other type of restorative maintenance; or misrepresenting in any manner the efficacy, durability, efficiency, composition or quality of any of respondents' products, installations or services.

9. Falsely representing, directly or by implication, that respondents' salesworkers or representatives are connected or affiliated with any manufacturer or manufacturers of products sold by respondents; or misrepresenting, in any manner, the connections, affiliations or sponsorships of respondents, their salesworkers or representatives, or the nature or scope of respondents' business activities.

10. Falsely representing, directly or by implication, that the home of any of the respondents' purchasers, or prospective purchasers will be used for any type of advertising or demonstration purpose or as a model home and, that as a result of such use, respondents' purchasers or prospective purchasers will receive a reduced price or will earn discounts, referral fees or allowances of any type.

11. Failing to disclose, orally prior to the time of sale and in writing on any trade acceptance, conditional sales contract, promissory note, or other instrument of indebtedness executed by the purchaser, with such conspicuousness and clarity as is likely to be observed and read by such purchaser:

(a) The disclosures, if any, required by federal law or the law of the state in which the instrument is executed;

(b) Where negotiation of the instrument to a third party is not prohibited by the law of the state in which the instrument is executed, that the trade acceptance, conditional sales contract, promissory note or other instrument may, at the option of the seller and without notice to the purchaser, be negotiated or assigned to a finance company or other third party; and

(c) Where the law of the state in which the instrument is executed does not preserve as against any holder of the instrument all the legal and equitable defenses the purchaser may assert against the seller, that in the event the instrument is negotiated or assigned to a finance company or other third party, the purchaser may have to pay such finance company or other third party the full amount due under his contract whether or not he has claims against the seller's merchandise as defective; the seller refuses to service the merchandise; or the seller is no longer in business, or other like claims.

II. It is further ordered, That the respondents, Southern States Distributing Company (formerly known as Southern Cross Discount Company, Inc.), a corporation, trading and doing business as Southern States Decorators, Southern Cross Pools, Southern Cross Windows, Miracle Plastic Roofers and Carpet Discount Outlet, or under any other name, its successors and assigns and Emanuel I. Gladstone, individually and as an officer of said corporation, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or any advertisement to aid, promote or assist, directly or indirectly, any extension of consumer credit as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR § 226) of the Truth in Lending Act (P.L. 90-321, 15 U.S.C. § 1601 *et seq.*), do cease and desist from:

1. Failing to disclose the "annual percentage rate" in accordance with § 226.5 of Regulation Z, as required by § 226.8 (b)(2) of Regulation Z.

2. Representing, directly or by implication, in any advertisement as "advertisement" is defined in Regulation Z, the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the following items are stated in terminology prescribed under § 226.8 of Regulation Z,

(i) the cash price;

(ii) the amount of the downpayment required or that no downpayment is required, as applicable;

(iii) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

(iv) the amount of the finance charge expressed as the annual percentage rate; and

(v) deferred payment price.

3. Failing to keep record evidence of compliance with the consumer credit cost disclosure requirements of Regulation Z for two years, as required by § 226.6(i) of Regulation Z.

III. It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

It is further ordered, That the individual respondent named herein shall notify the Commission of the discontinuance of his present business or employment and of his affiliation with any new business or employment, within thirty (30) days following affiliation with the new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this Order file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this Order.

By the Commission.[1]

Issued: December 26, 1973.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.74-3094 Filed 2-6-74;8:45 am]

[1] Commissioner Hanford did not participate in this proceeding since oral argument was heard prior to her assumption of Office.

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER C—DRUGS

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

Oxytetracycline Hydrochloride Injection

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (47-278V) filed by Philips Roxane, Inc., 2621 North Belt Highway, St. Joseph, MO 64502, proposing revised indications for use of oxytetracycline injection for the intravenous treatment of specified cattle. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135b is amended by revising § 135b.-65(b)(3)(ii) as follows:

§ 135b.65 Oxytetracycline hydrochloride injection.

* * * * *

(b) * * *

(3) * * *

(ii) It is administered by intramuscular or intravenous injection to beef cattle and non-lactating dairy cattle at a level of 3 to 5 milligrams of oxytetracycline per pound of body weight per day. In severe foot-rot and severe forms of the indicated diseases treat at 5 milligrams per pound of body weight. When administered intramuscularly no more than 0.5 to 2 milliliters should be injected in each site in the case of smaller animals and no more than 10 milliliters should be injected in each site in adult cattle. Treatment in cattle should be continued for 24 to 48 hours following remission of disease symptoms, not to exceed a total of 4 days. It is administered to sows intramuscularly at a level of 3 milligrams of oxytetracycline per pound of body weight approximately 8 hours before farrowing or immediately after completion of farrowing. No more than 5 milliliters should be injected intramuscularly per site in sows.

* * * * *

Effective date. This order shall be effective February 7, 1973.

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i).)

Dated: January 31, 1974.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc.74-3120 Filed 2-6-74;8:45 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Vincofos Capsules

The Commissioner of Food and Drugs has evaluated a new animal drug application (91-581V) filed by Shell Chemical Co., a Division of Shell Oil Co., 2401 Crow Canyon Rd., San Ramon, CA 94583, proposing safe and effective use of vincofos as a broad spectrum anthelmintic for dogs. The application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135c is amended by adding a new section as follows:

§ 135c.126 Vincofos capsules.

(a) *Specifications.* Vincofos capsules contain 19, 38, 75, 189, and 302 milligrams of vincofos in soft-gelatin capsules.

(b) *Sponsor.* See code No. 033 in § 135.-501(c) of this chapter.

(c) *Conditions of use.* (1) It is recommended for the removal and control of large roundworms (*Toxocara canis, Toxascaris leonina*), hookworms (*Ancylostoma caninum, Uncinaria stenocephala*), whipworms (*Trichuris vulpis*), and tapeworms (*Taenia pisiformis, Dipylidium caninum*) occurring in the intestinal tract of dogs over 3 months of age.

(2) The drug is administered orally so that the active ingredient dosage falls within the range of 7 to 9 milligrams per pound of body weight. Dogs weighing in excess of 65 pounds need not receive more than the 65-pound dosage. For use in "risk" animals which are very old, heavily parasitized or otherwise debilitated, a split dosage schedule should be used providing half the recommended dosage which is then repeated at 8 to 24 hours later. Split dosage slightly lowers the activity of the drug against the flea tapeworm (*D. caninum*).

(3) Do not use in puppies under 3 months of age. Re-treatment should not be given at less than weekly intervals. Do not administer this drug in conjunction with other anthelmintic, antifilorial, muscle relaxant or CNS depressant drugs. Do not administer to dogs with mechanical blockage of the intestinal tract, impaired liver function, circulatory failure or to dogs recently exposed to or showing signs of infectious disease. Do not use this drug in dogs known to be harboring adult or microfilarial heartworms (*Dirofilaria immitis*). This drug is a cholinesterase inhibitor and should not be used simultaneously or within a few days before or after treatment with or exposure to cholinesterase-inhibiting drugs, pesticides or chemicals.

(4) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. This order shall be effective February 7, 1973.

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i).)

Dated: January 31, 1974.

C. D. Van Houweling,
Director, Bureau of Veterinary Medicine.

[FR Doc.74-3121 Filed 2-6-74;8:45 am]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 19—CHEESES, PROCESSED CHEESES, CHEESE FOODS, CHEESE SPREADS, AND RELATED FOODS

Pasteurized Process Cheese Spread, Cold-Pack Cheese and Cold-Pack Cheese Food; Confirmation of Effective Date of Order Amending Standards of Identity

In the matter of amending the definitions and standards of identity for pasteurized process cheese spread, cold-pack cheese and cold-pack cheese food (21 CFR 19.775, 19.785, and 19.787) to permit the use of additional and/or increased levels of mold-inhibitors in these foods:

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), notice is given that no objections were filed to the order in the above-identified matter published in the Federal Register of October 5, 1973 (38 FR 27592). Accordingly, the amendments promulgated by that order became effective December 4, 1973.

Dated: January 30, 1974.

Sam D. Fine,
Associate Commissioner for Compliance.

[FR Doc.74-3122 Filed 2-6-74;8:45 am]

Title 27—Alcohol, Tobacco Products and Firearms

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

SUBCHAPTER C—FIREARMS

[T.D. ATF-8]

PART 47—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

Correction

In FR Doc. 74-2062 appearing in the issue for Friday, January 25, 1974, on pages 3251-3256 make the following changes:

1. In § 47.11 on page 3252, the first line in the third column reading "may be imposed and remedies invoked as" is deleted.

2. In § 47.21 on page 3253 in the third column under the heading "Category VIII—Aircraft, Spacecraft, and Associated Equipment" change the first line of the first "Note" to read "Note: Category VIII (b) through (l) and".

3. In the first column on page 3256 in § 47.61, correct paragraph (c) to read as follows:

(c) Otherwise violates any provisions of this part—

Shall upon conviction be fined not more than $25,000 or imprisoned not more than 2 years, or both.

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENT OF INTERPRETATION

Work Experience and Career Exploration Services

Correction

In FR Doc. 74-2122 appearing at page 3256 of the issue for Friday, January 25, 1974 and corrected on page 4478 in the issue of Monday, February 4, 1974, the last line of § 570.35a(b)(3)(ii), now reading "a reasonable size. A unit of 12 to 25 stu-", should read "instruction and on-the-job experience."

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

PART 426—GLASS MANUFACTURING POINT SOURCE CATEGORY

Insulation Fiberglass Subcategory; Correction

In FR Doc. 74-1860 appearing at page 2564 in the issue of Tuesday, January 22, 1974, make the following change: In the table contained in § 426.12, appearing at page 2566, under the column headed "Effluent Characteristic", the term "BOD" should, in both instances, read "BOD_5."

Dated: January 31, 1974.

Robert L. Sansom,
Assistant Administrator for Air and Water Programs.

[FR Doc.74-3075 Filed 2-6-74;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 15—ENVIRONMENTAL PROTECTION AGENCY

PART 15-60—GOVERNMENT PROPERTY

On August 23, 1973, a notice of proposed rulemaking was published in the Federal Register (38 FR 22637-22646) which stated that the Environmental Protection Agency was considering an amendment to 41 CFR Chapter 15 to add a new Part 15-60, Government Property.

Interested parties were invited to submit comments and written data on or before September 21, 1973. All relevant matter submitted by interested persons has been considered and the amendment is hereby adopted, subject to the following changes:

1. In the first sentence of § 15-60.-102-1, *Prime contractors,* delete the phrase: "Except for the conditions specified in paragraph (g), Risk of Loss, of the Government Property clause set out in § 15-60.702 * * * and substitute the following: "Except for the conditions specified in paragraph (g), Risk of Loss, of the Government Property

clauses set out in § 15-60.701(b) and § 15-60.702, * * *"

2. Delete the last sentence in § 15-60.103, *Use for or by contractors of test facilities owned and operated by the Government*, and substitute the following: "Whenever any such use is authorized, the Contracting Officer shall insure that adequate consideration comparable to commercial charges, if any, flows to the Government. (See § 15-60.503 for policy regarding evaluation of bids and competitive proposals.)"

3. Section 15-60.203, *Contract changes* is hereby changed to read as follows:

(a) Contracts may be modified:

(1) Bilaterally to provide for Government-furnished material when adequate consideration flows to the Government;

(2) Unilaterally under the Changes clause to increase the amount of Government-furnished material; and

(3) Unilaterally to make substitutions or decreases in material to be furnished by the Government, subject to equitable adjustment of the contract in accordance with the Government Property clause."

4. The citation, "§ 15-60.301(b)" in the next to the last sentence of § 15-60.301-2 (a), *Justification for providing property*, is hereby changed to read "§ 15-60.301-2(b)."

5. The phrase "* * * appropriate program manager." at the end of the first sentence in § 15-60.301-2(c)(3) is hereby changed to read "* * * Chief officer, at Division level or above, responsible for management of the program/project involved."

6. The word "clause" is hereby changed to the word "Article" in § 15-60.301-6(b)(4)(c) and (d) of § 15-60.301-6, Contract schedule articles. Also, the word "facilities" is hereby changed to the word "property" in § 15-60.301-6(b)(5)(b)(2) of § 15-60.301-6.

7. Section 15-60.502(c) is hereby deleted and the following substituted therefor:

"(c) Require prospective contractors to:

(1) List items (including dollar value) of Government-owned property in their possession which they propose to use in performance of the prospective contract;

(2) Identify the contract or other instrument under which the property is accountable; and

(3) Present written permission to use such property in the performance of the prospective Environmental Protection Agency (EPA) contract from the Government Contracting Officer having cognizance of the property."

8. The citation, "§ 15-60.300", under Subpart § 15-60.6—Administration of Government Property is hereby corrected to read "§ 15-60.600."

9. The phrase "* * * or other written authorization to a contract * * *" in the first sentence of § 15-60.601(c) is hereby corrected to read "* * * or other written authorization to a contractor * * *."

10. § 15-60.700(b) is hereby corrected to read as follows:

"(b) As used throughout this Subpart, the term 'fixed-price contract' shall include any advertised or negotiated fixed-price type contract and any letter contract which will be converted into a fixed-price type definitive contract, but shall exclude small purchases made under Subparts 1-3.6 and 15-3.6."

11. The following changes are hereby made in § 15-60.701, Government Property clause for Fixed-Price Contracts:

(a) Substitute paragraph (c) (applicable to contracts with educational institutions) of the Government Property (Fixed Price) (1973) clause has been amended, in the second sentence, by inserting the words "for the conduct of research" following the word "purchased."

(b) The following changes are made in § 15-60.701(b):

(1) The title of paragraph (b) is revised to read:

"Contracts with educational institutions and contracts requiring cost and pricing data."

(2) The "Risk of Loss" clause "(g)" is deleted and the "Risk of Loss" clause set out in the following new § 15-60.701 (b) is substituted therefor:

12. The following changes are hereby made in the Government Property clause set out in § 15-60.702, Government Property clause for Cost-Reimbursement contracts:

(a) Delete the words "contract price" in the next to last sentence of paragraph (a) and substitute the words "estimated cost, fixed fee."

(b) Substitute paragraph (c) (applicable to contracts with educational institutions) of the Government Property (Fixed Price) (1973) clause has been amended, in the second sentence, by inserting the words "for the conduct of research" following the word "purchased."

(c) Delete the word "industrial" in paragraph (g)(1)(ii)(A) and substitute the word "business."

Effective date. These regulations shall become effective as of the date of publication in the February 7, 1973.

Dated: January 31, 1974.

JOHN QUARLES,
Acting Administrator.

The new Part 15-60 reads as follows:

AUTHORITY: 40 U.S.C. 486(c), sec. 205(c), 63 Stat. 377, as amended.

§ 15-60.000 Scope of part.

This part sets forth policy and procedures with respect to providing property for use by contractors in performance of EPA contracts and prescribes appropriate contract clauses. This part does not apply to the lease of property to contractors or to property to which the Government has acquired a lien or title solely as a result of advance, progress, or partial payments.

Subpart 15-60.1—General

§ 15-60.100 Scope of subpart.

This subpart 15-60.1 contains (a) definition of terms used throughout this part 15-60 and (b) certain statements of general policy.

§ 15-60.101 Definitions.

As used in this subpart, the following terms have the meaning stated below. Additional definitions applicable to property administration are set forth in EPA publication entitled "Guide for Control of Government Property by Contractors."

§ 15-60.101-1 Property.

Property includes all property, both real and personal, severable and nonseverable, and expendable material and nonexpendable equipment.

§ 15-60.101-2 Property.

Government property means all property owned by or leased to the Government or acquired by the Government under the terms of a contract. Government property includes both Government-furnished property and contractor-acquired property as defined below:

(a) Government-furnished property is property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to the contractor; and

(b) Contractor-acquired property is property procured or otherwise made available by the contractor for performance of a contract, title to which is vested in the Government.

§ 15-60.101-3 Provide.

Provide means to furnish Government-owned property or to allow a contractor to acquire property at Government expense.

§ 15-60.101-4 Nonseverable.

Nonseverable, when related to Government property, means that such property cannot be removed after erection or installation without substantial loss of value or damage thereto, or to the premises where installed.

§ 15-60.101-5 Dollar value.

This is the amount determined by the Government and recorded in inventory records as the price or cost of an item of Government-owned property.

§ 15-60.101-6 Procurement contract.

Procurement contract means a Government contract for the acquisition of property or services of any description; e.g., research and development, construction, scientific, educational, medical, etc.

§ 15-60.101-7 Material.

Material means property which may be consumed or expended in the performance of a contract or which may be incorporated into or attached to an end item to be delivered under a contract. It includes, but is not limited to raw and processed material, parts, components, assemblies, small tools and supplies which may be consumed in normal use during performance of a contract.

§ 15-60.101-8 Nonprofit organization.

Nonprofit organization means any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

§ 15-60.102 Responsibility and liability for Government property.

§ 15-60.102-1 Prime contractors.

Except for the conditions specified in paragraph (g) *Risk of Loss*, of the Government Property clauses set out in § 15-60.701(b) and § 15-60.702, it is EPA policy not to hold a contractor responsible for loss of or damage to Government property when such property is provided under:

(a) A negotiated, fixed-price type procurement contract for which the price is not based on (1) adequate price competition, (2) established catalog or market prices of commercial items sold in substantial quantities to the general public (see § 1-3.807-1(a)(2)), or (3) prices set by law or regulation; or

(b) Cost-reimbursement type procurement contracts.

§ 15-60.102-2 Subcontractors.

(a) If Government property is provided to a subcontractor directly by the Government § 15-60.102-1 shall apply.

(b) If Government property is provided to a subcontractor by a prime contractor, the latter shall be required to hold the subcontractor liable for any loss of or damage to such property; provided, however the prime contractor may, with the prior approval of the Contracting Officer:

(i) include in any cost-reimbursement type subcontract thereunder provisions similar to those contained in paragraph (g) of the clause in § 15-60.702; and

(ii) include in any fixed-price subcontract meeting the criteria set forth in § 15-60.102-1(a) a provision similar to that contained in § 15-60.701(b).

Contracting Officers shall, prior to approving the inclusion of the provisions referred to above in any subcontract, balance the need for the protection and care of Government property against the cost thereof. A prime contractor who provides Government property to a subcontractor shall not be relieved of any responsibility to the Government that he may have under the terms of his contract.

§ 15-60.103 Use for or by contractors of test facilities owned and operated by the Government.

The on-site use for or by contractors of existing Government-owned test facilities located at installations owned and operated by the Government may be authorized in connection with the performance of Government contracts only when:

(a) There is no commercial test capability adequate for the testing needs, or

(b) Substantial cost savings will result from use of the Government-owned test facilities.

Whenever any such use is authorized the Contracting Officer shall insure that adequate consideration comparable to commercial charges, if any, flows to the Government. (See § 15-60.503 for policy regarding evaluation of bids and competitive proposals.)

Subpart 15-60.2 Material

§ 15-60.200 Scope of subpart.

This subpart prescribes policy and procedure for furnishing material (see § 15-60.101-7) to contractors for performance of EPA formally advertised and negotiated contracts.

§ 15-60.201 Policy.

Contractors normally are expected to furnish all material required for performance of EPA contracts. However, it may be in the Government's interest to furnish such material when justified by reason of economy, to expedite contract performance, to achieve standardization, or under other appropriate conditions.

§ 15-60.202 Procedure.

(a) Solicitation documents shall describe material to be furnished by the Government, in detail sufficient for evaluation by prospective contractors.

(b) Whenever material is to be furnished by the Government the contract shall specify whether the contracting activity or the contractor is to prepare requisitioning documents. If the contractor is to be responsible for preparing requisitioning documents, the EPA Property Administrator will instruct the contractor to prepare such documents in accordance with the Federal Standard Requisitioning and Issue Procedure (FEDSTRIP) system, prescribed by Subpart 101-26.2 of the Federal Property Management Regulations. (See FPR Subpart 1-5.9 for "Use of GSA Supply Services by Contractors Performing Cost-Reimbursement Type Contracts.)

(c) The appropriate Government Property clause prescribed in Subpart 15-60.7 shall be incorporated into all contracts which provide for Government-furnished material.

§ 15-60.203 Contract changes.

(a) Contracts may be modified:

(1) bilaterally to provide for Government-furnished material when adequate consideration flows to the Government;

(2) unilaterally under the changes clause to increase the amount of Government-furnished material; and

(3) unilaterally to make substitutions or decreases in material to be furnished by the Government, subject to equitable adjustment of the contract in accordance with the Government Property clause.

§ 15-60.204 Disposal.

Residual Government material (including scrap and salvage) shall be disposed of in accordance with instructions of the EPA Property Administrator and as directed by the Contracting Officer. (See FPMR, EPA Property Management Regulations, FPR Part 1-8, and EPA publication entitled "Guide for Control of Government Property by Contractors".)

Subpart 15-60.3—Providing Government Property to Contractors

§ 15-60.300 Scope of subpart.

This subpart enunciates policy to guide the decision-making process when property (other than material) is to be provided a contractor for performance of an EPA contract and to insure that such decisions are properly documented.

§ 15-60.301 Providing property.

§ 15-60.301-1 General.

(a) Contractors are expected to provide all resources necessary for performance of EPA contracts. Every effort must be made to locate and select contractors that demonstrate a willingness and ability to provide their own resources. However, during procurement planning, solicitation of prospective contractors, evaluation of proposals, contract negotiations, or during postaward performance of the contract, EPA may determine that it is in the Government't interest to furnish Government-owned property or to allow the contractor to acquire property at Government expense.

(b) Providing property at Government expense can create an expensive and burdensome inventory that may have to be disposed of at a fraction of its cost. EPA personnel must insure that (1) providing property is justified, (2) the Government receives adequate consideration, and (3) one contractor or prospective contractor, does not receive a competitive advantage over others. A decision to provide property at Government expense must be supported by a comprehensive "determination and findings."

(c) Items of property to be furnished by the Government or acquired by the contractor must be identified as specifically as possible in the original contract Schedule or in a Change Order or Supplemental Agreement, as appropriate. When acquisition of property at Government expense is authorized in a contract Schedule, Change Order or Supplemental Agreement, purchase orders or subcontracts issued by the contractor for acquisition of individual items of property are subject to the requirements of the Subcontracts clause incorporated into the contract. Authorization to acquire property should not be construed as consent to placement of a subcontract or vice-versa, unless so specified in the contract or in a written determination by the Contracting Officer.

§ 15-60.301-2 **Justification for providing property.**

(a) The Contracting Officer shall not authorize a contractor to (1) acquire property at Government expense, (2) obtain Government-furnished property, or (3) use Government-owned property in his possession until the Chief Officer, at Division level or above, responsible for management of the program/project involved, submits a written justification of need to provide the property to the Contracting Officer. If the Contracting Officer concurs in the justification of need, he will prepare and sign a separate "determination and findings" which identifies the property to be provided and sets forth the facts and circumstances which support providing the property. The "determination and findings" shall be approved by the Chief Officer responsible for procurement at the contracting activity involved. A similar approved "determination and findings" is required when changes are made in the kind or amount of property provided or acquired. However, a separate "determination and findings" is not mandatory if the justification of need fully supports providing the property and contains the minimum information prescribed in § 15-60.301-2(b). In such case concurrences by the Contracting Officer and Chief Officer responsible for procurement may be stated on the justification of need.

(b) As a minimum, the justification of need and/or "the determination and findings" must:

(1) Identify the specific program and project for which the property is required.

(2) Describe the kind, quantity, and estimated cost (including transportation and installation costs) of the individual item of property required to be furnished or acquired.

(3) Explain why the property is essential for contract performance.

(4) Explain why it is in the Government's interest to provide the property; why other alternatives (e.g., renting the property, use of subcontractors, modification of program/project requirements, procurement from another contractor, etc.); are impractical or uneconomical and why providing the requested property is likely to result in lower cost to the Government for products delivered or services rendered, when all costs are considered (e.g., purchase price of the property, transportation, modification, installation, maintenance, and administration costs by the contractor and the Government.)

(5) Identify, if known, location of the contractor's facility at which the property will be used and the contractor's personnel assigned responsibility for acquisition and management of the property.

(c) A justification of need is required regardless of when the need for the property is determined; thus:

(1) A written justification of need must be transmitted with EPA Form 1900.8, Procurement Request/Requisition, whenever the program/project manager is aware, prior to preparation of EPA Form 1900.8, that it will be necessary to authorize use of Government-owned property in contractor's possession, furnish Government-owned property, or allow contractor to acquire property at Government expense. Known requirements of this kind must be specified in the solicitation document as prescribed in Subpart 15-60.5.

(2) When the need to authorize use of existing Government-owned property or to authorize the furnishing or acquisition of property does not become known until evaluation of contractor's proposals or during contract negotiations, the Contracting Officer shall obtain a justification of need prior to execution of the procurement contract. In order to maintain the integrity of the competitive procurement process, other proposers that have submitted proposals will be offered the opportunity to amend their proposals as contemplated by §§ 1-3.805 and 15-3.805.

(3) After award of a contract, the Contracting Officer shall not authorize the use, furnishing, or acquisition of property until a justification of need is furnished by the Chief Officer, at Division level or above, responsible for management of the program/project involved. Also, the Contracting Officer must insure that consideration for such authorization flows to the Government in the form of a reduction in contract price/cost, payment of rent for use of the property, or other legal consideration determined to be adequate in terms of improved performance, increased quality, faster delivery, etc.

§ 15-60.301-3 **Special and general purpose property.**

(a) Generally, only special purpose property (*i.e.*, equipment and facilities items whose usefulness, without need for substantial modification, is limited to a particular operation or project) may be provided to a contractor. Standard or general purpose items of administrative equipment (*e.g.*, office furniture and equipment, cafeteria equipment, lockers, shelving, etc.), and technical equipment (*e.g.*, laboratory furniture and fixtures, microscopes, oscilloscopes, gauges, etc.), shall be provided only when justified under the most exceptional circumstances.

(b) Items of property having a unit cost of less than $1,000.00 shall not be provided contractors except as authorized under contracts with:

(1) Nonprofit institutions of higher education or other non-profit organizations whose primary purpose is the conduct of scientific research;

(2) State and local Government agencies; or

(3) Contractors operating a Government-owned plant or performing on-site at Government installations.

§ 15-60.301-4 **Providing property when disposal is limited.**

(a) Nonseverable property. Nonseverable property, other than foundation and similar improvements necessary for the installation of equipment, shall not be installed or constructed on land not owned by the Government, in such fashion as to be nonseverable, unless approved by the Director, Contracts Management Division, PM-214, or the Deputy Assistant Administrator for Administration, PM-211, in accordance with EPA Order 1960.1. The determination to locate such nonseverable property on land not owned by the Government shall be made only when all of the conditions in paragraph (a) (1) through (4) of this section have been met:

(1) Consideration has been given to any nonrecoverable costs involved, including transportation and installation.

(2) Consideration has been given to (i) locating the Government property where it can be segregated from existing contractor-owned and Government-owned property and where it is readily accessible from public thoroughfares and (ii) obtaining a written agreement by the contractor on whose land the property is to be placed that either the Government or another Government contractor will have a right to use and operate the property upon termination or completion of the work for which it was provided. (In cases where such an agreement is not

obtained, the negotiation effort shall be documented accordingly);

(3) The contractor agrees that the Government (i) will have the right to abandon in place all nonseverable Government property provided and (ii) will not have any obligation to disassemble or remove the property or to restore or rehabilitate the premises on which the property is located, unless otherwise provided in the contract and approved by the Director, Contracts Management Division, PM-214, or the Deputy Assistant Administrator for Administration, PM-211, as required by EPA Order 1960.1 (this approval authority shall not be delegated); and

(4) One of the circumstances in paragraphs (a)(4)(i)—(iv) of this section has been met—

(i) The Government obtain an option to acquire the underlying land;

(ii) The property is disposable, after the Government's need therefor has ceased, to parties other than the contractor and the Government acquires from the owner a right to retain title and to dispose of all facilities it has constructed, without regard to the laws of real property in the jurisdiction in which the facility is located. Such right of disposition must be unencumbered, and will be evidenced by written agreement or other legal instrument signed by the contractor or other owner of the real property;

(iii) The contractor agrees in writing that he will purchase the property upon the termination or completion of the contract under which the property is provided, or within a specified reasonable time thereafter, at a price to be determined by appraisal, or at a price equal to the acquisition cost of the property less depreciation at the rate or rates specified in the contract (which rate or rates shall take into account the estimated useful life of the property) or for the scrap and salvage value of the property if it is determined that the estimated useful life of the property will not extend beyond the completion of the work for which the property was provided. Any such purchase agreement must permit the Government to credit any amounts due the contractor under the contract against the purchase price; or

(iv) The Deputy Assistant Administrator, PM-211, specifically approves other provisions which he considers adequate to protect the interests of the Government in regard to the property.

(b) Property subject to patent or other proprietary rights. If patent or other proprietary rights of a contractor may restrict the disposal of Government property, the condition in either paragraph (a)(4)(ii) or (iii) of this section shall be satisfied before such property is provided.

§ 15-60.301-5 Changing Government property to be provided.

Increases in the amount of Government property specified in a contract shall be made under the contract "Changes" clause by issuance of an appropriate Change Order or Supplemental Agreement. Such increases shall be made only when approved in accordance with the policies prescribed in this Subpart 15-60.3 and when the Government receives adequate consideration therefor. Unilateral decreases in or substitutions for the Government property specified in a contract to be provided by the Government may be ordered by the Contracting Officer pursuant to the Government Property clause incorporated into the contract.

§ 15-60.301-6 Contract schedule articles.

(a) *General.* Whenever a contractor is authorized to acquire property at Government expense, is furnished Government-owned property, or is authorized to use Government-owned property in his possession, such property will be identified, as specifically as possible, in the contract Schedule and the appropriate Government Property clause prescribed in Subpart 15-60.7 will be included in the contract. Also, the Schedule will include the appropriate Article prescribed in § 15-60.301-6(b).

(b) *Contract Schedule Articles.* (1) When property is to be acquired or fabricated by a contractor, the estimated cost of such property and the following Article will be included in the Contract Schedule:

PROPERTY TO BE ACQUIRED OR FABRICATED (1973)

Subject to the approval of the Contracting Officer, the Contractor may acquire or fabricate (the property listed below) (the property listed in Appendix "A," attached hereto and made a part hereof). The Government will reimburse the Contractor for the cost of such property as determined allowable by the Contracting Officer in accordance with Part 1-15 of the Federal Procurement Regulations as in effect on the date of this contract. The Contractor shall have no obligation to acquire or fabricate property and the Government shall have no obligation to reimburse any amount for such property in excess of the total estimated cost of such property set forth in this Schedule, unless this contract is amended to increase such amount. All property acquired or fabricated, for which the contractor is reimbursed, shall be subject to the provisions of the Government Property clause of this contract.

(2) If a procurement contract is negotiated on the basis that Government-owned property will be provided the Contractor, the following Article will be included in the contract Schedule. If the Government is to pay the cost of transportation and installation of such property the Schedule will so state. The dollar value of each item of property listed will be shown.

GOVERNMENT-FURNISHED PROPERTY (1973)

The terms and conditions of this contract are based on the Government furnishing the property (listed below) (listed in Appendix "A" attached hereto and made a part hereof). Title to property furnished shall remain in the Government and is subject to the provisions of the Government Property clause of this contract. The Contractor is authorized to use the Government-owned property, (on a no-charge basis) (at the rental rates specified herein), in performance of this contract.

(3) The following Article will be included in the contract Schedule when a Contractor is authorized to use Government property in his possession. Also, the appropriate Government Property clause prescribed in Subpart 7 of this Part 15-60 must be incorporated into the procurement contract. The dollar value of each item of property listed will be shown and if the Government is to pay the cost of installing or modifying such property the Schedule will so state.

USE OF GOVERNMENT PROPERTY IN CONTRACTOR'S POSSESSION (1973)

The Contractor is authorized to use in performance of this contract, (on a no-charge basis) (at the rental rates specified herein), the Government property (listed below) (listed in Appendix "A" attached hereto and made a part hereof), provided to him under (this contract) (the following contracts:)

(4) The following Article will be included in all contracts under which the Contractor must pay rent for use of Government-owned property:

USE AND CHARGE

(a) Subject to the payment of a rental therefor, the Contractor may use in the performance of this contract the property specified in the Schedule or authorized in writing by the Contracting Officer. The amount of rental to be paid for the right to use the property under this paragraph (a) shall be determined in accordance with the following procedures:

(1) The following bases are or shall be established in writing for the rental computation prescribed in paragraph (a)(2) below in advance of any use of the property under this paragraph:

(i) The rental rates for the right to use the property shall be those set forth in paragraph (e) below.

(ii) The cost of the property shall be the total cost to the Government, as determined by the Contracting Officer of each item of property, including the cost of transportation and installation, if such costs are borne by the Government.

(iii) For the purpose of determining the amount of rental due under paragraph (a)(2) below, the rental period shall be not less than one (1) month nor more than six (6) months, as may be mutually agreed to.

(iv) For the purpose of computing any credit under paragraph (a)(2) below, the measurement unit for determining the amount of use of the property by the Contractor shall be hours of actual use, direct labor hours, or any other measurement unit which will result in an equitable apportionment of the rental charge, as may be mutually agreed to.

(2) The Contractor shall compute the amount of rentals to be paid for each rental period, using the bases established pursuant to paragraph (a)(1) above. The rental rates shall be applied to the cost of such of the property as may have been authorized for use in advance pursuant to this paragraph (a), for each rental period. The full charge for each rental period, so determined, shall be reduced by a credit in the amount of such rental as would otherwise be properly allocable to work with respect to which the use of the property without charge is authorized. Such credit shall be computed by multiplying the full rental for the rental period by a fraction whose numerator is the amount of use of the property by the Contractor without charge during such period, and whose

denominator is the total amount of use of the property by the Contractor during such period.

(3) The Contractor shall submit to the Contracting Officer within ninety (90) days after the close of each rental period a written statement of the use made of the property by the Contractor and the rental due the Government hereunder, and shall make available such records and data as are determined by the Contracting Officer to be necessary to verify the information contained in the statement.

(4) If the Contractor fails to submit the statement within the prescribed ninety (90) day period, the Contractor shall be liable for the full rental for the period in question, subject to the exception stated in subparagraph (5) below.

(5) If the Contractor's failure to submit the statement within the prescribed ninety (90) day period arose out of causes beyond the control and without the fault or negligence of the Contractor, the Contracting Officer shall grant to the Contractor in writing a reasonable extension of time in which to make such submission.

(b) Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall use the property only in performance of contracts and subcontracts of the Environmental Protection Agency.

(c) Concurrently with the submission of the written statement prescribed by paragraph (a)(3) above, the Contractor shall pay the rental due the Government under this Article by check made payable to the Treasurer of the United States. Each check shall be mailed or delivered to the Contracting Officer. Receipt and acceptance by the Government of the Contractor's checks pursuant to this paragraph shall constitute an accord and satisfaction of the final amount due the Government hereunder unless the Contractor is notified in writing within one-hundred-eighty (180) days following such receipt that the amount received is not regarded by the Government as the final amount due.

(d) If the Contractor uses any item of the property without authorization, the Contractor shall be liable for the full monthly rental, without credit, for such item for each month or part thereof in which such unauthorized use occurs: *Provided, however*, that the Director, Contracts Management Division, PM-214, may, in writing, waive the Contractor's liability for such unauthorized use if he determines that the Contractor exercised reasonable care to prevent such unauthorized use. In this latter event, the Contractor shall be liable only for the rental that would otherwise be due under this Article. The acceptance of any rental by the Government hereunder shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor growing out of the Contractor's unauthorized use of the property or any other failure to perform this contract according to its terms.

(e) The following rental rates shall be used when rent is to be charged, or an evaluation factor (equivalent to rent) is computed:

(1) For land and land preparation, buildings, building installations, and land installations, a fair and reasonable rental based on sound commercial practice;

(2) For personal property (equipment and facilities) not covered in (1) above; not less than the prevailing commercial rate for like property, if any, or in the absence of such rate, not less than two percent (2%) of the dollar value per month for electronic test equipment and automotive equipment; and not less than one percent (1%) of the dollar value per month for all other property and equipment.

(5) When a Contractor is permitted to authorize his subcontractors to use Government property in the subcontractor's possession, on a no-charge basis, the following Article will be included in the contract Schedule:

USE OF GOVERNMENT PROPERTY BY SUBCONTRACTORS (1973)

(a) The following subcontractors having Government-owned property provided under the contracts set forth below, in effect on the date of this contract, are authorized to use such property on a no-charge basis for the subcontract items listed below, and the subcontract shall so provide:

Subcontractor	Contract No.	Subcontract item

(b) If the Contractor enters into other subcontracts with subcontractors who have Government-owned property provided to them under contracts which provide that no-charge use may be authorized, the Contracting Officer may authorize the use of such property on a no-charge basis: *Provided*:

(1) He determines that such use will not give the subcontractor a favored competitive position; and

(2) This contract is amended to reflect adequate consideration to the Government for the use of such property on a no-charge basis. Such subcontracts shall specifically authorize the no-charge use, and require the written approval of the Contracting Officer. No modification to this contract will be required, as provided in (2) above, if the Contracting Officer determines that an elimination of charge for use of such property will, of itself, result in an adequate decreased cost to the Government under this contract.

(c) If the Government-owned property provided to the Contractor or any subcontractor hereunder on a no-charge basis are increased or decreased or do not remain available during the performance of this contract, or if any change is made in the terms and conditions under which they are made available, such equitable adjustments as may be appropriate will be made in the terms of this contract, unless such increase or decrease was contemplated in the establishment of the price of this contract or a subcontract.

(d) The Contractor agrees that he will not directly or indirectly, through overhead charges or otherwise, include in the price of this contract, or seek reimbursement under this contract for, any rental charge paid by the Contractor for the use on other contracts of the property referred to herein. Any subcontract hereunder which authorizes the subcontractor to use Government property on a no-charge basis shall contain a provision to the same effect as this paragraph (d).

Subpart 15–60.4—Use and Charges

§ 15–60.400 Scope of subpart.

This subpart deals with the authority for a contractor or subcontractor to use Government property and the charge for such use.

§ 15–60.401 General.

Authority for a contractor to use Government property must be granted by the Contracting Officer responsible for the contract under which the property is accountable and the contract file must be documented accordingly. If use without charge is granted, the contract file must be documented with a description of the consideration to the Government for such "no-charge" use and the Article prescribed in § 15–60.301–6(b)(3) must be included in the contract Schedule. The Article prescribed in § 15–60.301–6(b)(3) and the "Use and Charges" Article set out in § 15–60.301(b)(4) will be included in all contracts involving Government property when rent is charged for such use.

§ 15–60.402 Use without charge.

(a) A contractor may use Government property without charge in the performance of:

(1) Prime contracts which specifically authorize use without charge, and

(2) Subcontracts of any tier if the Contracting Officer having cognizance over the prime contract concerned has:

(i) Determined that the Government will receive adequate consideration, and

(ii) Authorized use without charge by:

(*a*) Including such authorization in the prime contract;

(*b*) Approving a subcontract specifically authorizing such use; or

(*c*) By otherwise approving such use in writing.

(b) A prime contractor may authorize subcontractors to use Government property in the subcontractor's possession, on a no-charge basis, when (1) the price or fee of the prime contract is negotiated with the specific understanding that the use of property by subcontractors on a no-charge basis will be permitted in the performance of specific subcontracts with specific subcontractors and (2) the "Use of Government Property by Subcontractors" clause, prescribed in § 15–60.301–6(5), is included in the prime contract Schedule.

§ 15–60.403 Rent.

(a) The following rental rates shall be used when rent is to be charged or an evaluation factor (equivalent to rent) is computed:

(1) For land and land preparation, buildings, building installations, and land installations, a fair and reasonable rental based on sound commercial practice;

(2) For personal property (equipment and facilities) not covered in (1) above not less than the prevailing commercial rate for like property, if any, or in the absence of such rate, not less than two percent (2%) of the dollar value for electronic test equipment and automotive equipment; and not less than one percent (1%) of the dollar value per month for all other property and equipment.

Subpart 15–60.5 Competition

§ 15–60.500 Scope of subpart.

This subpart sets forth guidance designed to preclude one prospective contractor from receiving a competitive advantage over others when Government property is provided.

§ 15–60.501 General.

It is incumbent upon the Contracting Officer to insure that genuine competition prevails and that adequate consideration flows to the Government whenever and however Government property is to be provided a contractor for contract performance. Willingness and ability to provide all resources necessary for contract performance should be an important factor in evaluating competitive contractors.

§ 15–60.502 Solicitation documents.

Contracting Officers shall make certain that solicitation documents:

(a) Require prospective contractors to specify additional facilities and equipment which must be acquired for contract performance, the estimated cost of individual items, and whether acquisition of such property will be financed by the prospective contractor or whether the Government will be requested to provide the required items.

(b) Explain whether it is the Government's intention to provide property, when it is known prior to solicitation that contract performance will require additional facilities or equipment.

(c) Require prospective contractors to:

(1) List items (including dollar value) of Government-owned property in their possession which they propose to use in performance of the prospective contract;

(2) Identify the contract or other instrument under which the property is accountable; and

(3) Present written permission to use such property in the performance of the prospective EPA contract from the Government Contracting Officer having cognizance of the property.

(d) Include a statement that the user will assume all costs related to making the property available for use (e.g., transportation, installation, rehabilitation, modification, etc.), unless, the Government is to assume such costs.

(e) Include a statement which explains the consideration to be given Govenment property during evaluation of bids and proposals. This is to insure that all prospective bidders and offerors understand that Government property will be an important consideration in evaluating their bids and proposals.

§ 15–60.503 Evaluation of bids and proposals.

The following policy shall be considered during evaluation of bids and proposals:

(a) In a competitive procurement, a prospective contractor provided Government property or authorized to use Government-owned property in his possession receives some degree of competitive advantage. When evaluating bids and proposals, such an advantage must be precluded through use of an equalizing factor in establishing the competitive range for negotiation and in arriving at the lowest bid. Any equitable equalizing factor may be used; e.g., rent equivalent, value of property, depreciation, etc.

(b) Government property to be furnished or acquired need not be assigned a weighted factor or criterion for evaluating bids and proposals. However, the evaluation narrative shall explain the importance that was placed upon Government property in rating and ranking bids and proposals.

(c) If a contractor is to be allowed to retain Government property at contract completion, the bid or proposal price shall be increased by an evalution factor equivalent to:

(1) The cost to be reimbursed by the Government for property acquired at Government expense; and

(2) The current dollar value (cost less depreciation) of Government-furnished property.

Subpart 15–60.6—Administration of Government Property

§ 15–60.600 Scope of subpart.

This subpart sets forth policy and procedures governing administration of Government-furnished property and property acquired by contractors at Government expense for performance of EPA contracts.

§ 15–60.601 General.

(a) Responsibility within EPA for administering Government property in a contractor's possession rests primarily with EPA Property Administrators and is defined in an "Agreement of Understanding Covering Contract Property Administration" executed by the Directors of the Contracts Management Division, PM–214, Facilities and Support Services Division, PM–215, and Financial Management Division, PM–223.

(b) The contractor's responsibility regarding the management and use of Government property is delineated in an EPA publication entitled "Guide for Control of Government Property by Contractors," instructions from EPA Property Administrators, and as specified in the contract.

(c) The Contracting Officer shall furnish the Property Administrator a copy of each contract, contract modification, or other written authorization to a contractor which involves Government property in any manner. Also, the Contracting Officer shall furnish the Property Administrator a copy of all determinations and findings which support a decision to authorize permanent improvements to private property as contemplated in EPA Order 1960.1A.

§ 15–60.602 Property Administrator.

(a) The Property Administrator is the EPA "Accountable Officer" for Government property in a contractor's possession and maintains the official records of such property.

(b) EPA Property Administrators are appointed and assigned by the Director, Facilities and Support Services Division, PM–215.

(c) A Property Administrator shall be designated as Representative of the Contracting Officer for property administration for every cost-reimbursement type contract and for each fixed-price type contract under which Government property is involved. Contracting Officers shall designate the Property Administrator in the contract Schedule or by a letter of designation and furnish a copy to the Property Administrator.

(d) As the Representative of the Contracting Officer the Property Administrator performs all transactions and handles all matters concerning Government property in the contractor's possession. However, the Contracting Officer must execute sales contracts and determinations of liability for lost, damaged, or destroyed Government property and will resolve disputes with contractors that cannot be settled by the Property Administrator.

(e) The Property Administrator will review and determine the adequacy of contractor's property policy and procedures concerning:

(1) Receiving and inspection;

(2) Accounting, control, and reports;

(3) Utilization, including reporting excess property;

(4) Maintenance, i.e., protection, preservation, service, repair, warranties and guaranties, etc.

(5) Scrap and salvage of material, parts, etc.; and

(6) Disposal, including preparation for shipment and shipping procedures.

§ 15–60.603 Insurance.

Consideration will be given to requiring a contractor to procure and maintain insurance against loss of or damage to Government property in his possession whenever less than 75 percent of the total use of such property is for Government work.

§ 15–60.604 Risk of loss or damage liability.

When justified by the circumstances of a particular procurement, the contract may require the contractor to assume greater risks than those enumerated in the applicable "Government Property" clause set forth in Subpart 15–60.7. (See § 15–60.102.)

Subpart 15–60.7—Contract Clauses

§ 15–60.700 Scope of subpart.

(a) This subpart prescribes Government Property clauses to be used in EPA contracts.

(b) As used throughout this subpart, the term "fixed-price contract" shall include any advertised or negotiated fixed-price type contract and any letter contract which will be converted into a fixed-price type definitive contract, but shall exclude small purchases made under Subparts 1–3.6 and 15–3.6.

(c) As used throughout this subpart, the term "cost-reimbursement contract" shall include any cost-reimbursement type contract and any letter contract which will be converted to a cost-reimbursement type definitive contract.

§ 15–60.701 Government Property Clause For Fixed-Price Contracts.

(a) The following clause shall be used in fixed-price contracts under which the Government is to furnish or the Contractor is to acquire Government property:

GOVERNMENT PROPERTY (FIXED-PRICE) (1973)

(a) *Government-Furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor, and shall equitably adjust the contract price or delivery or performance dates or any other contractual provisions affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) and (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the contract price, or delivery or performance dates, or both, and any other contractual provision affected by the return or disposition, or the repair or modification in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-Furnished Property.* (1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, and/or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (b)(1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) *Title.* Title to all property furnished by the Government shall remain in the Government. In order to define the obligations of the parties under this clause, title to each item of property acquired by the Contractor for the Government pursuant to this contract shall pass to and vest in the Government when its use in the performance of contract commences, or upon payment therefor by the Government whichever is earlier, whether or not title previously vested. All Government-furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government Property." Title to the Government property shall not be affected by the incorporation or attachment thereof 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.

(The following paragraph shall be substituted for paragraph (c) above when the contract is with an educational institution.)

(c) *Title.* Title to all property furnished by the Government shall remain in the Government. Title to all property purchased for the conduct of research by the Contractor, with the prior approval of the Contracting Officer, shall be vested in the Contractor without further obligation to the Government except as provided below, unless it is determined by the Contracting Officer that such vesting is not in furtherance of the objectives of the Government or unless there is not proper authority to vest title in the Contractor. Such title shall be vested in the Contractor upon acquisition of the property or as soon as feasible thereafter provided that:

(i) The Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization, or use of such property.

(ii) At any time prior to twelve (12) months after completion or termination of the contract, the Contracting Officer reserves the right to require the Contractor to transfer title to property costing $1,000.00 or more per unit to the Government or to a third party named by the Contracting Officer.

(iii) The Contractor shall, at the end of the calendar year, and within thirty (30) days after completion of the contract, furnish the Contracting Officer a list of all property where title is vested in the Contractor. If no such property has vested, the report shall so state.

All Government furnished property, together with all property title to which vests in the Government under this clause, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government Property." Title to the Government property shall not be affected by the incorporation or attachment thereof 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 reasons of affixation to any realty.

(d) *Property Administration.* The Contractor agrees to maintain and administer a property control system in accordance with EPA publication "Guide for Control of Government Property by Contractors," in effect as of the date of this contract, supplied by the Government. While the Contractor is responsible for the Government property (Government furnished and Contractor acquired), the Government will maintain the official accountability records.

(e) *Use of Government Property.* The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Maintenance and Repair of Government Property.* The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, protection and preservation of Government property until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs: *Provided, however,* that if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by the Contracting Officer. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in any contractual provisions affected by such repair or replacement of Government property made at the direction of the Government, in accordance with the procedures provided for in the "Changes" clause of this contract. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

(g) *Risk of Loss.* Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss of or damage to Government property provided under this contract upon its delivery to him or upon passage of title thereto to the Government as provided in paragraph (c) hereof, except for reasonable wear and tear and except to the extent that such property is consumed in the performance of this contract.

(h) *Access.* The Contractor agrees to make available to the Contracting Officer, at all reasonable times, at the office of the Contractor, all its property records under this contract, and the Government shall at all reasonable times have access to the premises where any of the Government property is located for the purpose of inspecting the Government property.

(i) *Final Accounting and Disposition of Government Property.* Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government property not consumed in the performance of this contract, or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings, or cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account therefor as a part of general overhead or other reimbursable cost in accordance with the Contractor's established accounting procedures.

(j) *Restoration of Contractor's Premises and Abandonment.* Unless otherwise provided herein, the Government:

(i) may abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease; and

(ii) has no obligation to the Contractor with regard to the disassembly or removal of the property or to the restoration or rehabilitation of the Contractor's premises, neither in case of abandonment (paragraph (j) (i) above), disposition on completion of need or of the contract (paragraph (i) above), nor otherwise, except for restoration or rehabilitation costs caused by removal of Government property pursuant to paragraph (b) above.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing.

(b) *Contracts with educational institutions and contracts requiring cost and pricing data.* Substitute the following paragraph (g) for paragraph (g) of the Government Property clause set out in paragraph (a) of this section for (1) negotiated fixed-price contracts with educational institutions and (2) other negotiated fixed-price contracts when the contract price is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or the prices are set by law or regulations:

(g) *Risk of Loss.* (1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage except that the Contractor shall be liable for any loss or damage to Government property provided under the contract upon its delivery to him or passage of title to the Government as provided in paragraph (c) above (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of his managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which the contract is being performed;

(ii) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in paragraph (g) (1) (i) above;

(A) To maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection and preservation of Government property as required by paragraph (f) hereof, or to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer under paragraph (f) hereof; or

(B) To establish, maintain and administer, in accordance with (d) above, a system for control of Government property;

(iii) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

(iv) Which results from a risk expressly required to be insured under some other provision of this contract, or of the schedules or task orders thereunder, but only to the extent of the insurance so required to be procured and maintained or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement.

Any failure of the Contractor to act, as provided in paragraph (g) (1) (ii) above, shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of such directors, officers, or other representatives mentioned in paragraph (g) (1) (i) above, if the Contractor is notified by the Contracting Officer by registered or certified mail, addressed to one of such directors, officers or other representatives, of the Government's disapproval, withdrawal of approval or nonacceptance of the Contractor's program or system. In such event, it shall be presumed that any loss or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system, or occurred during such time as an approved program or system for control of Government property was maintained.

If more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) The Contractor represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government property, except to the extent that the risk of loss is imposed on the Contractor under Paragraph (g) (1) (iii) above, or insurance has been required under paragraph (g) (1) (iv) above.

(3) Upon the happening of loss or destruction or damage to any Government property, the Contractor shall notify the Contracting Officer thereof and shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made by him in performing his obligations under this paragraph (g) (3).

(4) With the approval of the Contracting Officer after loss or destruction of or damage to Government property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(5) Except to the extent of any loss or destruction of or damage to Government property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government property in accordance with the provisions of this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of or damage to the Government property, and such property (other than that which is permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (f) above.

(6) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government property, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

§ 15–60.702 Government property clause for cost-reimbursement contracts.

The following clause shall be used in cost-reimbursement contracts (except those with educational or other nonprofit institutions and State and local Governments when no payment of fee is contemplated) under which the Government is to furnish or the Contractor is to acquire Government property:

GOVERNMENT PROPERTY (COST-REIMBURSEMENT) (1973)

(a) *Government-Furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based on the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the estimated costs, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision effected by the return or disposition, or the repair or modification in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-Furnished Property*. (1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, and/or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (b)(1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) *Title*. Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance on 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 in whole or in part, whichever first occurs. All Government-furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property." Title to the Government property shall not be affected by the incorporation or attachment thereof 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 or personalty by reason of affixation to any realty.

(The following paragraph shall be substituted for (c) above when the contract is with an educational institution.)

(c) *Title*. Title to all property furnished by the Government shall remain in the Government. Title to all property purchased for the conduct of research by the Contractor, with the prior approval of the Contracting Officer, shall be vested in the Contractor without further obligation to the Government except as provided below, unless it is determined by the Contracting Officer that such vesting is not in furtherance of the objectives of the Government or unless there is not proper authority to vest title in the Contractor. Such title shall be vested in the Contractor upon acquisition of the property or as soon as feasible thereafter provided that:

(i) The Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization, or use of such property.

(ii) At any time prior to twelve (12) months after completion or termination of the contract, the Contracting Officer reserves the right to require the Contractor to transfer title to property costing $1,000.00 or more per unit to the Government or to a third party named by the Contracting Officer.

(iii) The Contractor shall, at the end of the calendar year, and within thirty (30) days after completion of the contract, furnish the Contracting Officer a list of all property where title is vested in the Contractor. If no such property has vested, the report shall so state.

All Government furnished property, together with all property title to which vests in the Government under this clause, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government Property." Title to the Government property shall not be affected by the incorporation or attachment thereof 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 reasons of affixation to any realty.

(d) *Property Administration*. The Contractor agrees to maintain and administer a property control system in accordance with EPA publication "Guide for Control of Government Property by Contractors," in effect as of the date of this contract, supplied by the Government. While the Contractor is responsible for the Government Property (Government furnished and Contractor acquired), the Government will maintain the official accountability records. For Government furnished property and Contractor acquired property to which the Government takes title.

(e) *Use of Government Property*. The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Maintenance and Repair of Government Property*. The Contractor shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection and disposition of Government property.

(g) *Risk of Loss*. (1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or

(C) A separate and complete major industrial operation in connection with the performance of this contract;

(ii) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in paragraph (g)(1)(i) above—

(A) To maintain and administer, in accordance with sound business practice, the program for utilization, maintenance, repair, protection and preservation of Government property as required by paragraph (f) hereof, or to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer under paragraph (f) hereof; or

(B) To establish, maintain and administer, in accordance with (d) above, a system for control of Government property;

(iii) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

(iv) Which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement.

(2) If more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. The Contractor shall obtain the approval of the Contracting Officer prior to transferring any Government property to a subcontractor. If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(3) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provisions of this contract.

(4) Upon the happening of loss or destruction of or damage to the Government prop-

erty, the Contractor shall notify the Contracting Officer thereof, take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed and damaged Government property;

(ii) The time and origin of the loss, destruction or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovations of the damaged Government property or take such other action, as the Contracting Officer directs.

(5) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, he shall use the proceeds to repair, renovate or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(h) *Access*. The Contractor agrees to make available to the Contracting Officer, at all reasonable times, at the office of the Contractor, all its property records under this contract, and the Government shall at all reasonable times have access to the premises where any of the Government property is located.

(i) *Final Accounting and Disposition of Government Property*. Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government property not consumed in the performance of this contract, or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings, or cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account therefor as a part of general overhead or other reimbursable cost in accordance with the Contractor's established accounting procedures.

(j) *Restoration of Contractor's Premises and Abandonment*. Unless otherwise provided herein the Government:

(i) May abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease; and

(ii) Has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment (paragraph (j)(i) above), disposition on completion of need or of the contract (paragraph (i) above), nor otherwise, except for restoration or rehabilitation costs caused by removal of Government property pursuant to paragraph (b) above.

(k) *Communications*. All communications issued pursuant to this clause shall be in writing.

As provided in paragraph (i) of the above clause, the Contracting Officer may authorize or approve use of the Contractor's established scrap disposal and accounting procedures whenever the amount and recoverable value of scrap from Government property are relatively minor and the Contractor's established procedures for accumulating and disposing of scrap and crediting the proceeds thereof to general overhead or other general cost will permit the Government to share equitably in such scrap recovery through a reduction of overhead or other cost factor affecting reimbursement under the contract.

§ 15–60.703 Government Property Clause for "No-Fee" Cost-Reimbursement Contracts with Educational or Nonprofit Institutions and State and Local Governments.

Cost-reimbursement contracts which provide only for reimbursement of cost to educational or nonprofit institutions and State and local Governments shall incorporate the "Government Property" clause prescribed in § 15–60.702, modified to delete all reference to fee.

[FR Doc.74-3174 Filed 2-6-74;8:45 am]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER D—GRANTS

PART 57—GRANTS FOR CONSTRUCTION OF HEALTH RESEARCH FACILITIES (INCLUDING MENTAL RETARDATION RESEARCH FACILITIES), TEACHING FACILITIES, STUDENT LOANS, EDUCATIONAL IMPROVEMENT AND SCHOLARSHIPS

Health Professions Student Loans

In the FEDERAL REGISTER of July 12, 1973 (38 FR 18557) the Acting Director, National Institutes of Health, with the approval of the Secretary of Health, Education, and Welfare, proposed to amend Part 57 by repealing Subpart C of Part 57 and substituting a new Subpart C in lieu thereof. The purpose of the proposed change was to implement certain statutory changes made by section 105 of the Comprehensive Health Manpower Training Act of 1971 (P.L. 92-157).

Interested persons were afforded the opportunity to participate in the rulemaking through submission of comments on or before August 13, 1973. No such comments were received. There have, however, been a few minor changes in the regulations as proposed, which are merely technical in nature, and are self-explanatory.

Effective date. The regulations as set forth below shall become effective on March 11, 1974.

Dated: December 26, 1973.

CHARLES C. EDWARDS,
Assistant Secretary for Health.

Approved: February 4, 1974.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Subpart C—Health Professions Student Loans

AUTHORITY: Sec. 215, 58 Stat. 690; as amended, 42 U.S.C. 216.

§ 57.201 Applicability.

The regulations of this subpart are applicable to Federal Capital Contributions and Federal Capital Loans made by the Secretary to public or other nonprofit health professions schools under Subpart I of Part C of Title VII of the Public Health Service Act (42 U.S.C. 294–294f), and to loans made to students by such schools pursuant thereto.

§ 57.202 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) "Act" means the Public Health Service Act, as amended.

(b) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(c) "School" means a public or other nonprofit school of medicine, dentistry, osteopathy, optometry, podiatry, pharmacy, or veterinary medicine which provides a course of study, or a portion thereof, which leads respectively to a degree of doctor of medicine, doctor of dental surgery or an equivalent degree, doctor of osteopathy, doctor of optometry or an equivalent degree, doctor of podiatry or an equivalent degree, bachelor of science in pharmacy or an equivalent degree, or doctor of veterinary medicine or an equivalent degree, and which is accredited as provided in section 721(b)(1)(B) of the Act.

(d) "State" means a State, the District of Columbia, Puerto Rico or the Virgin Islands.

(e) "Health Professions Student Loan Fund or Funds" means a fund established at a school pursuant to Subpart I of Part C of Title VII of the Act, either with Federal Capital Contributions together with Institutional Capital Contributions, or with Federal Capital Loans. Where a school receives monies from both methods of payment, reference is made to Funds.

(f) "Federal Capital Contribution" means the capital portion allotted by the Secretary to a school for deposit in a Health Professions Student Loan Fund pursuant to section 742 of the Act.

(g) "Institutional Capital Contribution" means the money provided by a school, in an amount not less than one-ninth of the Federal Capital Contribution, and deposited in a Health Professions Student Loan Fund.

(h) "Federal Capital Loan" means a loan made by the Secretary to a school pursuant to section 744(a) of the Act, the proceeds of which are to be deposited by such school in a Health Professions Student Loan Fund.

(i) "Health professions student loan" means the amount of money advanced to a student by a school from a Health Professions Student Loan Fund under a properly executed promissory note.

(j) "Educational loan" means a health professions student loan as defined in paragraph (i) of this section or the amount of money provided to a student under any other bona fide loan which the Secretary determines was reasonably necessary for meeting the student's costs of attending a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, or podiatry, taking into account the tuition, fees, books, equipment, living expenses and such other expenses as the Secretary determines were reasonably necessary to enable an individual to attend such school.

(k) "Full-time student" means a student who is enrolled in a school and pursuing a course of study which constitutes a full-time academic workload, as determined by the school, leading to a degree specified in paragraph (c) of this section.

(l) "Date upon which a student ceases to be a full-time student" means the first day of the month which is nearest to the date upon which he ceases to be a full-time student as defined in paragraph (k) of this section.

(m) "Academic year" means the traditional, approximately 9-month September to June annual session. For the purpose of computing academic year equivalents for students who, during a 12-month period, attend for a longer period than the traditional academic year, the academic year will be considered to be of 9 months' duration.

(n) "Fiscal year" means the Federal fiscal year commencing on the first day of July and ending on the 30th day of June.

(o) "Permanently and totally disabled" means the inability to engage in any substantial gainful activity because of a medically determinable impairment, which impairment is expected to continue for a long and indefinite period of time, or to result in death.

(p) "Uniformed service" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Ocean Survey, and the U.S. Public Health Service.

(q) "National of the United States" means (1) a citizen of the United States or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States (8 U.S.C. 1101(a)(22)).

(r) "State health authority" means the Director of the agency responsible for administering or supervising the administration of the State plan for health services under section 314(d) of the Act.

§ 57.203 Eligibility of schools.

To be eligible for a Federal Capital Contribution or a Federal Capital Loan under this subpart, the applicant school shall meet the applicable requirements of sections 740(a) and 744(a) of the Act.

§ 57.204 Application by school.

(a) Each school desiring a Federal Capital Contribution or a Federal Capital Loan under the Act shall submit an application in such form and at such time as the Secretary may require.[1] The application shall be executed by an official authorized to act for the applicant school and to assume on behalf of the applicant school the obligations imposed by the terms and conditions of any Federal Capital Contribution or Federal Capital Loan, including the regulations of this subpart.

(b) Each application shall be reviewed to determine institutional eligibility and the reasonableness of the amount of Federal support requested. When necessary to these ends, the Secretary may require the submission of additional data.

§ 57.205 Agreements for Federal Capital Contributions and Federal Capital Loans.

(a) *Federal capital contribution agreements.* No application for a Federal Capital Contribution shall be approved unless there is in effect an agreement between the Secretary and the applicant school for Federal Capital Contributions pursuant to section 740 of the Act.

(b) *Federal capital loan agreements.* No application for a Federal Capital Loan shall be approved unless there is in effect an agreement between the Secretary and the applicant school for Federal Capital Loans containing the terms required by section 744(b) of the Act and such additional terms and conditions, consistent with the applicable provisions of section 740 of the Act, as the Secretary deems appropriate.

§ 57.206 Allotment and payment of Federal Capital Contributions and Federal Capital Loans.

(a) *Annual allotment.* At a time determined by him, the Secretary shall make allotments to each school with which he has entered into an agreement pursuant to § 57.205. If the total of the amounts requested for any fiscal year by all schools for Federal Capital Contributions and Federal Capital Loans exceeds the amount of Federal funds determined by the Secretary at the time of such allotment to be available for such purposes for such fiscal year, the allotment to each such school, whether in the form of Federal Capital Contributions or Federal Capital Loans or a combination of both, shall be reduced to whichever of the following is the smaller: (1) The amount requested in the application or (2) An amount which bears the same ratio to the total amount of Federal funds determined by the Secretary at the time of such allotment to be available for such fiscal year for the Health Professions Student Loan Program as the number of full-time students estimated by the Secretary to be enrolled in such school bears to the estimated total number of full-time students in all such schools during such year. Amounts remaining after such allotment shall be reallotted in accordance with subparagraph (2) of this paragraph among schools whose applications requested more than the amounts so allotted to them, but with such adjustments as may be necessary to prevent the total allotted to any school from exceeding the total requested by it.

(b) *Supplementary allotment from revolving fund only.* From funds which become available during any fiscal year for payment to schools from the revolving fund established by section 744(a) of the Act after the allotments pursuant to paragraph (a) of this section for such fiscal year have been made, the Secretary may, in his discretion and at such time as he shall determine, make supplementary allotments to schools with which he has Federal Capital Loan Agreements and whose requests for funds for such fiscal year exceed the amounts allotted to them pursuant to paragraph (a) of this section. If the total need for supplementary funds exceeds the amounts determined by the Secretary to be available for supplementary allotments, the supplementary allotment to each school shall be reduced to whichever of the following is the smaller: (1) The supplementary amount requested or (2) an

[1] Applications and instructions are available from the Regional Health Manpower Director at the Regional Office of the Department of Health, Education, and Welfare for the region in which the applicant is located.

amount which bears the same ratio to the amount determined by the Secretary to be available for supplementary allotment as the number of full-time students estimated by the Secretary to be enrolled in such school bears to the estimated total number of full-time students enrolled for such year in all schools which request supplementary allotments. Any amounts remaining after such supplementary allotment may be allotted among schools in such manner as the Secretary determines will best carry out the purposes of the Act.

(c) *Payment*. The allotment of Federal Capital Contributions and/or Federal Capital Loans to a school shall be paid in such amounts, at such times, and in such installments as will not result in unnecessary accumulation of money in any Health Professions Student Loan Fund.

§ 57.207 Federal Capital Loan Promissory Note.

Each Federal Capital Loan shall be made subject to the terms of a promissory note which shall be executed by an authorized official on behalf of the borrowing school. Each such note shall include such terms with respect to the payment of interest and the repayment of principal as are consistent with the provisions of section 744 of the Act, and shall include such other terms as the Secretary finds reasonably necessary to protect the financial interests of the United States and to promote the purposes of the applicable provisions of the Act.

§ 57.208 Health Professions Student Loan Funds.

(a) *Funds established with Federal Capital Contributions*. Any fund established by a school with Federal Capital Contributions shall be deposited and carried in a special account of such school. There shall be in such fund at all times monies representing the Institutional Capital Contribution, equal to at least one-ninth of the amount of the balance of the Federal Capital Contributions in such fund.

(1) Except for funds transferred as provided for in subparagraph (2) of this paragraph, such fund shall be used by such school only for (i) health professions student loans to full-time students; (ii) capital distribution as provided in section 743 of the Act or as agreed to by the school and the Secretary; and (iii) costs of litigation and, to the extent specifically approved by the Secretary, other collection costs that are in excess of the usual expenses incurred in the collection of health professions student loans.

(2) Not to exceed 20 per centum of the amount paid to any such school from the appropriation for any fiscal year for Federal Capital Contributions may be transferred to the sums available to the school for scholarship awards under section 780 of the Act, to be used for the same purpose as such sums: *Provided, however*, That where the Secretary finds in a particular case that a school has demonstrated an unusual need for scholarship funds, he may approve the transfer of an amount in excess of 20 per centum of the amount so paid. In the case of any transfer pursuant to this subparagraph, the proportionate amount of the Institutional Capital Contribution (i.e., one-ninth of the amount so transferred) may be withdrawn by the school from such fund.

(b) *Funds established with Federal Capital Loans*. Any funds established by a school with Federal Capital Loans shall be deposited and carried in a special account of such school, and shall be used by such school only for (1) health professions student loans to fulltime students; (2) repayments of principal and interest on Federal Capital Loans; and (3) costs of litigation and, to the extent specifically approved by the Secretary, other collection costs that are in excess of the usual expenses incurred in the collection of health professions student loans.

§ 57.209 Nondiscrimination.

(a) No eligible applicant shall be denied a health professions student loan on the grounds of sex or creed.

(b) Attention is called to the requirements of section 799A of the Act and the regulations issued by the Secretary pursuant thereto (45 CFR Part 83), which together provide that the Secretary may not enter into a contract under Title VII of the Act with any entity unless he receives satisfactory assurances that the entity will not discriminate on the basis of sex in the admission of individuals to its training programs.

(c) Attention is called to the requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d et seq.) which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such Title VI, which is applicable to Federal Capital Contributions and Federal Capital Loans made under Subpart I of Part C, Title VII of the Act, has been issued by the Secretary with the approval of the President (45 CFR Part 80).

(d) Attention is called to the requirements of Title IX of the Education Amendments of 1972 and in particular to section 901 of such Act which provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

§ 57.210 Eligibility and selection of health professions student loan recipients.

(a) *Eligibility*. Health professions student loans from any fund may be made only to students who are:

(1) Nationals of the United States or permanent residents of the Trust Territory of the Pacific Islands or who are in the United States, Puerto Rico, the Virgin Islands, or Guam for other than temporary purposes and intend to become permanent residents thereof.

(2) Enrolled, or accepted for enrollment in the school as full-time students; and

(3) In need of the amount of the loan to pursue a full-time course of study at the school.

(b) *Selection of health professions student loan recipients and determination of need*. It shall be the responsibility of the school to select qualified applicants and to make a reasonable determinations of need. In determining whether a student is in need of a health professions student loan to pursue a full-time course of study at the school, the school shall take into consideration:

(1) The financial resources available to the student; and

(2) The costs reasonably necessary for the student's attendance at the school, including any special needs and obligations which directly affect the student's ability to attend the school on a full-time basis.

(c) *Records of approval or disapproval*. The records of the school shall indicate the basis for approval or disapproval of all or any part of each student application for a health professions student loan.

§ 57.211 Maximum amount of health professions student loan.

Effective on November 18, 1971, the total of the health professions student loans made from the Fund or Funds to any student for an academic year may not exceed $3,500. The maximum amount loaned during a 12-month period to any student enrolled in a school which provides a course of study longer than the 9-month academic year may be proportionately increased.

§ 57.212 Evidence of student indebtedness—promissory note; security.

(a) *Evidence of indebtedness—promissory note*. Each health professions student loan to a student from any Fund or Funds shall be evidenced by a promissory note, executed by the student borrower in such form as shall be approved by the Secretary.

(1) Any substantive deviations from the promissory note form so approved shall be made only pursuant to approval by the Secretary prior to the making of any loan evidenced thereby, except that a school which elects to require security or endorsement in cases permitted under paragraph (b) of this section may include a provision reflecting such election without prior approval.

(2) Each promissory note shall include a provision stating that the loan evidenced thereby shall bear interest, on the unpaid balance of such loan, computed only for periods during which repayment of the loan is required, at the rate of 3 percent per year.

(3) A copy of each executed note shall be supplied by the school to the student maker thereof.

(b) *Security*. Neither security nor endorsement shall be required except that if the borrower is a minor and if under the applicable State law the note executed by him would not create a binding obligation, then the school is permitted to require security or endorsement.

§ 57.213 Payment of health professions student loans.

(a) Health professions student loans from any Fund or Funds shall be paid to or on behalf of student borrowers in such installments as are deemed appropriate by the school, except that no school shall pay to or on behalf of any borrower more during any given installment period (e.g., semester, term, or quarter) than the school determines he needs for such period.

(b) No payment shall be made from any Fund or Funds to or on behalf of any student borrower if at the time of such payment such borrower is not a full-time student as defined in § 57.202(k).

§ 57.214 Repayment and collection of health professions student loans.

(a) *Repayment of health professions student loans.* Subject to the provisions of this paragraph any health professions student loan, including interest accrued thereon, shall be repayable in equal or graduated periodic installments in amounts calculated on the basis of a 10-year repayment period. Except as otherwise provided in this paragraph, repayment of all such loans made after June 30, 1969, shall begin 1 year after the student ceases to be a full-time student.

(1) When a borrower, within such 1-year period, reenters the same or another school as a full-time student, the date upon which interest accrual and the repayment period begin shall be related to and determined by the date on which he last ceases to be a full-time student at any such school.

(2) The following periods shall be excluded from the 10-year repayment period: (i) All periods of up to a total of 3 years of active duty performed by the borrower as a member of a uniformed service; (ii) all periods of up to a total of 3 years of service as a volunteer under the Peace Corps Act; and (iii) all periods of advanced professional training: *Provided*, That, with respect to health professions student loans made prior to November 18, 1971, but subsequent to June 30, 1969, such periods of advanced training may not exceed a total of 5 years; *Provided further*, That, with respect to student loans made before July 1, 1969, all periods up to a total of 5 years of advanced professional training after June 30, 1969, may be excluded from such repayment period where so agreed by the school which made the loan and the Secretary, except that in no such case may the total of the periods of advanced professional training so excluded from the repayment period and the period between the date on which the borrower ceases to be a full-time student and the date on which, under the terms of the promissory note evidencing such loan, the repayment period is to begin, exceed 6 years. For purposes of this subdivision advanced professional training shall include only (i) internship and residency programs or (ii) full-time training beyond the first professional degree of at least 1 academic year which is provided by an accredited institution or an affiliate thereof, and which will advance the borrower's knowledge of and strengthen his skills in the health profession for the study of which he received the loan.

(3) Each student borrower may (subject to the provisions of paragraph (b)(3) of this section) choose the repayment schedule which he prefers from those in use by the school and approved by the Secretary, but a student borrower may, at his option and without penalty, prepay all or part of the principal and accrued interest at any time.

(b) *Collection of health professions student loans.* (1) Each school at which a Fund is established shall exercise due diligence in the collection of all health professions student loans due the Fund. The school shall use such collection practices as are generally accepted among institutions of higher education and which are at least as extensive and effective as those used in the collection of other student loan accounts due the school.

(2) With respect to any health professions student loan made after June 30, 1969, the school may assess a charge for failure of the borrower to pay all or any part of an installment when it is due, and, in the case of a borrower who is entitled to deferment benefits under section 741(c) of the Act, or cancellation benefits or repayment under section 741(f) of the Act for any failure to file timely and satisfactory evidence of such entitlement. The amount of such charge may not exceed $1 for the first month or part of a month by which such installment or evidence is late and $2 for each such month or part of a month thereafter. The school may elect to add the amount of such charge to the principal amount of the loan as of the first day after the day on which such installment or evidence was due, or to make the amount of the charge payable to the school not later than the due date of the next installment after receipt by the borrower of notice of the assessment of the charge.

(3) With respect to any health professions student loan made after June 30, 1969, the school may provide that during the repayment period of such loan, payments of principal and interest by the borrower with respect to all the outstanding loans made to him from any Health Professions Student Loan Fund shall be at a rate equal to not less than $15 per month.

§ 57.215 Cancellation of health professions student loans for disability and death.

(a) *Permanent and total disability.* Determinations as to whether or not a student borrower is entitled to a cancellation of indebtedness in accordance with section 741(d) of the Act on the basis of permanent and total disability as defined in § 57.202(o) shall be made by the Secretary on the recommendation of the school to whose fund the borrower is indebted, supported by such medical certifications as the Secretary may require relating to the borrower's disability.

(b) *Death.* The determination as to whether or not a student borrower is entitled to a cancellation of indebtedness in accordance with section 741(d) of the Act because of the death of the borrower shall be made by the school to which the borrower is indebted on the basis of a certification of death or such other official proof as is conclusive under State law.

§ 57.216 Repayment or cancellation of loans for practice.

(a) *Practicing in a shortage area.* (1) Subject to the provisions of section 741(f) of the Act and of this paragraph, any person who has obtained a degree specified in § 57.202(c) and who obtained any educational loan as defined in § 57.202(j), and who enters into an agreement with the Secretary to spend all or substantially all of his professional time (as a member of the National Health Service Corps or otherwise) for a period of at least two consecutive years practicing his profession in, and helping to meet the need for professional services of the population of an area in a State designated under section 329(b) of the Act, or otherwise determined by the Secretary, after consultation with the State health authority, to have a shortage of and need for persons trained in his profession, is entitled to have a portion of such loan repaid by the Secretary as follows:

(i) Upon completion by the borrower of the first year of practice as specified in the agreement, the Secretary shall pay 30 percent of the principal of, and the interest on, each such loan which was unpaid as of the date the borrower began such practice.

(ii) Upon completion by the borrower of the second year of such practice the Secretary shall pay another 30 percent of the principal of, and the interest on, each such loan which was unpaid as of the date the borrower began such practice.

(iii) Upon completion by the borrower of a third year of such practice, the Secretary shall pay another 25 percent of the principal of, and interest on, each such loan which was unpaid as of the date the borrower began such practice.

(2) Notwithstanding the requirement in subparagraph (1) of this paragraph of completion of such practice, the Secretary shall, on or before the due date thereof, pay any loan or loan installment which may fall due within the period of practice for which the borrower is eligible to receive such payments. Such payments will be contingent upon a declaration by the borrower at such time and in such manner as the Secretary may prescribe that the borrower is then engaged in practice eligible for such payments and will continue to be so engaged for the period required (in the absence of this paragraph) to entitle the borrower to have such payments made: *Provided*, That not more than 85 percent of the principal of any such loan which was unpaid on the date the borrower began

such practice shall be paid by the Secretary pursuant to this paragraph.

(3) A borrower who fails to complete two years of practice pursuant to the agreement entered into with the Secretary shall be liable to reimburse the Secretary for any payments made pursuant to such agreement.

(4) A borrower who fails to complete a third year of practice shall be liable to reimburse the Secretary for any payments made pursuant to subparagraph (2) of this paragraph in consideration of such practice.

(5) In accordance with section 741(f) of the Act, an area in a State, other than one designated under section 329(b) of the Act, may be determined by the Secretary, after consultation with the State health authority, to have a shortage of and need for persons trained in the health professions, based upon consideration of, among other pertinent factors: (i) The latest reliable statistical data available to him regarding numbers of health professions practitioners and the population to be served by such practitioners; (ii) inaccessibility of medical services to the residents of the area; and (iii) particular local health problems. A list of areas in which practice will qualify a borrower for repayment under this paragraph shall be promulgated periodically by the Secretary and published in the Federal Register together with the methodology used in determining such areas.

(b) *Continuation of provisions for cancellation of loans made prior to November 18, 1971*—(1) *Practicing in a shortage area.* Any person who obtained prior to November 18, 1971, one or more loans from a Fund or Funds established under Part C of Title VII of the Act, and who engages in the practice of medicine, dentistry, optometry, or osteopathy in an area having a shortage of and need for physicians (M.D. and D.O.), dentists, or optometrists and whose practice is certified by the State health authority (as designated for purposes of section 314(d) of the Public Health Service Act) as helping to meet the shortage of and need for such professional services, shall be entitled, upon compliance with the statute, regulations, and instruction, to have a portion of such loans canceled as follows: 10 per centum of the total of such loans (plus accrued interest on such amount) which is unpaid as of the date that such person's professional services begin in such area, for each year of such practice thereafter, up to 50 per centum of the total of such unpaid amount, plus accrued interest thereon.

(i) For purposes of subparagraph (1) of this paragraph, the State health authority may designate as areas in the State in which there is a shortage of and need for physicians, dentists, or optometrists any county (or established comparable political subdivision in those States in which there are no counties) in which the ratio of practicing physicians, dentists, or optometrists, respectively, to the most recent available estimated population in the county is lower than the following ratios:

Physicians (M.D. and D.O.)	1:1,500
Dentists	1:3,000
Optometrists	1:15,000

Provided, That the State health authority may, with the approval of the Secretary, designate as shortage areas: (*a*) Geographical areas other than counties where he finds that the use of another classification of areas of the State will better reflect the health manpower needs of the State as related to particular administrative, geographical, or other factors, and (*b*) those counties or other geographical, areas in which the ratio of such professional personnel to population is equal to or greater than the ratios specified above in special circumstances such as (*1*) inaccessibility of medical services to the residents of the area, (2) age or incapacity of professionals rendering service, and (3) particular local health problems.

(ii) For purposes of subparagraph (1) of this paragraph, in determining whether the practice of a physician, dentist, or optometrist in a shortage area helps to meet the shortage of and need for such professional services in the area, the State health authority shall take into consideration the amount of time which the practitioner devotes to serving the health needs of persons living in the area; the extent to which his services are generally available to residents of the area; and such other factors as will permit the State health authority to determine that the physician, dentist, or optometrist is substantially helping to meet the shortage of and need for professional services for residents of the area.

(iii) For purposes of subparagraph (1) of this paragraph, a year of practice in a shortage area means any 12-month period of continuous practice (*a*) after the date the person begins practice in such area if the area is at that time designated as an area in which there is a shortage of and need for physicians, dentists, or optometrists, or (*b*) after the date the area is designated a shortage area if the area was so designated subsequent to the date that such person began practicing in such area: *Provided,* That, when an area's designation is changed, after a practitioner would otherwise be eligible for cancellation of a portion of his loan by practicing in such area, so that such area is no longer a shortage area, such change in designation shall not affect the eligibility of such practitioner to have a portion of his loan canceled for any year in which he continues to practice his profession in such area.

(iv) For the purposes of subparagraph (1) of this paragraph, the State health authority shall certify to the Secretary in such form and at such times as the Secretary may prescribe: (*a*) The areas of his State which he has determined to be shortage areas and (*b*) the names of loan recipients whose practice in such areas he has determined helps to meet the shortage of and need for the designated area in accordance with physicians, dentists, or optometrists in the criteria prescribed in this paragraph.

(v) A list of areas in which practice will qualify borrowers for cancellation under the provisions of this paragraph will be promulgated by the Secretary and published in the FEDERAL REGISTER.

(2) *Practicing in a rural shortage area characterized by low family income.* Any person who obtained prior to November 18, 1971, one or more loans from a C of Title VII of the Act and who engages in the practice of medicine, dentistry, optometry, or osteopathy in an area which has been determined by the Secretary pursuant to this paragraph to be a rural shortage area characterized by low family income, and whose practice is certified by the State health authority pursuant to subparagraph (1) of this paragraph as helping to meet the shortage of and need for such professional services, shall be entitled, upon compliance with the statute, regulations, and instructions, to have a portion of such loans canceled as follows: 15 per centum of the total of such loans (plus accrued interest on such amount) which is unpaid as of the date that such person's professional services begin in such area, for each year of such practice thereafter, up to 100 per centum of the total of such unpaid amount (plus accrued interest thereon).

(i) For purposes of subparagraph (2) of this paragraph, the Secretary, after consultation with the appropriate State health authority, may determine an area to be arural shortage area characterized by low family income if the area has been designated as a shortage area pursuant to subparagraph (1) of this paragraph and is an area in which (*a*) at least 50 per centum of the total population is rural (as determined in accordance with the most recent available data of the U.S. Bureau of the Census), or there is no municipality of more than 10,000 population, and (*b*) at least 30 per centum of all persons have an income of less than 125 per centum of the poverty level as determined in accordance with the most recent available data of the U.S. Bureau of the Census.

(3) Nothing in this paragraph shall be construed to prevent any person from entering into an agreement with the Secretary under section 741(f) of the Act, as amended by the Comprehensive Health Manpower Training Act of 1971 (P.L. 92–157), as provided in paragraph (a) of this section.

§ 57.217 Repayment of loans made subsequent to November 17, 1971 for failure to complete program of study.

In the event the Secretary undertakes to repay educational loans pursuant to section 741(*l*) of the Act, he shall utilize the following criteria in making his determination as to each applicant's eligibility:

(a) An applicant will be considered to have failed to complete the course of study leading to his first professional degree for which an eligible educational loan was made upon certification by a health professions school that the individual ceased to be enrolled in such school subsequent to November 17, 1971;

(b) An applicant will be considered to be in exceptionally needy circumstances if, upon comparison of the income and other financial resources of the applicant with his expenses and financial obligations, the Secretary determines that repayment of such loan would constitute a serious economic burden on the applicant. In making such determination the Secretary shall take into consideration the net financial assets of the applicant and the relationship of the income available to the applicant to the low-income levels published annually by the Secretary pursuant to paragraph (c) of this section;

(c) An applicant will be considered to be from a low-income family if the applicant comes from a family with an annual income below a level based on low-income thresholds by family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index and multiplied by a factor to be determined by the Secretary for adaptation to this program, and the family has no substantial net financial assets. Such factor and income levels as adjusted will be published annually by the Secretary in the FEDERAL REGISTER.

(d) An applicant will be considered to be from a disadvantaged family if the individual comes from a family in which the annual income minus unusual expenses which contribute to the economic burdens borne by the family does not exceed the low-income levels published by the Secretary pursuant to paragraph (c) of this section and the family has no substantial net financial assets;

(e) An applicant will be considered as not having resumed his health professions studies within two years following the date the individual ceased to be a student upon a certification so stating from the applicant; and

(f) An applicant will be considered as not reasonably expected to resume his health professions studies within two years following the date upon which he terminated such studies based upon consideration of the reasons for the applicant's failure to complete these studies, taking into account such factors as academic, medical, or financial difficulties.

Provided however, That the Secretary shall only repay educational loans made subsequent to November 17, 1971.

§ 57.218 Records, reports, inspection and audit.

(a) *Records and reports*. (1) Each Federal Capital Contribution and Federal Capital Loan shall be subject to the condition that the school shall maintain such records, and file with the Secretary such reports relating to the operation of its Health Professions Student Loan Fund or Funds, as the Secretary may find necessary to carry out the purposes of the Act and the regulations. Where any school has both a Fund established with Federal Capital Contributions and a Fund established with Federal Capital Loans, records shall be kept separately for each Fund. All records shall be retained until such time as agreed upon with the Secretary that there is no further need for retention.

(2) The following individual student records not related to the operation of the Fund or Funds must be retained for five years after the individual student has ceased to be a full-time student:

(i) Approved and disapproved student applications for assistance;

(ii) Documentation of the financial need of applicants;

(iii) Reasons for approval or disapproval of applications; and

(iv) Such other records as the Secretary may prescribe.

Such individual student records may be destroyed at the end of such five-year period, except that in all cases where questions have arisen as a result of Federal audit, such records shall be retained until resolution of all such questions.

(b) *Inspection and audit*. Any application for a Federal Capital Contribution or a Federal Capital Loan shall constitute the consent of the applicant school to inspection and fiscal audit by the Secretary and the Comptroller General of the United States or any of their duly authorized representatives of the fiscal and other records of the applicant school which relate to such Contribution or Loan.

§ 57.219 Additional conditions.

The Secretary may with respect to any agreement entered into with any school pursuant to § 57.205, impose additional conditions prior to or at the time of any award when in his judgment such conditions are necessary to assure or protect advancement of the purposes of the agreement, the interest of the public health or the conservation of funds awarded.

§ 57.220 Noncompliance.

Whenever the Secretary finds that a participating school has failed to comply with the applicable provisions of the Act or the regulations of this subpart, he may, on reasonable notice to the school withhold further payments of Federal Capital Contributions or Federal Capital Loans, and take such other action, including the termination of any agreement, as he finds necessary to carry out the purposes of the applicable provisions of the Act and regulations. In such case no further expenditures shall be made from the Health Professions Student Loan Fund or Funds involved until the Secretary determines that there is no longer any such failure of compliance.

[FR Doc.74-3150 Filed 2-6-74;8:45 am]

PART 57—GRANTS FOR CONSTRUCTION OF HEALTH RESEARCH FACILITIES (INCLUDING MENTAL RETARDATION RESEARCH FACILITIES), TEACHING FACILITIES, STUDENT LOANS, EDUCATIONAL IMPROVEMENT AND SCHOLARSHIPS

Financial Distress Grants to Health Professions Schools

In the FEDERAL REGISTER of June 14, 1973 (38 FR 15628) the Acting Director, National Institutes of Health, with the approval of the Secretary of Health, Education, and Welfare proposed to amend Part 57 by adding thereto a new Subpart M to implement section 773 of the Public Health Service Act (42 U.S.C. 295f-3) which authorizes the Secretary of Health, Education, and Welfare to make grants to assist public or nonprofit private schools of medicine, osteopathy, dentistry, optometry, podiatry, pharmacy, or veterinary medicine which are in serious financial straits to meet their cost of operation in the fiscal year in which the grant is sought, or which have special need for financial assistance to meet accreditation requirements.

Interested persons were afforded the opportunity to participate in the rulemaking through submission of comments on or before July 16, 1973. No such comments were received. The only substantive change in the regulations as proposed concerns the record retention policy (§ 57.2214(a)) which, as modified, will be governed by the relevant provisions of 45 CFR Part 74.

Effective date. The regulations as set forth below shall become effective March 11, 1974.

Dated December 26, 1973.

CHARLES C. EDWARDS,
Assistant Secretary for Health.

Approved February 4, 1974.

CASPAR W. WEINBERGER,
Secretary.

Subpart M—Financial Distress Grants to Health Professions Schools

AUTHORITY:—Sec. 215, 58 Stat. 690, as amended (42 U.S.C. 216); sec. 773, 85 Stat. 446 (42 U.S.C. 295f-3).

§ 57.1201 Applicability.

The regulations in this subpart are applicable to the award of grants pursuant to section 773 of the Public Health Service Act (42 U.S.C. 295f-3) to assist schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, and podiatry which are in serious financial straits to meet their cost of operation or which have special need for financial assistance to meet accreditation requirements.

§ 57.1202 Definitions.

As used in this subpart:

(a) "Act" means the Public Health Service Act, as amended.

(b) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and

Welfare to whom the authority involved has been delegated.

(c) "School" means a public or other nonprofit school of medicine, dentistry, osteopathy, optometry, podiatry, pharmacy, or veterinary medicine which provides a course of study or a portion thereof leading respectively to a degree of doctor of medicine, doctor of dental surgery or an equivalent degree, doctor of osteopathy, doctor of optometry or an equivalent degree, doctor of podiatry or an equivalent degree, bachelor of science in pharmacy or equivalent degree, or doctor of veterinary medicine or an equivalent degree, and which is accredited as provided in section 775 (b)(2) of the Act.

(d) "Council" means the National Advisory Council on Health Professions Education (established by section 725 of the Act).

(e) "Fiscal year" means the Federal fiscal year beginning July 1 and ending the following June 30.

(f) "Construction" means (1) the construction of new buildings or the expansion or acquisition of existing buildings (including related costs such as architect's fees, acquisition of land, offsite improvements, and the initial equiping of such buildings); and (2) the remodeling, alteration and repair of existing buildings.

§ 57.1203 **Eligibility.**

To be eligible for a financial distress grant under section 773 of the Act the applicant shall:

(a) Be a school as defined in § 57.1202 (c) with operating income insufficient to meet its cost of operation in the fiscal year in which the grant is sought, or which has special need for financial assistance to meet accreditation requirements. A school is considered to have such "special need" for financial assistance if accreditation requirements cannot be met within the school's operating income; and

(b) Be located in a State, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

§ 57.1204 **Application.**

(a) Each school desiring a financial distress grant shall submit an application in such form and at such time as the Secretary may require.[1] Such application shall be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award, including the regulations of this subpart.

(b) The application shall state the purpose for which the application is made and shall include a narrative of the manner in which the applicant intends to utilize funds awarded in accordance with this subpart and a proposed plan to eliminate the need for support under this subpart.

§ 57.1205 **Assurances required.**

(a) Pursuant to section 773(d) of the Act, the applicant shall submit an assurance satisfactory to the Secretary that the applicant will expend in carrying out its functions as a school during the fiscal year for which the grant is sought, an amount of non-Federal funds (excluding costs of construction as defined in § 57.-1202(f)) at least as great as the average amount of non-Federal funds (excluding expenditures of a nonrecurring nature, including costs of construction as defined in § 57.1202(f)) expended for this purpose during the 3 fiscal years immediately preceding such fiscal year. The determination of the average amount of non-Federal funds expended by a new school during this 3-year period shall be the average for such of the 3 preceding years as expenditures were actually made in carrying out the functions of the school: *Provided, however*, That the Secretary may, after consultation with the Council, waive the above requirement with respect to any school if he determines that the application of such requirement to such school would be inconsistent with the purposes of section 773 of the Act.

(b) The Secretary may in individual cases require additional assurances where he finds that such additional assurances are necessary to carry out the purposes of section 773 of the Act.

§ 57.1206 **Grant awards.**

(a) Within the limits of funds available for such purpose, the Secretary, after consultation with the Council, may award a financial distress grant to assist any applicant with operating income insufficient to meet its costs of operation in the fiscal year in which the grant is sought, or which has special need for financial assistance to meet accreditation requirements taking into consideration, among other pertinent factors:

(1) The extent to which the school is either in serious financial straits and unable to meet its cost of operation or has special need for financial assistance to meet accreditation problems;

(2) The alternatives available to the school to meet its need for financial assistance;

(3) The actions which the applicant has taken, or proposes to take, to ameliorate the problem;

(4) The merit of the applicant's proposed plan to eliminate the long-range need for support under this program; and

(5) The causes of the school's financial distress.

(b) Any grant under this subpart shall be made upon such terms and conditions as the Secretary determines to be reasonable and necessary to carry out the purposes of the grant including requirements, where applicable, that the school agree (1) to disclose any financial information or data deemed by the Secretary to be necessary to determine the sources or causes of that school's financial distress; (2) to conduct a comprehensive cost analysis study in cooperation with the Secretary; and (3) to carry out appropriate operational and financial reforms on the basis of information obtained in the course of the comprehensive cost analysis study or on the basis of other relevant information.

(c) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sum necessary to carry out the purposes of the applicant's approved plan: *Provided, however*, That grant awards to meet costs of operation of a school shall not exceed the funds necessary to meet the school's anticipated deficit through June 30 of the year in which the grant is sought.

(d) All grant awards shall be in writing, shall set forth the amount of funds granted and the period for which such funds will be available for obligation by the grantee.

(e) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, or other award with respect to any approved plan or portion thereof.

§ 57.1207 **Payments.**

The Secretary shall from time to time make payments to a grantee of all or a portion of any grant award, either in advance or by way of reimbursement.

§ 57.1208 **Expenditure of grant funds.**

(a) Grant funds awarded to schools for the purpose of meeting costs of operation may be expended for such costs in accordance with the applicable provisions of the Act, the regulations of this subpart and the terms and conditions of the award for any purpose necessary to reduce or remove the operating deficit through June 30 of the year in which the grant is sought, including the liquidation of obligations incurred either by the grantee or parent institution prior to the date of the grant award to the extent such obligations were incurred for costs properly considered regular operating costs of the school: *Provided, however*, That such funds shall not be expended for (1) construction as defined in § 57.1202(f) (except that grant funds may be used for alteration and renovation); (2) student aid; and (3) depreciation, amortization, or use charges. Such funds will be available for a fixed period set forth on the grant award statement based upon the Secretary's estimate of the time necessary to permit the school to utilize the grant funds in reducing or removing the current deficit.

(b) Grant funds awarded to schools for the purpose of meeting accreditation requirements shall be expended solely for carrying out the school's approved plan in accordance with the applicable provisions of the Act, the regulations of this subpart, the terms and conditions of

[1] Applications and instructions are available from the Regional Health Manpower Director at the Regional Office of the Department of Health, Education, and Welfare for the region in which the project to be conducted is located.

[2] The Department of Health, Education, and Welfare Grants Administration Manual is available for public inspection and copying at the Departments' and regional offices' information centers listed in 45 CFR 5.31 and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

the award and the applicable portions of the Department of Health, Education, and Welfare Grants Administration Manual; [4] *Provided however*, That grant funds may only be used to pay direct costs. Such funds will be available for obligation through the end of the fiscal year following the fiscal year in which the grant is sought.

(c) Any unobligated grant funds remaining in the grant account at the end of the period of fund availability (as set forth in paragraphs (a) and (b) of this section) shall be refunded to the Federal Government.

§ 57.1209 **Nondiscrimination.**

(a) Attention is called to the requirements of section 799A of the Act and to 45 CFR, part 83, which together provide that the Secretary may not make a grant, loan guarantee, or interest subsidy payment under title VII of the Act to, or for the benefit of, any entity unless he receives satisfactory assurance that the entity will not discriminate on the basis of sex in the admission of individuals to its training programs.

(b) Attention is called to the requirements of title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d et seq.) which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such title VI, which is applicable to grants made under this subpart, has been issued by the Secretary with the approval of the President (45 CFR, part 80).

(c) Attention is also called to the requirements of title IX of the Education Amendments of 1972 and in particular to section 901 of such Act which provides that no person, shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

(d) Grant funds used for alteration or renovation shall be subject to the condition that the grantee shall comply with the requirements of Executive Order 11246, 30 FR 12319 (Sept. 24, 1965), as amended, and with the applicable rules, regulations, and procedures prescribed pursuant thereto.

§ 57.1210 **Accountability.**

(a) *Accounting for grant award payments.*—All payments made by the Secretary shall be recorded by the grantee in accounting records separate from the records of all other funds, including funds derived from other grant awards. With respect to each award the grantee shall account for the sum total of all amounts paid by presenting or otherwise making available evidence satisfactory to the Secretary of expenditures for costs meeting the requirements of this subpart.

(b) *Accounting for equipment under grants to meet accreditation requirements.*—As used in this section, the term "equipment" means an article of property procured or fabricated which is complete in itself, is of a durable nature, and has an expected service life of more than 1 year. Equipment on hand on the date of termination for which accounting is required in accordance with the procedures set forth in chapter 1-410-50 of the "Grants Administration Manual" shall be identified and reported by the grantee in accordance with such procedures and be accounted for by one or a combination of the following methods, as determined by the Secretary:

(1) *Retention of equipment for other health projects.*—Equipment may be used, without adjustment of accounts, for other grant-supported activities (whether or not federally supported) within the scope of the applicable provisions of the Act, and no other accounting for such equipment shall be required: *Provided, however*, (i) That during such period of use no charge for depreciation, amortization or for other use of the equipment shall be made against any existing or future Federal grant or contract, and (ii) if within the period of its useful life, the equipment is transferred by sale or otherwise for use outside the scope of section 773 of the Act, the Federal portion of the fair market value at the time of transfer shall be refunded to the Federal Government.

(2) *Sale or other disposition of equipment, crediting of proceeds or value.*—The equipment may be sold by the grantee and the net proceeds of sale credited to the grant account for grant-related use, or they may be used or disposed of in any manner by the grantee by crediting to the grant account the Federal share of the fair market value on the termination date. To the extent equipment purchased from grant funds is used for credit or trade-in on the purchase of new equipment, the accounting obligation shall apply to the same extent to such new equipment.

(3) *Return or transfer of equipment.*—The equipment may be returned to the Federal Government by the grantee, or in accordance with the provisions of chapter 1-410-50B of the Grants Administration Manual may be transferred to another grantee.

(c) *Accounting for grant-related income.*—(1) *Interest.*—Pursuant to section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), a State will not be held accountable for interest earned on grant funds pending their disbursement for grant purposes. A State, as defined in section 102 of the Intergovernmental Cooperation Act of 1968, means any one of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of the State. All grantees other than a State, as defined in this subsection, must return all interest earned to the Federal Government.

(2) *Grant-related income.*—Grant-related income earned by the grantee shall be disposed of in accordance with one of the alternatives specified in chapter 1-420 of the Grants Administration Manual as determined by the Secretary in the grant award.

(d) *Grant closeout.*—(1) *Date of final accounting.*—A grantee shall render, with respect to each approved project, a full account, as provided herein, as of date of the termination of grant support. The Secretary may require other special and periodic accounting.

(2) *Final settlement.*—There shall be payable to the Federal Government as final settlement with respect to each grant the total sum of (i) any amount not accounted for pursuant to paragraph (a) of this section; (ii) any credits for equipment on hand as provided in paragraph (b) of this section; (iii) any credits for earned interest pursuant to paragraph (c)(1) of this section, and (iv) any other settlements required pursuant to paragraph (c)(2) of this section. Such total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assigns by set off or other action as provided by law.

§ 57.1211 **Records, reports, inspection, and audit.**

(a) *Records and reports.*—The relevant provisions of Subpart D of 45 CFR Part 74 establishing uniform administrative requirements for the retention and custody of records shall be applicable to all grants awarded pursuant to this subpart.

(b) *Inspection and audit.*—Any application for a grant award under this subpart shall constitute the consent of the applicant to inspections of the facilities, equipment, and other resources of the applicant at reasonable times by the Secretary and the Comptroller General of the United States or any of their duly authorized representatives and to interviews with the principal staff members and students to the extent that such resources, personnel, and students are, or will be involved in the activity. In addition, the acceptance of any grant award under this subpart shall constitute the consent of the grantee to inspections and fiscal audits by such persons of the supported activity and of progress and fiscal records relating to the use of grant funds.

§ 57.1212 **Additional conditions.**

The Secretary may, with respect to any grant award, impose additional conditions prior to or at the time of any award when, in his judgment, such conditions are necessary to assure or protect advancement of the approved activity, the interests of the public health or the conservation of grant funds.

§ 57.1213 **Early termination and withholding of payments.**

Whenever the Secretary finds that a grantee has failed in a material respect to comply with the applicable provisions of the Act, the regulations of this subpart, or the terms of the grant, he may on reasonable notice to the grantee, withhold further payments, and take such other action, including the termination of the grant, as he finds appropriate to carry out the purposes of the applicable provisions of the Act and regulations. Noncancelable obligations of the grantee properly incurred prior to the receipt of the notice of termination will be honored. The grantee shall be promptly notified of such termination in writing and given the reasons therefor.

[FR Doc.74-3149 Filed 2-6-74;8:45 am]

PART 57—GRANTS FOR CONSTRUCTION OF HEALTH RESEARCH FACILITIES (INCLUDING MENTAL RETARDATION RESEARCH FACILITIES), TEACHING FACILITIES, STUDENT LOANS, EDUCATIONAL IMPROVEMENT AND SCHOLARSHIPS

Loan Guarantees and Interest Subsidies To Assist in Construction of Nurse Training Facilities

In the FEDERAL REGISTER of May 24, 1973 (38 FR 13654) the Acting Director, National Institutes of Health, with the approval of the Secretary of Health, Education, and Welfare, proposed to amend Part 57 by adding thereto a new Subpart X governing loan guarantee and interest subsidy agreements made pursuant to section 809 of the Public Health Service Act.

Interested persons were afforded the opportunity to participate in the rule-making through submission of comments on or before June 25, 1973. No such comments were received.

There have been however, several changes made in the regulations as proposed, a number of which, notably in § 57.1714(a), are editorial and technical in nature and have been made in the interest of clarity. Three of the changes, however, are substantive in nature.

The first appears in § 57.1705(a)(1) which, as modified, will require that with respect to other than interim facilities the title assurance period shall not be less than 20 years or the term of the guaranteed loan. This modification was necessary in order to assure that the applicant will have sufficient title to the site to allow him to use it for the purposes for which constructed during the entire period of the Federal interest.

The second change involves the addition of three separate paragraphs to § 57.1714(b), which, in sum, indicate that the Secretary's obligation to make interest subsidy payments ceases where the applicant is found to be in noncompliance with either section 845 of the Public Health Service Act, Title VI of the Civil Rights Act of 1964, or Title IX of the Education Amendments of 1972. Furthermore, these paragraphs state that the Secretary shall resume making interest subsidy payments where he subsequently determines that the applicant is again in compliance with the requirements of such provisions.

A third change is the addition of § 57.1714(a)(6) to clarify that the Secretary shall not guarantee disbursements made to an applicant subsequent to notification by the Secretary to a lender that the applicant has ceased to comply with section 845 of the Public Health Service Act, which prohibits discrimination on the basis of sex.

In addition, the subpart has been redesignated subpart R and the sections have been renumbered accordingly.

Effective date. The regulations as set forth below shall be effective on February 7, 1974.

Dated: December 26, 1973.

CHARLES C. EDWARDS,
Assistant Secretary for Health.

Approved: February 4, 1974.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Subpart R—Loan Guarantees and Interest Subsidiaries to Assist in Construction of Nurse Training Facilities

AUTHORITY: Sec. 215, 58 Stat. 690, as amended (42 U.S.C. 216).

§ 57.1701 Applicability.

The regulations of this subpart are applicable to loan guarantees and interest subsidy payments made pursuant to section 809 of the Public Health Service Act (42 U.S.C. 296h) to assist nonprofit private schools of nursing which are eligible for construction grants under part A of title VIII of the Public Health Service Act in carrying out projects for construction of nurse training facilities.

§ 57.1702 Definitions.

As used in this subpart:

(a) All terms not defined herein shall have the same meanings as given them in section 843 of the act.

(b) "Act" means the Public Health Service Act, as amended.

(c) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved may be delegated.

(d) "Council" means the National Advisory Council on Nurse Training (established by section 841(a) of the act).

(e) "Nonprofit" as applied to any school means one which is a corporation or association or is owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure to the benefit of any private shareholder or individual.

§ 57.1703 Eligibility.

(a) *Eligible applicants.*—In order to be eligible for a loan guarantee or interest subsidy under this subpart, the applicant shall:

(1) Be a nonprofit private school of nursing, and

(2) Otherwise meet the applicable requirements set forth in section 802(b) of the act and § 57.403 of subpart E of this part with respect to eligibility for grants for construction of nurse training facilities.

(b) *Eligible loans.*—Subject to the provisions of this subpart, the Secretary may guarantee payment, when due, of principal and interest on, or may pay interest subsidies with respect to, or may both guarantee and pay interest subsidies with respect to, any loan or portion thereof made to an eligible applicant by a non-Federal lender: *Provided,* that no such guarantee or interest subsidy shall apply to any loan the interest on which is exempt from Federal income taxation.

§ 57.1704 Application.

Each applicant desiring to have a loan guaranteed or to have interest subsidies paid on its behalf, or any combination of such loan guarantee or interest subsidies, shall submit an application for such assistance in such form and manner and at such time as the Secretary may require.[1]

(a) The application shall contain or be supported by such information as the Secretary may require to enable him to make the determinations required of him under the act and this subpart.

(b) The application shall be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any loan guarantee or agreement to pay interest subsidies, including the applicable regulations of this subpart.

§ 57.1705 Approval of applications.

(a) *General.*—Any application for loan guarantee or interest subsidies, or for a combination of both, may be approved by the Secretary, after consultation with the Council, only if he makes each of the applicable determinations set forth in section 802(b) of the act. In addition,

(1) Any such approval shall be subject to compliance by the applicant with the applicable provisions set forth in §§ 57.406, 507.407, 57.408, and 57.410 of subpart E of this part: *Provided however,* That for purposes of the title assurance in § 57.407(a) the period shall be not less than 20 years or the term of the

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[1] Applications and instructions are available from the Regional Health Manpower Director at the Regional Office of the Department of Health, Education, and Welfare for the region in which the applicant is located.

guaranteed loan, whichever is longer or in the case of interim facilities, the term of the guaranteed loan, and

(2) Any such application may be approved by the Secretary only if he determines:

(i) That the applicant will have sufficient financial resources to enable him to comply with the terms and conditions of the loan;

(ii) That the applicant has the necessary legal authority to finance, construct, and maintain the proposed project, to apply for and receive the loan, and to pledge or mortgage any assets or revenues to be given as security for such loan;

(iii) That the loan will be made only with respect to initial permanent financing of the project;

(iv) That the loan will be secured by a lien against the facilities to be constructed or against other security satisfactory to the Secretary specified in § 57.1710;

(v) That the rate of interest on the loan does not exceed such per centum per annum as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States; and

(vi) Such additional determinations as the Secretary finds necessary with respect to particular applications in order to protect the financial interests of the United States.

(b) *Loan guarantees*.—In addition to the requirements of paragraph (a) of this section, any application for a loan guarantee may be approved by the Secretary only if he determines that the loan with respect to which such guarantee is sought would not be available to the applicant on reasonable terms and conditions without such guarantee. To assist the Secretary in making such determination, each applicant for a loan guarantee shall submit statements from at least three non-Federal institutions normally engaged in making long-term loans for construction, describing whether, and the terms and conditions under which, each institution would make a loan to the applicant for the project described in the applications.

(c) *Interest subsidies*.—In addition to the requirements of paragraph (a) of this section, any application for interest subsidies may be approved by the Secretary only if he determines that without such interest subsidy payments the applicant would not, over a substantial portion of the loan term, be able to repay the principal and interest of the loan without jeopardizing the quality of the educational program.

§ 57.1706 Priority.

(a) Priority in approving applications for loan guarantee and/or interest subsidies shall be determined in accordance with the factors specified in section 802 (c) of the act, and the following: (1) The availability of training opportunities for students; (2) the relative effectiveness of the project in carrying out the purposes of sections 801–804 and section 809 of the act at the least relative cost to the Federal Government; and (3) the relative ability of the applicant to make efficient and productive use of the facility constructed, consistent with sections 801–804 and section 809 of the act.

§ 57.1707 Limitations applicable to loan guarantee.

(a) The amount of loan with respect to which a guarantee is made under this subpart shall be determined by the Secretary based upon such considerations as the availability of funds and the applicant's need therefor: *Provided*, That:

(1) Subject to paragraph (a)(2) of this section, no loan with respect to which a guarantee is made for any project under this subpart may be in an amount which, when added to the amount of any grant made with respect to such project under part A of title VIII of the act or any other law of the United States, or to the total of such grants, exceeds 90 percent of the eligible cost of construction of such project as determined by the Secretary;

(2) Notwithstanding paragraph (a) (1) of this section, the Secretary may in particular cases guarantee loans in excess of the amount specified in paragraph (a)(1) where he determines that, because of special circumstances, such additional loan guarantee will further the purposes of sections 801–804 and section 809 of the act. In making such determination, the Secretary will in each case consider the following factors:

(i) The need for the project in the area to be served;

(ii) The availability of financing for the project on reasonable terms and conditions without such additional loan guarantee;

(iii) Whether the project can be constructed without such additional loan guarantee; and

(iv) Other relevant factors consistent with the purposes of sections 801–804 and section 809 of the act and this subpart.

(3) In determining the cost of construction of the project there shall be excluded from such cost all fees, interest, and other charges relating or attributable to the financing of the project except the following:

(i) Reasonable fees attributable to services rendered by legal counsel in connection with such loan;

(ii) With the approval of the Secretary, reasonable fees attributable to the services of a financial advisor in assisting the applicant in securing the loan and arranging for repayment thereof, and

(iii) Interest attributable to the interim financing of construction of the project prior to the initial permanent financing thereof.

(b) No loan guarantee under this subpart shall apply to more than 90 percent of the loss of principal of and interest on such loan incurred by the holder of such loan upon default by the applicant.

57.1708 Amount of interest subsidy payments, limitations.

The length of time for which interest subsidy payments will be made under the agreement, the amount of loan with respect to which such payments will be made, and the level of such payments shall be determined by the Secretary on the basis of the availability of funds and his determination of the applicant's need therefor taking into consideration his analysis of the present and reasonable projected future financial ability of the applicant to repay the principal and interest of the loan without jeopardizing the quality of its educational program: *Provided, however*, That each such interest subsidy payment shall not exceed the amount necessary to reduce by 3 percent per annum the net effective interest rate otherwise payable on the loan or the portion thereof with respect to which such interest subsidy is paid.

§ 57.1709 Forms of credit and security instruments.

Each loan with respect to which a guarantee is made or interest subsidies are paid under this subpart shall be evidenced by a credit instrument and secured by a security instrument in such forms as may be acceptable to the Secretary.

§ 57.1710 Security for loans.

Each loan with respect to which a guarantee is made or interest subsidies are paid under this subpart shall be secured in a manner which the Secretary finds reasonably sufficient to insure repayment. The security may be one or a combination of the following:

(a) A first mortgage on the facility and site thereof.

(b) Negotiable stocks or bonds of a quality and value acceptable to the Secretary.

(c) A pledge of unrestricted and unencumbered income from an endowment or other trust fund acceptable to the Secretary.

(d) A pledge of a specified portion of annual general or special revenues of the applicant acceptable to the Secretary.

(e) Such other security as the Secretary may find acceptable in specific instances.

§ 57.1711 Opinion of legal counsel.

At appropriate stages in the application and approval procedure for a loan guarantee or interest subsidy, the applicant shall furnish to the Secretary a memorandum or opinion of legal counsel with respect to the legality of any proposed note issue, the legal authority of the applicant to issue the note and secure it by the proposed collateral, and the legality of the issue upon delivery. "Legal counsel" means either a law firm or individual lawyer, thoroughly experienced in the long-term financing of construction projects, and whose approving opinions have previously been accepted by lenders or lending institutions. The legal memorandum or opinion to be provided by legal counsel in each case shall be as follows:

(a) A memorandum, submitted with the application for a loan guarantee or interest subsidy, stating that the applicant is or will be lawfully authorized to finance, construct, and maintain the project, and to issue the proposed obligations and to pledge or mortgage the assets and/or revenues offered to secure the loan, citing the basis for such authority; and

(b) A final approving opinion, delivered to the Secretary at the time of delivery of the evidence of indebtedness to the lender, stating that the credit and security instruments executed by the applicant are duly authorized and delivered and that the indebtedness of the applicant is valid, binding, and payable in accordance with the terms on which the loan guarantee was approved by the Secretary.

§ 57.1712 **Length and maturity of loans.**

The repayment period for loans with respect to which guarantees are made or interest subsidies paid under this subpart shall be limited to 30 years: *Provided*, That

(a) The Secretary may, in particular cases where he determines that a repayment period of less than 30 years is more appropriate to an applicant's total financial plan, approved such shorter repayment period;

(b) The Secretary may, in particular cases where he determines that, because of unusual circumstances, the applicant would be financially unable to amortize the loan over a repayment period of 30 years, approve a longer requirement period which shall in no case exceed 40 years; and

(c) In no case shall a loan repayment period exceed the useful life of the facility to be constructed with the assistance of the loan.

§ 57.1713 **Repayment.**

Unless otherwise specifically authorized by the Secretary, each loan with respect to which a guarantee is made or interest subsidies are paid shall be repayable in substantially level total annual installments of principal and interest, sufficient to amortize the loan through the final year of the life of the loan.

§ 57.1714 **Loan guarantee and interest subsidy agreements.**

For each application for a loan guarantee or interest subsidy, or combination thereof, which is approved by the Secretary under this subpart, an offer to guarantee such loan and/or make interest subsidy payments with respect thereto will be sent to the applicant, setting forth the pertinent terms and conditions for the loan guarantee and/or interest subsidy, and will be conditioned upon the fulfillment of such terms and conditions. The accepted offer will constitute the loan guarantee agreement, the interest subsidy agreement, or the loan guarantee and interest subsidy agreement, as the case may be. Each such agreement shall include the applicable provisions set forth below:

(a) *Loan guarantee*. Each agreement pertaining to a loan guarantee shall include the following provisions:

(1) That the loan guarantee evidenced by the agreement shall be incontestable (i) in the hands of the applicant on whose behalf such loan guarantee is made except for fraud or misrepresentation on the part of such applicant, and (ii) as to any person who makes or contracts to make a loan to such applicant in reliance on such guarantee, except for fraud or misrepresentation on the part of such other person.

(2) That the applicant shall be permitted to prepay up to 15 percent of the original principal amount of such loan in any calendar year without additional charge. The applicant and the lender may further agree that the applicant will be permitted to prepay in excess of 15 percent of the original principal amount of the loan in any calendar year without additional charge, but no such payment in excess of 15 percent shall be made without the prior written approval of the Secretary.

(3) That if the applicant shall default in making periodic payment, when due, of the principal and interest on the loan guaranteed under the agreement, the holder of the loan shall promptly give the Secretary written notification of such default. The Secretary shall, immediately upon receipt of such notice, provide the holder with written acknowledgment of such receipt.

(4) That if such default in making periodic payment when due of the principal and interest on the guaranteed loan is not cured within 90 days after receipt by the Secretary of notice of such default, the holder of the loan shall have the right to make demand upon the Secretary, in such form and manner as the Secretary may prescribe, for payment of 90 percent of the amount of the overdue payments of principal and accrued interest, together with such reasonable late charges as are made in accordance with the terms of the credit instrument or security instrument evidencing or securing such loan. The Secretary shall pay such amount from funds available to him for that purpose.

(5) That in the event of exercise by the holder of the loan of any right to accelerate payment of such loan as a result of the applicants default in making periodic payment when due of the principal and interest on the guaranteed loan, the Secretary shall, upon demand by the holder not less than 90 days after receipt by the Secretary of notification of such default, pay to such holder 90 percent of the total amount of the principal of and interest on the loan remaining unpaid after the holder has exercised his right to foreclose upon and dispose of the security and has applied the proceeds thereby received to reduce the outstanding balance of the loan, in accordance with applicable law and the terms of the security instrument.

(6) That the Secretary shall not guarantee any funds disbursed by a lender after notification by the Secretary to such lender that the Assurance executed by the applicant under section 845 of the Act is no longer satisfactory.

(b) *Interest subsidy*.—Each agreement pertaining to the payment of interest subsidies with respect to a loan shall include the following provisions:

(1) That the holder of the loan shall have a contractual right to receive from the United States interest subsidy payments in amounts sufficient to reduce by up to 3 percent per annum the net effective interest rate determined by the Secretary to be otherwise payable on such loan.

(2) That payments of interest subsidies pursuant to subparagraph (1) of this paragraph will be made by the Secretary, in accordance with the terms of the loan with respect to which the interest subsidies are paid, directly to the holder of such loan, or to a trustee or agent designated in writing to the Secretary by such holder, until such time as the Secretary is notified in writing by the holder that such loan has been transferred. Pursuant to such written notification of transfer, the Secretary will make such interest payments directly to the new holder (transferee) of the loan: *Provided, however*, That it shall be the responsibility of the holder to remit any payments of interest subsidy to the new holder which the Secretary may have made to the holder after such transfer and prior to receipt of such written notice, and the Secretary shall not be liable to any party for amounts remitted to the holder prior to receipt of such written notice and acknowledgement in writing by the Secretary of receipt of such notice.

(3) That the holder of the loan will promptly notify the Secretary of any default or prepayment by the applicant with respect to the loan.

(4) In the event of any exercise by the holder of the loan of the right to accelerate payment of such loan, whether as a result of default on the part of the applicant or otherwise, the Secretary's obligations with respect to the payment of interest subsidies shall cease.

(5) Where, during the life of the loan with respect to which interest subsidies are to be paid, the applicant ceases to use the facility for the purposes for which constructed, the Secretary's obligation with respect to the payment of interest subsidies shall cease: *Provided, however*, that where the applicant is continuing to use the facility for purposes eligible for support under sections 801–804 and section 809 of the act, the Secretary may make a determination, based upon the nursing personnel needs of the community served by the facility as well as other relevant factors, to continue to make interest subsidy payments in accord with the agreement.

(6) Where during the life of the loan with respect to which interest subsidies are to be paid, it is determined, after an opportunity for a hearing pursuant to 45 CFR Part 83, that the Assurance executed by the applicant under section 845 of the Act, is no longer satisfactory, the Secretary's obligation with respect to the payment of interest subsidies shall cease: *Provided however*, That the Secretary shall resume making interest subsidy payments if he determines that a subsequent Assurance submitted by the applicant is satisfactory.

(7) Where during the life of the loan with respect to which interest subsidies

are to be paid, it is determined by the Secretary, after an opportunity for a hearing pursuant to 45 CFR Parts 80 and 81, that the applicant has ceased to comply with the Assurance it has executed under 45 CFR § 80.4(d) concerning nondiscrimination on the basis of race, color or national origin, the Secretary's obligation with respect to the payment of interest subsidies shall cease: *Provided however*, That the Secretary shall resume making interest subsidy payments if he subsequently determines that the applicant has come into compliance with the requirements of Title VI of the Civil Rights Act of 1964 and implementing regulations.

(8) Where during the life of the loan with respect to which interest subsidies are to be paid, it is determined by the Secretary after an opportunity for a hearing pursuant to Title IX of the Education Amendments of 1972, that the applicant has ceased to comply with such Title, and its implementing regulations, the Secretary's obligation with respect to the payment of interest subsidies shall cease: *Provided however*, That the Secretary shall resume making interest subsidy payments if he subsequently determines that the applicant has come into compliance with the requirements of Title IX of the Education Amendments of 1972 and implementing regulations.

(c) *General.*—In addition to the applicable requirements of paragraphs (a) and (b) of this section, each agreement, whether pertaining to a loan guarantee or interest subsidy or both, shall contain such other provisions as the Secretary finds necessary in order to protect the financial interests of the United States.

§ 57.1715 Loan closing.

Closing of any loan with respect to which a guarantee is made or interest subsidies are paid under this subpart shall be accomplished at such time as may be agreed upon by the parties to such loan and found acceptable by the Secretary.

§ 57.1716 Right of recovery—subordination.

(a) The United States shall be entitled to recover from the applicant for a loan guarantee under this subpart the amount of any payment made pursuant to such guarantee, unless the Secretary waives such right of recovery as provided in § 57.1717.

(b) Upon making of any payments pursuant to a loan guarantee under this subpart, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.

§ 57.1717 Waiver of right of recovery.

In determining whether there is good cause for waiver of any right of recovery which he may have against an applicant by reason of any payments made pursuant to a loan guarantee under this subpart, the Secretary shall take into consideration the extent to which:

(a) The facility with respect to which the loan guarantee was made will continue to be devoted by the applicant or other owner to nurse training or the teaching of other health professions personnel;

(b) There are reasonable assurances that for the remainder of the repayment period of the loan other facilities not previously utilized for nurse training will be so utilized and are substantially equivalent in nature and extent for such purposes; and

(c) Such recovery would seriously curtail the training of qualified nursing personnel in the area served by the facility.

[FR Doc.74-3151 Filed 2-6-74;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[R.S.O. 1112]

PART 1033—CAR SERVICE

Railroad Operating Regulations for Freight Car Movement

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 29th day of January 1974.

It appearing, that there are acute shortages of freight cars throughout the country; that certain carriers are unable to furnish an adequate supply of freight cars to shippers located on their lines; that these shortages of freight cars are impeding both the domestic and export movements of agricultural, mineral, forest, and manufactured products, and other commodities; and that the existing car service rules, regulations, and practices of the railroads are ineffective with respect to the use, supply, control, movement, distribution, exchange, interchange, and return of freight cars to meet the requirements of shippers. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.112 Service Order No. 1112.

(a) *Railroad operating regulations for freight car movement.* Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations, and practices with respect to its car service:

(1) Application:

(i) The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(ii) This order shall apply to all loaded cars.

[1](iii) This order shall apply to all empty general service freight equipment cars described on pages 1119-1121, inclusive and listed in the Official Railway Equipment, Register ICC RER No. 390, issued by W. J. Trezise, or reissues thereof including cars bearing mechanical designations modified in the manner described in the various notes thereto. (See exceptions, paragraph (a)(1) (iv), (v), (vi), (vii), and (viii) of this section.)

(iv) Exception: Car of mechanical designation FL, SC, SM, ST, or NE.

[1](v) Exception: Empty cars of private ownership as defined in Service Order No. 1170, or revisions thereof.

(vi) Exception: Empty cars owned by The Alaska Railroad, while held in the State of Washington, pursuant to instructions of the car owner, are exempt from the provisions of this order.

(vii) Exception: Empty cars, described in paragraph (a)(1)(iii) of this section, which are in general service and are not assigned to the exclusive use of a specified shipper, owned by and bearing the registered reporting marks assigned to the line holding the car, are exempt from the provisions of this order.

(viii) Exception: To alleviate hardships or inequities, exceptions to this order may be authorized to the carrier by the Railroad Service Board, Interstate Commerce Commission, Washington, D.C. Requests for such exceptions may be made only by carriers and shall be sent to W. H. Van Slyke, Chairman, Car Service Division, Association of American Railroads, Washington, D.C., for recording and submission to the Railroad Service Board, Interstate Commerce Commission, for consideration.

(ix) This order shall apply to all empty cars described in part (iii) of this section, which are assigned to the exclusive use of a specified shipper, except as otherwise provided in this section.

(x) Freight cars assigned to the exclusive use of a specified shipper may be removed from assignment; provided, that assignee furnishes written notice to originating railroad and to the car owner, if different from originating railroads, at least one day in advance of his desire to release such cars from assignment on a permanent, or on a temporary basis of not less than 15 days' duration (See exception). The carrier must remove cars from assignment in accordance with assignee's request.

EXCEPTION: Assigned cars which have arrived empty at the point of assignment or at a point of loading designated by assignee, shall not be diverted empty to another point for loading unless authorized by prepaid shipping order showing destination and route at a rate of ten cents (10¢) per mile, subject to a minimum of 100 miles for each railroad handling the car in line-haul service, plus applicable tariff switching charges of each participating railroad which does not provide line-haul service in connection with the movement, or unless released from assignment in the manner described herein. If released from assignment, cars may not be ordered empty to any point or shipper on instructions of the assignee who ordered the release of the cars.

[1] Change.

(xi) Car assigned to the exclusive use of a specified shipper must be listed on assignment lists posted in the office of the Chief Transportation Officer of the car owner, and in the office designated to issue waybills and other shipping documents for loaded movements from the points of assignment. Assignment lists must specify initial and number of each assigned car, the shipper to whom assigned, and the date car assignment became effective. Requests for assignments of cars must be secured in writing, or confirmed in writing, by the carrier on whose lines the cars are assigned, not less than ten days before the effective date of the car assignment. Freight cars in assigned service on October 9, 1972, shall be considered as having been in such assignments for ten days or longer, provided that the assignment lists are prepared and posted, as required herein, not later than October 23, 1972.

(xii) The mechanical designations of existing freight cars in paragraph (a) (1) (iii) of this section may not be changed to any mechanical designation other than those listed in paragraph (a) (1) (iii) of this section during the period this order is in effect.

(xiii) Actual placement means placing a car in an accessible position for loading or unloading, or placing on an industrial interchange track serving the consignor or consignee. If such placing is prevented by any cause attributable to consignor or consignee and car is placed on the private or other-than-public-delivery tracks serving the consignor or consignee, it shall be considered constructively placed without notice.

(xiv) Holidays shall be those listed in Item 25 of Agent B. B. Maurer's Tariff 4-J ICC H-59, naming Car Demurrage Rules and Charges, supplements thereto, or successive issues thereof.

[1](2) *Placing of cars.* (i) Loaded cars shall be actually or constructively placed within 24 hours, exclusive of Saturdays, Sundays, and holidays following arrival at destination, or after arrival at the yard from which cars are dispatched for actual placement.

(ii) Empty cars which are in general service and are not assigned to the exclusive use of specified shipper, which after placement will be subject to demurrage or detention rules applicable to cars for loading, shall be actually or constructively placed within 48 hours, exclusive of Saturdays, Sundays, and holidays, after arrival at the point where held.

(iii) Empty cars described in paragraph (a) (1) (ix) of this section which are assigned to the exclusive use of a specified shipper shall be subject to a storage charge of $5.00 per car per day or fraction thereof until ordered placed for loading or appropriated for loading, without free time allowance and without allowance for Saturdays, Sundays, and holidays. (See exception, paragraph (a) (2) (iv) of this section.)

(A) In computing storage charges on cars subject to this part, such charges shall begin at the second 7:00 a.m., exclusive of Saturdays, Sundays, and holidays, following the sending or giving of notice that the cars are being held awaiting orders for actual placement or appropriation for loading.

(B) When empty assigned cars are held at any point awaiting orders from assignee for placement for loading or awaiting appropriation by assignee for loading, a written notice of arrival (see note) shall be sent or given assignee within 24 hours of arrival of the empty car at the point where held, exclusive of Saturdays, Sundays, and holidays. Such notice shall contain the initials and numbers of each car held and shall state that each car is being held subject to a storage charge of $5.00 per car per day or fraction of a day, until ordered placed for loading or ordered released, in writing, from assignment.

NOTE: When the assignee notifies the railroad, in writing, that it will accept verbal or telephone notice of the arrival of empty assigned cars, verbal or telephone notice may be substituted for written notice of arrival. The carriers will maintain a written record of all such verbal or telephone notices, such records to show car initials and numbers, date and hour of notice, name of assignee, name of railroad employee giving the notice, and name of employee of assignee receiving the notice.

(C) Empty cars released from storage status by order or appropriation for loading shall be subject to all demurrage or detention rules and charges published in tariffs applicable to cars held for loading, from time released from storage charges.

(iv) Exception to paragraph (a) (2) (iii) of this section: When it is impossible to load or to receive for loading empty cars assigned to the exclusive use of a shipper because of cessation of operations for a period of five days or more resulting from a strike, work stoppage, flood, high water, or other interference at the plant of the assignee for which empty assigned cars are held, the charges provided in paragraph (a) (2) (iii) of this section shall be suspended for the period of such interference with operations; provided, that the assignee furnishes a written notice to the carrier at the point of assignment, with a copy to the Director, Bureau of Operations, Interstate Commerce Commission, Washington, D.C., for his approval. Such notice shall be given within five days, exclusive of Saturdays, Sundays, and holidays, after the date on which the interference ceased; and shall state the date and time when the interference began and ceased and the cause of the interference.

[1](v) When delivery of a car, either empty or loaded, consigned or ordered to an industrial interchange track or to an other-than-public-delivery track, cannot be made because of any condition attributable to the consignor or consignee, such car shall be held at destination or, if it cannot reasonably be accommodated there, at an available hold point; and constructive placement notice, shall be sent or given the consignor or consignee within 24 hours, exclusive of Saturdays, Sundays, and holidays, after arrival of car at destination or hold point.

(vi) Proper notice for cars placed on public delivery tracks shall be sent or given within 24 hours after placement, exclusive of Saturdays, Sundays, and holidays.

(vii) Cars held at destination for accessorial terminal services described in the applicable tariffs, such as holding for orders or inspection, shall be placed on unloading, hold, or inspection tracks; and proper notice shall be given within 24 hours, exclusive of Saturdays, Sundays, and holidays, after arrival of car at destination or at hold point. Time and charges shall be computed following such notice and demurrage or detention charges assessed in accordance with provisions of governing tariffs.

(3) *Removal of cars.* [1] (i) Empty cars must be removed from point of unloading or interchange tracks of industrial plants within 24 hours, exclusive of Sundays, and holidays, following unloading or release by consignee or shipper, unless such empty cars are ordered or appropriated by the shipper for reloading within such 24-hour period. Empty cars not ordered for loading at point where made empty must be forwarded or set aside for cleaning, repairs, or weighed, if to be weighed at that point, within 24 hours following removal of empty cars.

[1](ii) Outbound loaded freight cars must be removed from point of loading or interchange tracks of industrial plants within 24 hours, exclusive of Sundays, and holidays, following acceptance by carrier of the shipping instructions covering the cars. Such cars must be forwarded or set aside for repairs or weighed, if to be weighed at that point, within 24 hours, following release and removal.

(iii) Cars subject to paragraph (a) (3) (i) and (ii) of this section, not made accessible to the carrier, shall be subject to demurrage until such time as they become, and remain, accessible to the carrier.

(iv) Cars shall not be removed from point of unloading or from industrial interchange tracks, nor released from demurrage or detention status, until all bracing, blocking, dunnage, paper, residue of lading, debris, and other foreign matter directly related to the inbound load have been removed from the car in accordance with the requirements of Rules 14 and 27 of the Uniform Freight Classification, I.C.C. 7, issued by J. D. Sherson, supplements thereto, or reissues thereof.

EXCEPTION: Dunnage being returned to shipper under the provisions of the applicable tariffs may be left in cars released as empty, provided that proper shipping instructions are received by the carrier prior to 5:00 p.m., of the first day, which is not a Saturday, Sunday or holiday, immediately following release of the car.

(4) *Forwarding of cars.* (i) Loaded cars and empty cars shall be forwarded within 24 hours, except cars described in para-

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graph (a) (4) (ii), (iii), or (iv) of this section, or cars described in paragraph (a) (2) (ii) of this section.

(ii) Exception: Loaded cars held subject to instructions of consignee, consignor, or other qualified owner of the freight contained therein, while subject to applicable tariffs.

[1] (iii) Exception: Cars held for repairs, weighing, or cleaning. (See paragraph (a) (5) of this section.)

(iv) Exception: Cars held because no train or switch engine service is available between hold point and destination.

(5) *Cars held for repairs, weighing, or cleaning.* (i) Cars of system, foreign, or private ownership which are held for light repairs or cleaning shall be placed on repair or cleaning tracks not later than the first 7 a.m., exclusive of Sundays, and holidays, after time carded for repairs or cleaning. Light repairs or cleaning shall be accomplished within 24 hours, excluusive of Sundays, and holidays, after placement on repair or cleaning tracks; except that when necessary to order material from car owner to make the repairs to foreign or private cars held awaiting such material, repairs shall be completed within 24 hours, exclusive of Sundays and holidays, after receipt of such material at the station at which the repair point is located.

(ii) Light repairs are defined as repairs requiring less than 20 man-hours by repair track forces to complete.

[1](iii) Cars which must be weighed shall be weigsed and restencilled, if required, within 24 hours, exclusive of Sundays and holidays, after arrival at the point at which weighing is to be accomplished, or after request for weight is received, if weights are requested by shipper or by car owner.

[1](iv) Cars which have been repaired, cleaned or weighed shall become subject such to paragraph (a) (2), (8), or (4) of this section, as applicable, from the date such repairs, cleaning or weighing have been accomplished.

(6) *Movement of freight cars.* (i) No common carrier by railroad subject to the Interstate Commerce Act shall delay the movement of cars by holding such cars in yards, terminals, or sidings for the purpose of increasing the time in transit of such cars.

(ii) Cars shall not be set out between terminals except in cases of emergency.

(iii) Back-hauling cars for the purpose of increasing the time in transit is prohibited.

(iv) Through cars shall not be handled on local or way freight trains for the purpose of increasing the time in transit of such cars.

(v) The use of any common carrier by railroad, or the acceptance of instructions from the shipper, for the movement of cars over its line via any route other than its shortest available route or its usual and customary fast freight route from point of receipt of the car from consignor, or connecting line, to point of delivery to consignee, or to next connecting line, except for the purpose of according a lawfully established transit privilege (not including a diversion or reconsignment privilege) is hereby prohibited.

[1] Change.

(b) *Rules and regulations suspended.* The operation of all rules and regulations, insofar as they conflict with the provisions of this order, is hereby suspended.

(c) *Effective date.* This order shall become effective at 12:01 a.m., February 1, 1974.

(d) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1974, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15 and 17(2), 24 Stat. 379, 383, 384, as amended (49 U.S.C. 1, 12, 15, and 17 (2)). Interprets or applies Secs. 1 (10–17), 15 (4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911 (49 U.S.C. 1(10–17), 15(4), and 17(2)))

It is further ordered, That a copy of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.74-3171 Filed 2-6-74;8:45 am]

[Corrected S. O. 1169]

PART 1033—CAR SERVICE

Providence and Worcester Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 21st day of January 1974.

It appearing, that the Boston and Maine Corporation, Robert W. Meserve and Benjamin H. Lacy, Trustees (B&M), in Finance Docket No. 26558, was authorized to abandon a portion of its Worcester Branch between milepost 3.2595 at Worcester, Massachusetts, and milepost 25.199 at Gardner, Massachusetts, a distance of approximately 21.94 miles; that the Commission's order authorizing abandonment of the aforementioned trackage required the B&M to sell this trackage to any responsible person or corporation offering to continue its operation; that the Providence and Worcester Company (P&W) has agreed to purchase the aforementioned line of the B&M; that the B&M and the P&W have agreed upon the terms of the sale of this line to the P&W; that the B&M has also consented to the use by the P&W of its line between milepost 0.00 at Worcester, Massachusetts, and milepost 3.2595 at Worcester, Massachusetts, a distance of approximately 3.26 miles, in order to provide a connection between the existing line of the P&W and the line to be acquired by the P&W from the B&M; that the B&M has also consented to the use of the remaining segment of its Worcester Branch between milepost 25.199, and milepost 26.166 at Gardner, Massachusetts, a distance of approximately 1.033 miles, in order to provide interchange connections with the B&M; that operation by the P&W over the aforementioned trackage authorized to be abandoned by the B&M and over the necessary connecting trackage of the B&M at Worcester, Massachusetts, and Gardner, Massachusetts, is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1169 Corrected Service Order No. 1169.

(a) *Providence and Worcester Company authorized to operate over tracks authorized to be abandoned by Boston and Maine Corporation, Robert W. Meserve and Benjamin H. Lacy, Trustees, and over tracks of Boston and Maine Corporation, Robert W. Meserve and Benjamin H. Lacy, Trustees.* The Providence and Worcester Company (P&W) be, and it is hereby, authorized to operate over tracks of the Worcester Branch authorized to be abandoned by the Boston and Maine Corporation, Robert W. Meserve and Benjamin H. Lacy, Trustees (B&M), between milepost 3.2595 at Worcester, Massachusetts, and milepost 25.199 at Gardner, Massachusetts, a distance of approximately 21.94 miles, and over tracks of the B&M between milepost 0.00 and milepost 3.2595 at Worcester, Massachusetts, a distance of approximately 3.26 miles, and over tracks of the B&M between Worcester Branch milepost 25.199 and milepost 26.166, a distance of approximately 1.033 miles, at Gardner, Massachusetts, pending disposition of the application of the P&W, in Finance Docket No. 27515, seeking authority to acquire and operate the aforementioned trackage.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates applicable.* Inasmuch as this operation by the P&W over tracks authorized to be abandoned by the B&M and over tracks of the B&M is deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via the B&M, until tariffs naming rates and routes specifically applicable via the P&W become effective.

(d) *Effective date.* This order shall become effective at 12:01 a.m., February 1, 1974.