personal and real property and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) For the sale of services to the public;

(c) By a nonprofit organization; or

(d) For (in accordance with section 202(a) of the Act) assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

§ 101–18.303–6 Farm operation.

"Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

§ 101–18.303–7 Mortgage.

"Mortgage" means such classes of liens as are commonly given to secure advances on or the unpaid purchase price of real property under the laws of the State in which the real property is located, with any credit instruments secured thereby.

§ 101–18.303–8 Comparable replacement dwelling.

"Comparable replacement dwelling" means a dwelling which, when compared with the dwelling being taken, is:

(a) Decent, safe, and sanitary (sound, clean, weathertight), and meets local housing codes and criteria specified in § 101–18.306.

(b) Functionally equivalent and substantially the same with respect to age, construction, state of repair, number of rooms, and square feet of living area.

(c) Open to all persons and meets the provisions of title VIII of the Civil Rights Act of 1968 (Public Law 90–284).

(d) Located in an area not generally less desirable than the dwelling to be acquired as to the neighborhood, public utilities, and commercial facilities and is reasonably accessible to the displaced person's place of employment.

(e) Available on the market and within the financial means of the displaced person or family.

(f) Adequate to accommodate the displaced person.

§ 101–18.303–9 Initiation of negotiations.

"Initiation of negotiations" means the date on which an official representative of GSA makes the first personal contact with an owner (or his duty authorized representative) of real property to be acquired by GSA and furnishes him with a written offer to purchase the property.

§ 101–18.303–10 Owner.

"Owner" means an individual (or individuals) who:

(a) Holds the fee title, a life estate, or a 99-year lease; or

(b) Has an interest in a cooperative housing project which includes the right of occupancy of a dwelling unit; or

(c) Is the contract purchaser of any such estates or interests listed in paragraph (a) of this section; or

(d) Has succeeded to any of the interests in paragraphs (a) or (b) of this section, by devise, bequest, inheritance, or operation of law. For the purposes of this subpart, if a person acquires ownership by any of the methods listed in this paragraph, the tenure of ownership not occupancy of the succeeding owner shall be the same as the tenure of the preceding owner.

§ 101–18.303–11 Dwelling.

"Dwelling" means the place of permament or customary and usual abode of a person. It includes a single-family building, a one-family unit in a multifamily building, a unit of a condominium or cooperative housing project, or any other residential unit, including a mobile home which either is considered to be real property under State law, cannot be moved without substantial damage or unreasonable cost, or is not a decent, safe, and sanitary dwelling.

§ 101–18.303–12 Nonprofit organization.

"Nonprofit organization" means a corporation, partnership, individual, or other public or private entity engaged in a business, professional, or instructional activity on a nonprofit basis, necessitating fixtures, equipment, stock-in-trade, or other tangible property for the carrying on of the business, professional, or institutional activity on the premises.

§ 101–18.303–13 Existing patronage.

"Existing patronage" is the annual average dollar volume of business transacted during the 2 taxable years immediately preceding the taxable year in which the business is relocated.

§ 101–18.303–14 Family.

"Family" means two or more individuals living together in the same dwelling who are related to each other by blood, marriage, adoption, legal guardianship, or operation of law.

§ 101–18.303–15 Moving and related expense payments.

"Moving and related expense payments" means those payments authorized by section 202 of the Act.

§ 101–18.303–16 Replacement housing payments.

"Replacement housing payments" means those payments authorized by section 203 of the Act.

§ 101–18.303–17 Replacement rental payments.

"Replacement rental payments" means those payments authorized by section 204 of the Act.

§ 101–18.303–18 Notice of displacement.

"Notice of displacement" means a written notice to vacate real property given by GSA generally 90 days prior to the date of vacation.

§ 101–18.303–19 Economic rent.

"Economic rent" means the amount of rent a displaced tenant would have to pay for a similar dwelling unit in areas not generally less desirable than the dwelling unit to be acquired by the Government.

§ 101–18.304 Basic policy.

GSA, to the greatest extent practicable, will:

(a) Administer its real property acquisition programs or projects so that every person displaced because of such programs or projects will have been offered a comparable replacement dwelling which is decent, safe, and sanitary before being required to vacate the dwelling acquired by the Government.

(b) Make prompt and equitable payments to those eligible displaced persons to cover:

(1) Reasonable costs incurred for moving and related expenses;

(2) Amounts determined to be the replacement housing payments; and/or

(3) Amounts determined to be the replacement rental payments.

(c) Provide, or cause to be provided, relocation assistance advisory services in a manner to insure that the displaced person will receive assistance in relocation. When GSA causes services to be provided by the staff of an agent under contract, GSA will require that the services be administered in a manner that will accomplish the specific and underlying purposes of the Act.

(d) Provide procedures for reviewing the application of an aggrieved applicant to encourage the prompt and proper resolution of the causes of such aggravation.

(e) Adhere to all existing GSA regulations, procedures, policies, and forms relating to the acquisition of real property and interests therein as well as project requirements except as modified by the requirements of the Act and these regulations.

§ 101-18.305 Right of appeal.

Any applicant aggrieved by a determination as to eligibility for a payment under the Act, or the amount of such payment, may submit through the Commissioner, Public Buildings Service, a request to have his application reviewed by the Administrator of General Services.

§ 101-18.306 General criteria for decent, safe, and sanitary housing.

A decent, safe, and sanitary dwelling is one which meets all of the following minimum requirements:

(a) Conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing, electrical, housing, and occupancy codes and similar ordinances or regulations.

(b) Has a continuing and adequate supply of potable safe water.

(c) Has a kitchen or an area set aside for kitchen use which contains a sink in good working condition and is connected to hot and cold water and an adequate sewage system.

(d) Has an adequate heating system in good working order capable of maintaining a minimum temperature of 70° F. in the living area under local outdoor design temperature conditions. A heating system will not be required in those geographical areas where not normally included in new housing.

(e) Has a bathroom, well lighted and ventilated and affording privacy to a person within it, containing a lavatory basin and a bathtub or stall shower, properly connected to an adequate supply of hot and cold running water, and a flush closet, all in good working order and properly connected to a sewage disposal system.

(f) Has an adequate and safe wiring system for lighting and other electrical services.

(g) Is structurally sound, weathertight, in good repair, and adequately maintained.

(h) Has a safe unobstructed means of egress leading to safe open space at ground level. Each dwelling unit in a multidwelling building must have access either directly or through a common corridor to a means of egress to open space at ground level. In buildings of three stories or more, the common corridor on each story must have at least two means of egress.

(i) Has 150 square feet of habitable floor space for the first occupant in a standard living unit and at least 100 square feet (70 square feet for mobile home) of habitable floor space for each additional occupant. The floor space is to be subdivided into sufficient rooms to be adequate for the family. All rooms must be adequately ventilated. Habitable floor space is defined as that space used for sleeping, living, cooking, or dining purposes and excludes such enclosed places as closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries, and unfurnished attics, foyers, storage spaces, cellars, utility rooms, and similar spaces.

§ 101-18.306-1 Sleeping rooms.

The standards for decent, safe, and sanitary housing as applied to rental of sleeping rooms shall include the minimum requirements contained in § 101-18.306 (a), (d), (f) through (h), and the following:

(a) At least 100 square feet of habitable floor space for the first occupant and 50 square feet of habitable floor space for each additional occupant.

(b) Lavatory, bath, and toilet facilities that provide privacy, including a door that can be locked if such facilities are separate from the room.

§ 101-18.306-2 Application of local code standards.

In those instances where there is no local housing code or where a local housing code does not meet all the standards listed in this section, the Commissioner, Public Buildings Service, will determine the standards acceptable for decent, safe, and sanitary housing.

§ 101-18.306-3 Exceptions.

Exceptions may be granted to decent, safe, and sanitary standards and will be limited to items and circumstances that are beyond the reasonable control of the displaced person to adhere to the standards. Approved exceptions will not affect the computation of a replacement housing payment.

§ 101-18.307 Multiple occupancy.

Multiple occupancy will be treated as single occupancy in the case of individuals, not families, in dealing with benefits for replacement housing. However, each displaced individual may receive benefits for actual, reasonable moving expenses and for other related expenses, and in the case of families, each family will be considered separately.

§ 101-18.308 Moving and related expenses.

Whenever the acquisition of real property by GSA will result in the displacement of any person on or after January 2, 1971, and such person occupied the real property acquired by GSA prior to its acquisition, GSA will make a payment to the person, upon application as approved by GSA, for the person's reasonable and actual moving expenses as follows:

(a) Transporting individuals, families, and property from the acquired site, including storage, to the replacement site, not to exceed a distance of 50 miles except where GSA determines that relocation beyond the 50-mile area is justified.

(b) Packing and crating of personal property.

(c) Advertising for packing, crating, and transportation when GSA determines that it is necessary.

(d) Storing personal property for a period generally not to exceed 12 months when GSA determines that storage is necessary in connection with relocation.

(e) Insuring loss and damage of personal property while in storage or transit.

(f) Removing, reinstalling, and reestablishing machinery, equipment, appliances, and other items, not acquired as real property, including reconnection of utilities, which do not constitute an improvement to the replacement site, and which were not acquired by GSA. (Prior to payment of any expenses for removal and reinstallation of such property, the displaced person shall be required to agree in writing that the property is personalty and that GSA is released from any payment for the property.)

(g) Replacing property lost, stolen, or damaged (not caused by the fault or negligence of the displaced person, his agent, or employees) in the process of moving, where insurance to cover such loss or damage was not available at the time of the move.

(h) Paying other reasonable expenses determined proper by GSA.

§ 101-18.308-1 Limitations.

In the implementation of section 202 of the Act, GSA will apply the following limitations:

(a) When the displaced person accomplishes the move himself, the amount of payment will not exceed the estimated cost of moving commercially.

(b) When an item of personal property which is used in connection with any business or farm operation is not moved but sold and promptly replaced with a comparable item, reimbursement will not exceed the replacement cost, minus the proceeds received from the sale, or the cost of moving, whichever is less.

(c) When personal property which is used in connection with any business or farm operation to be moved is of low value and high bulk, and the cost of moving would be disproportionate in relation to the value, as determined by GSA, the allowable reimbursement for the expense of moving the personal property will not exceed the difference between the amount which would have been received for such item on liquidation and the cost of replacing the same with a comparable item available on the market. This provision will be applicable in the case of moving of junk yards, stockpiled sand, gravel, minerals, metals, and similar type items of personal property.

§ 101-18.308-2 Exclusions.

In the implementation of section 202 of the Act, GSA will exclude the following moving expenses and losses from payment:

(a) Additional expenses incurred because of living in a new location.

(b) Cost of moving structures, improvements, or other real property in which the displaced person reserved ownership.

(c) Improvements to the replacement site, except when required to reinstall machinery, equipment, or other personal property.

(d) Interest on loans to cover moving expenses.
(e) Loss of goodwill.
(f) Loss of profits.
(g) Loss of trained employees.
(h) Personal injury.
(i) Cost of preparing the application for moving and related expenses.
(j) Modification of personal property to adapt it to the replacement site, except when required by law.
(k) Such other items as GSA determines should be excluded on the basis that they are not reasonable, prudent, or proper.

§ 101-18.308-3 **Direct losses.**

GSA will reimburse a displaced person as the result of the person's moving or discontinuing a business or a farm operation for direct losses to personal property in accordance with the following:

(a) When the displaced person does not move personal property, he will be required to make a bona fide effort to sell it.

(b) When personal property is sold and the business or farm operation reestablished, the displaced person is entitled to the difference between the replacement cost minus the sale proceeds, or the cost of moving, whichever is less.

(c) When the business or farm operation is discontinued, the displaced person is entitled to the difference between the in-place value of the personal property and the sale proceeds, or the cost of moving, whichever is less.

(d) When the personal property is abandoned, the displaced person is entitled to payment for the difference between the in-place value and the amount which would have been received from the sale of the item, or the cost of moving, whichever is less.

§ 101-18.308-4 **Expenses in searching for a replacement business or farm.**

In the implementation of section 202 (a)(3) of the Act, GSA will allow the following expenses, except that the total amount which a displaced person may be paid for searching expenses will not exceed $500, unless GSA determines that a greater amount is justified based on the circumstances involved:

(a) Travel costs up to a maximum distance of 100 miles.

(b) Reasonable costs for meals and lodging.

(c) Time spent in searching at the rate of the displaced person's salary or earnings, but not exceeding $10 per hour.

(d) Broker or realtor fee to locate a replacement business or farm operation if GSA determines such service is necessary to effect a satisfactory relocation.

§ 101-18.308-5 **Scheduled payments.**

Any displaced person eligible for moving and related expense benefits heretofore enumerated may elect to receive a moving expense allowance determined in accordance with a schedule established by GSA but not to exceed $300 and a dislocation allowance of $200. These payments will be made upon application by the displaced person and need not be supported by any evidence of incurred expenses. The schedule established by GSA will be the room moving allowance schedules maintained by the respective State highway departments.

§ 101-18.308-6 **Fixed payments for displaced businesses or farms.**

Any eligible displaced business or farm operator who elects to accept a payment authorized by this section in lieu of the moving and related expense payments heretofore enumerated may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment will not be less than $2,500 nor more than $10,000. However, where an entire farm operation is not acquired, the payment will be made only if GSA determines that the farm met the definition of a farm operation prior to the acquisition and the property remaining after the acquisition is no longer an economic unit. In the case of a business, no payment will be made unless GSA is satisfied that the business cannot be relocated without a substantial loss of its existing patronage and is not part of a commercial enterprise having at least one other establishment not being acquired by the Government, which is engaged in the same or similar business. The term "average annual net earnings" means one-half of the sum of the net earnings of the business or farm operation before Federal, State, and local income taxes during the 2 taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property acquired by GSA or during any other period that GSA determines to be more equitable for establishing such earnings. The "average annual net earnings" includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during that period.

(a) To be eligible for the payment authorized in this section, the business or farm operation must contribute materially to the income of the displaced owner. This standard is designed to eliminate those part-time family occupations which do not contribute materially to a displaced person's income.

(b) The loss of existing patronage of a business will be determined by GSA only after consideration of all pertinent circumstances, including the following:

(1) The type of business conducted by the displaced concern.

(2) The nature of the clientele of the displaced concern.

(3) The relative importance of the present and proposed locations to the patronage of the displaced business.

(c) A person who is displaced from his place of business or farm may elect to receive a fixed relocation payment whether or not he discontinues or reestablishes operations. Any displaced owner-occupant of a multifamily dwelling who earns income from such dwelling will be regarded as displaced from his place of business, in addition to having been displaced from his dwelling, and is eligible in accordance with the foregoing requirements for a fixed payment based on the average annual net earnings.

§ 101-18.308-7 **Advance payments in hardship cases.**

Advance moving and related expense payments may be made to individuals, families, and business concerns in cases of hardship. By written prearrangement between the displaced person, GSA, and the mover, the mover may present invoices covering services rendered to GSA for direct payment.

§ 101-18.309 **Replacement housing payments.**

In addition to payments otherwise authorized, GSA will make a payment not in excess of $15,000 to any eligible displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than 180 days prior to initiation of negotiations for the acquisition of the dwelling. Such additional payments will include the following elements:

(a) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the Government is determined to be the reasonable cost of a comparable replacement dwelling.

(b) The amount, if any, which will compensate the displaced person for any increased interest costs which the person is required to pay for financing of the comparable replacement dwelling. This amount will be paid only if the dwelling acquired by the Government was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of the dwelling. Such amount will be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling over the remainder of the term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate will be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(c) Reasonable expenses incurred by the displaced person for evidence of title, recording fees, legal, closing, and related costs, preparing conveyance contracts, credit reports, FHA and VA appraisal fees, and other costs incident to the purchase of the comparable replacement dwelling, but not including prepaid expenses.

§ 101-18.309-1 **Eligibility.**

(a) A displaced owner-occupant is eligible for a replacement housing payment if he:

(1) Owned and occupied the acquired dwelling for not less than 180 days immediately prior to the initiation of negotiations for the real property; and

(2) Purchases and occupies a comparable replacement dwelling not later than the end of the 1-year period beginning on the date on which the displaced person receives from the Government final

payment of all costs of the acquired dwelling or on the date on which he moves from the acquired dwelling, whichever is later.

§ 101-18.309-2 Computation of replacement housing payment.

GSA will compute the amount of the replacement housing payment by:

(a) Determining the amount necessary to purchases a comparable replacement dwelling using a schedule, or by devising a suitable alternate method to better meet local conditions. The schedule will be based on a continuing and current analysis of the market to determine a representative amount for each type of dwelling required.

(b) Selecting a comparable dwelling or dwellings which are actually available on the real estate market and which meet the definition of a comparabe replacement dwelling. Asking prices will be adjusted to reflect market sales experience. A single comparable dwelling will be used only when additional comparable dwellings are not available.

(c) Cooperating with other Federal agencies causing displacement in a community to establish a uniform method of calculating replacement housing payments.

(d) Basing the interest payment portion of the replacement housing payment on the present value of the reasonable cost of the interest differential including points paid by the purchaser on the amount refinanced not to exceed the amount of the unpaid debt for its remaining term at the time of Government acquisition of the real property.

(e) Reimbursing the displaced person, in the amount found in the incidental expenses portion of the replacement housing payment, for costs incident to the purchase of a comparable replacement dwelling. This amount may include: Legal, closing, and related costs including costs of title search, preparing conveyance contracts, notary fees, surveys, preparing drawings of plats, and charges incident to recordation; lender's, FHA, or VA appraisal fees; FHA application fees; certifying structural soundness when required by lender, FHA, or VA; credit report; title policies or abstracts of title; escrow agent's fee; and State revenue stamps, or sale or transfer taxes. However, no fee, cost, charge, or expense is reimbursable which is determined to be part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321 and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System.

§ 101-18.309-3 Upper limit of replacement housing payments.

The amount established as the replacement housing payment for a comparable replacement dwelling sets the upper limit of this payment.

(a) If a displaced person, of his own volition, purchases and occupies a decent, safe, and sanitary dwelling at a price less than the upper limit of the replacement housing payment plus the purchase price paid for the Government-acquired dwelling, the replacement housing payment will be reduced to the amount necessary to pay the difference between the acquisition price of the replacement dwelling plus reasonable incidental expenses. A displaced person will be considered as having "purchased" such a dwelling if he acquires an existing dwelling, purchases and rehabilitates a substandard dwelling, relocates, or relocates and rehabilitates an existing dwelling, constructs a new dwelling, contracts to purchase a dwelling to be constructed on a site provided by a builder or developer, or enters into a contract for the construction of a dwelling on a site which he owns or acquired for the purpose.

(b) If a displaced person, of his own volition, purchases and occupies a decent, safe, and sanitary dwelling at a price less than the acquisition price of the acquired dwelling, no differential payment will be made.

§ 101-18.309-4 Tenants' notice of initiation of negotiations.

Tenants and other persons lawfully occupying real property acquired by GSA wil be notified of the date when negotiations for the property were initiated with the property owner.

§ 101-18.310 Replacement rental payments.

In addition to payments otherwise authorized, GSA will make a payment not in excess of $4,000 to any eligible displaced person not eligible to receive a replacement housing payment under § 101-18.309 who actually and lawfully occupied the dwelling acquired by the Government for not less than 90 days immediately prior to the initiation of negotiations for acquisition of the dwelling. GSA will notify the tenant or other occupant of the property in writing of the actual date of initiation of negotiations. Such payment will be the amount, not to exceed $4,000, determined by GSA to be necessary to enable the displaced person to:

(a) Lease or rent for a period not to exceed 4 years a comparable replacement dwelling, or

(b) Make a downpayment, including incidental expenses described in § 101-18.309-2(e), on a comparable replacement dwelling; if such amount exceeds $2,000, the displaced person must match any amount in excess of $2,000 in making the downpayment.

§ 101-18.310-1 Eligibility.

A displaced person who is a tenant or an owner-occupant of less than 180 days prior to initiation of negotiations is eligible for a replacement housing payment if he meets both of the following requirements:

(a) Occupies, actually and lawfully, the dwelling for not less than 90 days immediately prior to the initiation of negotiations for the acquisition of the dwelling.

(b) Meets the other eligibility requirements of § 101-18.310.

§ 101-18.310-2 Owner-occupant who elects to rent.

An owner-occupant eligible for a replacement housing payment under the provisions of § 101-18.309 but who elects to rent a comparable replacement dwelling rather than purchase such a replacement dwelling is eligible for a replacement rental payment under these provisions. However, in no event will the replacement rental payment exceed the amount of his entitlement under the replacement housing payment provisions or the replacement rental payment provisions, whichever is less.

§ 101-18.310-3 Computation of renter's replacement rental payment.

Computation of the replacement rental payment for eligible displaced persons who elect to rent a comparable replacement dwelling will be determined by GSA by the establishment of a schedule, by using a comparative method, or by devising a suitable alternate method to better meet local conditions.

(a) GSA may establish a rental schedule for comparable replacement dwellings. The replacement rental payment will be computed by determining the amount necessary to rent a comparable replacement dwelling for 4 years (using the average monthly cost from the schedule) and subtracting from such amount 48 times the average month's rent paid by the displaced person in the last 3 months prior to initiation of negotiations if such rent was reasonable, or if not reasonable, 48 times the monthly economic rent for the dwelling as established by GSA. Economic rent is the amount of rent the displaced tenant would have had to pay for a similar dwelling unit in areas not generally less desirable than the dwelling unit to be acquired. The schedule should be based on a current analysis of the market to determine an amount for each type of dwelling required.

(b) GSA may determine the average month's rent by selecting one or more dwellings representative of the dwelling unit acquired by the Government which is available on the market and is a comparable replacement dwelling. The payment will be computed by determining the amount necessary to rent for 4 years the comparable replacement dwelling and subtracting the amount of 48 times the average month's rent paid by the displaced person in the last 3 months prior to initiation of negotiations, or if not reasonable, 48 times the monthly economic rent.

(c) GSA may establish the average month's rent paid by a displaced person by using more than 3 months prior to negotiations if it is deemed advisable.

(d) All replacement rental payments for displaced persons who elect to rent instead of purchase, that exceed $500, will be made in four equal installments on an annual basis. Before making each annual payment, GSA will verify that the displaced person continues to occupy a decent, safe, and sanitary dwelling.

(e) When more than one Federal agency is causing displacement in a community or area, GSA will cooperate with those agencies in determining uniform replacement rental payments.

§ 101–18.310–4 Computation of purchaser's replacement rental payment.

Computation of the replacement rental payment for eligible displaced persons who elect to purchase instead of rent a comparable replacement dwelling will be the amount determined to be necessary to make a downpayment and to cover incidental expenses in the purchase of a replacement dwelling.

(a) Incidental expenses of closing the transaction are those heretofore described § 101–18.309–2(e).

(b) The full amount of the downpayment must be applied to the purchase price and such downpayment and incidental costs shown on the closing statement.

(c) To receive payment to apply on the purchase of a replacement dwelling, a tenant or owner-occupant eligible under this section to receive a replacement housing payment, must purchase and occupy a decent, safe, and sanitary dwelling not later than 1 year subsequent to the date he vacated the dwelling acquired by GSA.

§ 101–18.310–5 Time limit for filing claims.

Claims for benefits under the Act are to be received by GSA within 18 months from the date on which the displaced person moves from the real property acquired or to be acquired; or the date on which GSA makes final payment of all costs for the acquisition of the real property, whichever is the later date.

§ 101–18.311 Relocation assistance advisory services.

Whenever GSA causes displacement of persons residing on a public building site, after January 2, 1971, GSA will provide to all eligible displaced persons a relocation assistance advisory service. This service will be provided by GSA personnel or by the personnel of a contractor employed by GSA. If GSA determines that any person occupying property immediately adjacent to the real property acquired by the Government is caused substantial economic injury because of that acquisition, such person may be offered relocation assistance advisory services.

(a) GSA will cooperate to the maximum extent feasible with other Federal or State agencies to insure that displaced persons receive the maximum assistance available to them.

(b) GSA relocation assistance advisory services will include such measures, facilities, or services as may be necessary or appropriate in order to:

(1) Determine the need, if any, of eligible displaced persons, for relocation assistance.

(2) Provide current and continuing information on the availability, prices, and rentals of comparable replacement dwellings which are decent, safe, and sanitary and of comparable commercial properties and locations for displaced businesses.

(3) Insure that, within a reasonable time, prior to displacement, comparable replacement dwellings which are decent, safe, and sanitary will be available to replace the dwellings acquired by the Government.

(4) Assist a person displaced from his business or farm operation in obtaining and becoming established in a replacement location.

(5) Supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons.

(6) Provide other advisory services to displaced persons to minimize hardships to such persons in adjusting to relocation.

§ 101–18.312 Availability determination.

GSA will not proceed with any phase of a project which will cause the displacement of any person until it has determined that there will be available, within a reasonable time prior to such displacement, on a basis consistent with the requirements of Title VIII of the Civil Rights Act of 1968 (Public Law 90–284), in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means (including supplements provided by law) of the families displaced, decent, safe, and sanitary dwellings equal in number of, and available to, such displaced persons who require such dwellings and reasonably accessible to their places of employment.

(a) This determination will be based on a current survey and analysis of available replacement housing resources. This survey will take into account the competing demands on the available housing resources.

(b) GSA may waive the requirements of this section in periods of emergency and/or other extraordinary situations where immediate possession of real property is of crucial importance.

§ 101–18.313 Housing replacement as a last resort.

GSA will be guided by the criteria and policies to be developed by the Secretary of Housing and Urban Development in its implementation of section 206 of the Act.

§ 101–18.314 Planning and other preliminary expenses for additional housing.

GSA will be guided by the criteria and policies to be developed by the Secretary of Housing and Urban Development in its implementation of section 215 of the Act.

§ 101–18.315 Applicability to the acquisition of leasehold interest.

The relocation provisions of the Act do not apply to leasing actions except when persons are displaced as a result of the condemnation of a leasehold interest or lease construction of a building which has received congressional approval as a public buildings project pursuant to section 7(a) of the Public Buildings Act of 1959 (40 U.S.C. 606).

Subparts 101–18.4—101–18.49 [Reserved]

Effective date. This regulation is effective upon publication in the FEDERAL REGISTER (7–22–72).

Dated: July 20, 1972.

ARTHUR F. SAMPSON,
Acting Administrator of General Services.

[FR Doc.72–11436 Filed 7–21–72;8:50 am]

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

PART 53—GRANTS, LOANS AND LOANS GUARANTEES FOR CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND MEDICAL FACILITIES

Subpart L—Community Service; Services for Persons Unable to Pay; Nondiscrimination

NOTICE OF INTERIM RULE MAKING

Notice is hereby given that the Administrator, Health Services and Mental Health Administration, with the approval of the Secretary of Health, Education, and Welfare and of the Federal Hospital Council, has issued an interim regulation, to be effective 15 days from the date of publication of this notice and until a final regulation is issued, revising § 53.111 of Title 42, CFR, entitled "Services for persons unable to pay." Notice is also given that a proposed final regulation will be submitted to the Federal Hospital Council for its approval within 90 days of publication of this notice.

Interested persons may comment upon the interim regulation and thereby participate in the formulation of the final regulation, by submitting data, views or arguments, within 30 days after the publication of this notice, to the Health Care Facilities Service, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20852.

Notice of proposed rule making and of opportunity for public comment concerning the establishment of procedures for determining compliance with, and enforcing, assurances to provide a reasonable volume of services to persons unable to pay therefor given, or to be given, by applicants for assistance under Title VI of the Public Health Service Act (42 U.S.C. 219 et seq.) was published in the FEDERAL REGISTER on April 18, 1972 (37 F.R. 7632). As stated in the notice, the proposed action was subject to the approval of the Federal Hospital Council. The period for public comment was thereafter extended for 30 days, to and including June 17, 1972 (37 F.R. 9783).

In response to the notice, a large number of comments, suggestions and objections were received. These comments were carefully reviewed and considered and a number of revisions in the proposed regulations, as detailed below, have been made as a result of such consideration.

A number of the objections were general statements of the position that no new regulations dealing with "reasonable volume" should be issued. This assurance is currently the subject of litigation in a number of suits in which the Secretary has been named or joined as a defendant. These cases have emphasized the imperative necessity of a new regulation designed to define the scope of the assurance more clearly and to govern its enforcement.

Many carefully written and detailed objections and suggestions were also submitted. Some of these dealt with matters outside the scope of title VI of the Public Health Service Act, e.g., participation by the Medicare and Medicaid programs in the cost to facilities of uncompensated services, and, accordingly, have been rejected. Other comments offered suggestions relating to accessibility to care, and to participation by facilities in the Medicaid program. These suggestions relate to the community service assurance (42 CFR 53.112) rather than to the reasonable volume assurance, and will be considered as a request for the revision of the community service assurance.

As a result of our consideration of the relevant comments, a number of revisions to the proposed regulations as published were prepared.

Under section 603 of the Public Health Service Act (42 U.S.C. 291C), general regulations under the Hill-Burton Act may be adopted only with the approval of the Federal Hospital Council. Accordingly, the revisions of the proposed regulations were presented to the Federal Hospital Council for approval at its meeting of June 13, 1972.

The Federal Hospital Council approved the revised proposal subject to the Secretary making five changes in its text. These changes were made, and the revised proposal, with the changes, is here published as an interim regulation.

The revisions to the proposed regulation published on April 18, 1972 are described below. Changes initiated by the Council are so identified.

1. *Section 53.111(a)*. The Council recommended the adoption of a time limit to the period of obligation under an assurance by the applicant that the federally aided facility will make available a reasonable volume of services to persons unable to pay therefor. This period is set as 20 years after the completion of construction in the case of a grant and in the case of a loan or loan guarantee the period during which (a) any amount of a direct loan made under sections 610 and 623 of the Act, or (b) any amount of a loan with respect to which a loan guarantee and interest subsidy has been provided under sections 623 and 624 of the Act remains unpaid.

2. *Section 53.111(b)*. The definition of "uncompensated services" has been changed to make clear that the level of uncompensated services is measured by the difference between the reasonable cost of the services provided to persons unable to pay therefor and the amount charged such persons for such services.

3. *Section 53.111(c)*. A new condition has been added to this paragraph to require public notice and an opportunity for public comment before the State agency recommends an exception to the requirement that an applicant give an assurance concerning the availability of a reasonable volume of services to persons unable to pay therefor.

4. *Section 53.111(d)*. The presumptive compliance guideline was revised to establish a dollar level of 3 percent of operating costs or 10 percent of all Federal assistance provided to or on behalf of the applicant under the Act, whichever is less. Federal assistance is defined to include the total amount of any interest subsidy which the Secretary is, or will be, obligated to pay in connection with a direct loan or loan guarantee provided under the Act.

A second option is provided under which a certification by an applicant that it will not deny admission to, and services at, its facility to any person unable to pay therefor will be deemed to constitute presumptive compliance. Council action clarified this option to include a certification that services available in the facility will be provided without charge or at a charge below reasonable cost which does not exceed the ability of any such person to pay therefor as determined in accordance with criteria established pursuant to paragraph (g).

A clarifying amendment was also made to § 53.111(d) by the Council, which deleted the reference to paragraph (h). Such change made paragraph (d) and paragraph (h)(1) internally consistent (see item 8 below).

5. *Section 53.111(e)(2)*. A new subparagraph (2) was added to make clear that the inclusion in the annual statement of the amount of uncompensated services provided in a prior year is required only if a level of uncompensated services was established for such year.

The Council revised the statement of the elements of an affirmative action plan to limit the publicity requirements to "press releases or other appropriate means as the facility may desire."

6. *Section 53.111(e)(5)*. A new subparagraph (5) has been added to require that, pending the establishment of a level of uncompensated services for a fiscal year, the applicant shall provide such services at a level which is the higher of the level established (or if no such level has been established, the level provided) in the preceding fiscal year or the level proposed in its budget for the current fiscal year.

7. *Section 53.111(f)*. As revised, this paragraph will permit uncompensated services to be credited toward fulfillment of the reasonable volume obligation if a written determination of inability to pay for the services provided is made prior to any collection effort other than the rendition of bills. While this applies to collection efforts, whether made by the facility or any other entity, it is not intended to preclude obtaining information as to the person's ability to pay through means other than action calculated to enforce collection. Collection efforts against third party insurers or governmental programs are specifically permitted.

8. *Section 53.111(h)(1)*. Under paragraph (h) of the regulation, as published on April 18, 1972, the State agency was authorized to set a level of uncompensated services which could be equal to or less than the presumptive compliance guideline or, under the prescribed conditions, taking into account the need in the area served by the applicant for uncompensated services and the financial ability of the applicant to provide such services, could exceed the guideline.

The Council added the proviso that "in no event shall the level of uncompensated services established under this section exceed the presumptive compliance guideline."

9. *Section 53.111(h)(5)*. This paragraph has been revised to make clear that all objections and supporting documents are to be made available for public inspection, and to require that the State agency rule on the objections within 60 days after the expiration of the period for objections.

In considering whether to issue the revised proposal with the changes suggested by the Council as a final regulation, the Secretary was apprised of contentions that the approval by the Council was procedurally defective in that there were five vacancies in the Council's authorized membership of 12 and that the meeting of the Council had not been open to the public.

In Perry et al. v. The Greater Southeast Community Hospital Foundation, Inc., et al. (U.S.D.C. D.C.) a law suit involving compliance with the "reasonable volume" assurance, Judge Gesell, in denying a motion for a temporary restraining order to enjoin the issuance of the regulation, held on June 28, 1972, that the Federal Hospital Council was "performing quasi-legislative rather than advisory functions in consulting and recommending to the Secretary appropriate regulations," and was not, therefore, subject to the Executive order in this nonadvisory function.

The Court went on to note, however, its concern with the composition of the Council, which it indicated raised "questions of policy, if not of illegality." Furthermore, the Court indicated its view that, although not legally required, the Council meeting on the regulation should be open to the public.

Accordingly, in order to remove any question regarding the procedural propriety of the Council's approval of the regulation the Secretary will submit a proposed regulation to a fully constituted council of 12 members at a meeting open to the public within 90 days of the publication of this notice. In order, however, that some regulation be immediately in effect, particularly in view of the pendency of litigation against the Secretary seeking to compel him to issue promptly a regulation, he is issuing forthwith as an interim regulation the revised proposal with the changes suggested by the Council.

All comments received pursuant to this invitation, as well as all comments received in response to the notice of proposed rule making published in the FEDERAL REGISTER on April 18, 1972 (37 F.R. 7632), will be considered by the Secretary in framing the regulation to be proposed to the fully constituted Federal Hospital Council. The comments will be available for public inspection at Room 9-05, Parklawn Building, between the hours of 8:30 a.m. and 5 p.m., Monday through Friday. Notice of the meeting of the Council at which the final regulation will be proposed will be published in accordance with section 13 of Executive Order 11671, and the meeting will be open to the public.

In presenting the proposed regulation to the Council, the Secretary will recommend that any revision approved by the Council be applicable to the fiscal year of each applicant which is subject to the regulation as adopted below (see sec. 53.111(h)(3)).

In view of the time which will be required to process the appointments to the Council and the need to select a suitable date for the meeting, it is anticipated that the Council meeting will be scheduled for a date after September 5 and prior to September 30, 1972.

Dated: July 13, 1972.

VERNON E. WILSON,
Administrator, Health Services and Mental Health Administration.

Approved: July 14, 1972.

ELLIOT L. RICHARDSON,
Secretary.

Section 53.111 of Part 53 is revised as follows:

§ 53.111 Services for persons unable to pay.

(a) *Applicability.* The provisions of this section apply to every applicant which heretofore has given or hereafter will give an assurance that it will make available a reasonable volume of services to persons unable to pay therefor but shall not apply to an applicant (1) for more than 20 years after the completion of construction of any facility with respect to which funds have been paid under section 606 of the Act or (2) beyond the period during which any amount of a direct loan made under sections 610 or 623 of the Act, or any amount of a loan with respect to which a loan guarantee and interest subsidy has been provided under sections 623 and 624 of the Act remains unpaid.

(b) *Definitions.* As used in this section:

(1) The term "facility" includes hospitals, facilities for long-term care, outpatient facilities, rehabilitation facilities, and public health centers;

(2) The term "applicant" means an applicant for, or recipient of, a grant, a loan guarantee or a loan under the Act;

(3) "Fiscal year" means the fiscal year of the applicant;

(4) The term "operating costs" means the actual operating costs of the applicant for a fiscal year as determined in accordance with cost determination principles and requirements under Title XVIII of the Social Security Act (42 U.S.C. 1395): *Provided,* That such "operating costs" shall be determined for the applicant's entire facility and for all patients regardless of the source of payment for such care: *And provided further,* That in determining such operating costs there shall be deducted the amount of all actual or estimated reimbursements, as applicable, for services received or to be received pursuant to Title XVIII and XIX of the Social Security Act (42 U.S.C. 1395 and 1396);

(5) The term "net income" means the net income of the applicant determined in accordance with the applicant's usual accounting methods provided that such methods are consistently applied and are compatible with accounting principles generally accepted in hospital and related fields;

(6) The term "reasonable cost" means the cost of providing services to a specific patient determined in accordance with the cost determination principles and requirements under title XVIII of the Social Security Act (42 U.S.C. 1395) and Subpart D of the regulations thereunder (20 CFR 405, 401 et seq.);

(7) The term "uncompensated services" means services which are made available to persons unable to pay therefor without charge or at a charge which is less than the reasonable cost of such services. The level of such services is measured by the difference between the amount charged such persons for such services and the reasonable cost thereof;

(8) "Reasonable volume of services to persons unable to pay therefor" means a level of uncompensated services which meets a need for such services in the area served by an applicant and which is within the financial ability of such applicant to provide.

(c) *Assurance.* (1) Before an application under this part is recommended by a State agency to the Secretary for approval, the State agency shall obtain an assurance from the applicant that there will be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor. The requirement of an assurance from an applicant shall be waived if the applicant demonstrates to the satisfaction of the State agency, subject to subsequent approval by the Secretary, that such a requirement is not feasible from a financial viewpoint. (2) Prior to recommending that such requirement be waived, the State agency shall publish in a newspaper of general circulation in the area served by the applicant a notice of the request for such waiver and invite public comment thereon, allowing not less than 30 days therefor. All comments received shall be available for public inspection, and shall be considered by the State agency in arriving at its recommendation. Notice of the determination on the request for waiver shall be given to all interested persons and to the public before the approval of the Secretary is sought.

(d) *Presumptive compliance guideline.* An applicant which, for a fiscal year, (1) budgets for the support of, and makes available on request, uncompensated services at a level not less than the lesser of 3 percent of operating costs or 10 percent of all Federal assistance provided to or on behalf of the applicant under the Act, or (2) certifies that it will not exclude any person from admission on the ground that such person is unable to pay for needed services and that it will make available to each person so admitted services provided by the facility without charge or at a charge below reasonable cost which does not exceed any such person's ability to pay therefor as determined in accordance with criteria established pursuant to paragraph (g), shall be deemed in presumptive compliance with its assurance. In the case of a loan guarantee with interest subsidy or a direct loan guarantee be sold by the Secretary with an interest subsidy, the amount of Federal assistance shall include the total amount of the interest subsidy which the Secretary is, or will be, obligated to pay over the full life of the loan, as well as any other payments which the Secretary makes on behalf of the applicant in connection with the loan guarantee or the direct loan which has been sold.

(e) *Compliance reports.* (1) Each applicant shall, not later than 120 days after the end of a fiscal year, unless a longer period is approved by the State agency for good cause shown, file with the State agency a copy of its annual statement for such year as required by section 646 of the Act and § 53.128(q), which shall set forth its operating costs.

(2) With respect to each fiscal year for which a level of uncompensated services has been established in accordance with this section, the annual statement shall also set forth the amount of uncompensated services provided in such year. (i) The provision of a level of uncompensated services in such year which equals or exceeds the level established pursuant to paragraph (h) of this section for such year shall constitute compliance with the assurance. (ii) If the level of services provided was less than the level of uncompensated services established pursuant to paragraph (h) of this section, the applicant shall submit with such statement: A justification therefor, showing that the provision of such lower level of uncompensated services was reasonable under the circumstances; and a description of the steps it proposes to take to assure the availability and utilization of the level of uncompensated services to be established for the current fiscal year, which shall include an affirmative action plan, utilizing press releases or other appropriate means as the facility may desire to bring to the attention of

the public the availability of such uncompensated services and the conditions of eligibility therefor.

(3) Each applicant shall file with its annual statement a copy of that portion of its adopted budget for the current fiscal year relating to the support of uncompensated services in such year. Such budget for uncompensated services shall be based on the operating costs of the applicant for the preceding fiscal year and shall give due cognizance to probable increases in operating costs. If the budget statement does not conform to the presumptive compliance guidelines, the applicant shall submit with its statement (i) a justification therefor, showing that such lower level of uncompensated services is reasonable under the circumstances, and (ii) a plan to increase such uncompensated services to meet the presumptive compliance guideline or such other level of uncompensated services as may have been established or as it requests the State agency to establish in accordance with paragraph (h) of this section.

(4) The applicant shall also submit such additional reports related to compliance with its assurance as the State agency may reasonably require.

(5) Pending the establishment of a level of uncompensated services for any fiscal year pursuant to paragraph (h) of this section, the applicant shall, in such fiscal year, provide a level of services which is the higher of (i) the level established for the preceding fiscal year (or if no such level has been established for such prior year, the level of services provided in such year) or (ii) the level proposed in its adopted budget for the current fiscal year.

(f) *Qualifying services.* (1) In determining the amount of uncompensated services provided by an applicant, there shall be included only those services provided to an individual with respect to whom the applicant has made a written determination prior to any collection effort other than the rendition of bills that such individual is unable to pay therefor under the criteria established pursuant to paragraph (g) of this section except that such collection efforts may be made against a third party insurer or against a governmental program.

(2) There shall be excluded from the computation of uncompensated services:

(i) Any amount which the applicant has received, or is entitled to receive, from a third party insurer or under a governmental program; and

(ii) The reasonable cost of any services for which payment in whole or in mental program (e.g., Medicare and part would be available under a govern-Medicaid) in which the applicant, although eligible to do so, does not participate, but only to the extent of such otherwise available payment.

(g) *Persons unable to pay for services.* (1) The State agency shall set forth in its State plan, subject to approval by the Secretary, criteria for identifying persons unable to pay for services, which shall include persons who are otherwise self-supporting but unable to pay the full charge for needed services. Such criteria shall be based on the following or similar factors:

(i) The health and medical care insurance coverage, personal or family income, the size of the patient's family, and other financial obligations and resources of the patient or the family in relation to the reasonable cost of the services;

(ii) Generally recognized standards of need such as (*a*) the State standard for the medically needy as determined for the purposes of the Aid for Families with Dependent Children program; (*b*) the current Social Security Administration poverty income level; (*c*) the current Office of Economic Opportunity Income Poverty Guidelines applicable in the area; or

(iii) Any other equivalent measures which are found by the Secretary to provide a reasonable basis for determining an individual's ability to pay for medical and hospital services.

(2) A copy of such criteria shall be provided by the applicant, upon request, to any patient or former patient of the applicant and to any person seeking services from the applicant.

(3) The State agency shall provide a copy of such criteria to any person requesting it.

(h) *Level of uncompensated services.* (1) The State agency shall set forth in its State plan procedures for the determination for each applicant of the level of uncompensated services which constitutes a reasonable volume of services to persons unable to pay therefor provided that in no event shall the level of uncompensated services established under this section exceed the presumptive compliance guideline.

(2) The State agency shall for the purpose of making such determination, review, and evaluate the annual statement, the budget and the related documents submitted by each aplicant pursuant to paragraph (e) of this section, by applying the following criteria:

(i) The financial status of the applicant, taking account of income from all sources, and its financial ability to provide uncompensated services;

(ii) The nature and quantity of services provided by the applicant;

(iii) The need within the area served by the applicant for the provision, without charge or at charge which is less than reasonable cost, for services of the nature provided or to be provided by the applicant; and

(iv) The extent and nature of joint or cooperative programs with other facilities for the provision of uncompensated services, and the extent and nature of outreach services directed to the needs of underserved areas.

(3) In accordance with its findings made after such review and evaluation, the State agency shall, within 60 days after receipt of the annual statement and related documents required by paragraph (e) of this section, for each fiscal year of an applicant which begins following the expiration of 90 days after the effective date of this regulation:

(i) Establish a level of uncompensated services for each applicant which may be equal to or less than the presumptive compliance guideline: *Provided*, That if the State agency determines, in accordance with subparagraph (2) of this paragraph, that (*a*) there is a need in the area served by an applicant for a level of uncompensated services greater than the level proposed in the applicant's budget statement, and (*b*) the applicant is financially able to provide such greater level of uncompensated services, the State agency shall establish such greater level as the level applicable to the applicant; and

(ii) Accept or modify a plan submitted pursuant to paragraph (e) of this section.

(4) The State agency shall notify the applicant in writing of the level of uncompensated services which it has established for the applicant for the fiscal year. At the time of notifying the applicant, the State agency shall also publish as a public notice in a newspaper of general circulation within the community served by the applicant the rate that has been established, a statement that the documents upon which the agency based its determination are available for public inspection at a location and time prescribed, and that persons wishing to object to the rate can do so by writing to the State agency within 20 days after publication of the notice.

(5) The applicant or any person or persons residing or located within the area served by the applicant, or any organization on behalf of such person or persons, may submit to the State agency within 20 days of the publication and sending of the notice objections to the rate established by the State agency for the applicant. Such objections may be supported in writing by factual information and argument. The State agency shall give public notice of other receipt of the objections and shall make the objections and their supporting documents available for public inspection and comment. It may, if it believes that determination of the objections will be assisted by oral evidence or by oral argument, set a public hearing on the objections and shall give notice of such hearing to all interested parties and to the public. The State agency shall within 60 days of the expiration of the period within which objections may be filed, rule upon the objections in writing, stating its reason for sustaining or overruling them, in whole or in part, and establishing finally the rate of uncompensated services either the same as, above, or below the rate previously established, as may best accord with all of the evidence on file with or heard by the State agency. Notice of the final determination shall be mailed to all parties who filed objections or who participated in the proceedings leading to the redetermination.

(6) Within 20 days of receipt of written notice of the final determination of a State agency after ruling on objections to the rate established by the State agency, the applicant or any other interested person or organization may submit to the Secretary a written request for review of the State agency determination. Such review shall be made upon the

record of the State agency determination which shall be sustained if supported by substantial evidence and is not otherwise arbitrary or capricious. If the Secretary or his designee determines that the rate established by the State agency is unsupported by the evidence in the record or is otherwise arbitrary or capricious, the Secretary or his designee shall, upon the basis of the record or upon other evidence or information which is before him or which he may obtain, establish a level of uncompensated services which he determines, in accordance with the criteria set out in subparagraph (2) of this paragraph, is appropriate.

(7) The level of uncompensated services established for an applicant under this section for any fiscal year shall constitute a reasonable volume of services to persons unable to pay therefor with respect to such applicant for such fiscal year.

(i) *Evaluation and enforcement.* The State plan shall provide for evaluation and enforcement of the assurance in accordance with the following requirements:

(1) The State agency shall, (i) at least annually, perform evaluations of the amount of the various services provided in each facility with respect to which Federal assistance has been provided under the Act, to determine whether such assurance is being complied with; and (ii) establish procedures for the investigation of complaints that such assurance is not being complied with.

(2) Evaluation pursuant to subparagraph (1) of this paragraph shall be based on the annual budget of each facility for uncompensated services and on financial statements of such facilities filed pursuant to section 646 of the Act and § 53.128(q), and on such other information, including reports of investigations and hearing decisions, as the State agency deems relevant and material.

(3) The State plan shall provide for adequate methods of enforcement of the assurance, including effective sanctions to be applied against any facility which fails to comply with such assurance. Such sanctions may include, but need not be limited to, license revocation, termination of State assistance, and court action.

(j) *Reports.* (1) The State agency shall, not less often than annually, report in writing to the Secretary its evaluation of each facility's compliance with the assurance, the disposition of each complaint received by the State agency, proposed remedial action with respect to each facility found by the State agency to be not in compliance with the assurance, and the status of such remedial action.

(2) In addition, the State agency shall promptly report to the Regional Attorney and Regional Health Director of the Department of Health, Education, and Welfare the institution of any legal action against a facility or the State agency involving compliance with the assurance.

[FR Doc.72-11199 Filed 7-21-72;8:45 am]

Title 45—PUBLIC WELFARE

Chapter II—Social and Rehabilitation Service (Assistance Programs), Department of Health, Education, and Welfare

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

PART 220—SERVICE PROGRAMS FOR FAMILIES AND CHILDREN: TITLE IV, PARTS A AND B OF THE SOCIAL SECURITY ACT

Affirmative Action Plan for Equal Employment Opportunity

Parts 205 and 220 of Chapter II, Title 45, of the Code of Federal Regulations are amended in accordance with the revision of 45 CFR Part 70 published in the FEDERAL REGISTER on March 6, 1971 (36 F.R. 4498), Standards for a Merit System of Personnel Administration. The revision included a provision (§ 70.4) requiring affirmative action toward the goal of equal employment opportunity. Notice of proposed rule making has been dispensed with since the regulations implement this requirement for agencies administering State plans under titles I, IV-A, IV-B, X, XIV, XVI, and XIX of the Social Security Act.

Chapter II of Title 45 of the Code of Federal Regulations is amended as set forth below.

1. Section 205.200 is amended to add paragraph (c) as follows:

§ 205.200 Standards of personnel administration.

* * * * *

(c) The State plan must provide that the State agency will develop and implement an affirmative action plan for equal employment opportunity in all aspects of personnel administration as specified in § 70.4 of this title. The affirmative action plan will provide for specific action steps and timetables to assure such equal opportunity. The plan shall be made available for review upon request.

2. Section 220.49(c) is revised to read as follows:

§ 220.49 Other plan requirements for child welfare services under title IV-B (see also Subpart D of this part).

* * * * *

(c) *Personnel standards.* (1) There shall be, with respect to the employees of the State agency and those of local agencies, personnel administration on a merit basis which shall be in accordance with current Federal Standards for a Merit System of Personnel Administration in 45 CFR Part 70. The State plan shall contain necessary materials relating to personnel administration to permit evaluation for compliance with the said Standards for a Merit System of Personnel Administration.

(2) The State plan must provide that the State agency will develop and implement an affirmative action plan for equal employment opportunity in all aspects of personnel administration as specified in § 70.4 of this title. The affirmative action plan will provide for specific action steps and timetables to assure such equal opportunity. The plan shall be made available for review upon request.

* * * * *

(Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302)

Effective date. This amendment shall be effective July 1, 1972.

Dated: June 12, 1972.

JOHN D. TWINAME,
Administrator, Social and Rehabilitation Service.

Approved: July 18, 1972.

JOHN G. VENEMAN,
Acting Secretary.

[FR Doc.72-11369 Filed 7-21-72;8:49 am]

Chapter IV—Social and Rehabilitation Service (Rehabilitation Programs), Department of Health, Education, and Welfare

PART 401—THE STATE VOCATIONAL REHABILITATION PROGRAM

Affirmative Action Plan for Equal Employment Opportunity

Part 401 of Chapter IV of Title 45 of the Code of Federal Regulations is amended in accordance with the revision of 45 CFR Part 70 published in the FEDERAL REGISTER on March 6, 1971 (36 F.R. 4498), Standards for a Merit System of Personnel Administration. The revision included a provision (§ 70.4 of this title) requiring affirmative action toward the goal of equal employment opportunity. Notice of proposed rule making has been dispensed with since the regulations implement this requirement for agencies administering a State plan for vocational rehabilitation in accordance with the merit system.

Section 401.12 of Part 401, Chapter IV, Title 45 of the Code of Federal Regulations is amended by revising paragraph (c) to read as follows:

§ 401.12 Standards of personnel administration.

* * * * *

(c) Where personnel administration is conducted under a State merit system approved by the Department of Health, Education, and Welfare (or constituent unit thereof) as meeting the "Standards for a Merit System of Personnel Administration," Part 70 of this title:

(1) The State plan may make reference to such fact, and the information required above with respect to "Standards of personnel administration" need not be submitted, except that the responsibility for the appointment of personnel shall be described.

(2) The State plan must provide that the State agency will develop and implement an affirmative action plan for equal employment opportunity in all aspects of