

(3) by inserting "until one year from the date of enactment of this title," immediately after "(2)".

(c) Section 111 of such Act is amended by striking out "July 1, 1976" and inserting in lieu thereof "October 1, 1977".

(d) Section 3(b) of the Emergency Home Purchase Assistance Act of 1974 is amended by striking out "July 1, 1976" and inserting in lieu thereof "October 1, 1977".

(e) (1) Section 313(b) of the National Housing Act is amended by striking out the period at the end thereof and inserting in lieu thereof "; and", and by inserting the following at the end thereof:

"(D) such mortgage involves a principal residence the sales price of which does not exceed \$48,000 (\$52,000 in high-cost areas as determined by the Secretary) per family residence or dwelling unit, except that such sales price in Alaska, Hawaii, and Guam may not exceed \$65,000."

(2) The amendment made by paragraph (1) shall apply only with respect to mortgages purchased pursuant to commitments made after the date of the enactment of this Act.

FLOOD INSURANCE

Sec. 14. (a) Section 202(b) of the Flood Disaster Protection Act of 1973 is amended by striking out all that follows "shall not apply to" and inserting in lieu thereof the following: "(1) any loan made to finance the acquisition of a residential dwelling occupied as a residence prior to March 1, 1976, or one year following identification of the area within which such dwelling is located as an area containing special flood hazards, whichever is later, or made to extend, renew, or increase the financing or refinancing in connection with such a dwelling, (2) any loan, which does not exceed an amount prescribed by the Secretary, to finance the acquisition of a building or structure completed and occupied by a small business concern, as defined by the Secretary, prior to January 1, 1976, (3) any loan or loans, which in the aggregate do not exceed \$5,000, to finance improvements to or rehabilitation of a building or structure occupied as a residence prior to January 1, 1976, or (4) any loan or loans, which in the aggregate do not exceed an amount prescribed by the Secretary, to finance nonresidential additions or improvements to be used solely for agricultural purposes on a farm."

(b) Section 1336(a) of the National Flood Insurance Act of 1968 is amended by striking out "December 31, 1976" and inserting in lieu thereof "September 30, 1977".

(c) Section 1376 of the National Flood Insurance Act of 1968 is amended by adding at the end thereof the following new subsection:

"(c) There are authorized to be appropriated for studies under this title not to exceed \$100,000,000 for the fiscal year 1977."

[FR Doc. 76-37471 Filed 12-20-76; 8:45 am]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Revision 6, Amdt. 12]

PART 120—BUSINESS LOAN POLICY

Amendment of "Media" Policy

On page 23731 of the FEDERAL REGISTER of June 11, 1976, SBA published a proposal to amend, for the purpose of clarification, the regulation setting forth its policy of denying financial assistance to enterprises engaged in the creation, origi-

ination, expression, dissemination, propagation, or distribution of ideas, values, thoughts, opinions or similar intellectual property.

On the basis of information admitted in response to its request for public comment, SBA has concluded that the exception to the above mentioned policy, in favor of certain cable TV operations, (set forth in § 120.2(d)(4)(v)) is excessively narrow; and that financial assistance could be extended to Cable TV operations having the capacity for program origination in conformity with the purpose underlying § 120.2(d)(4), provided the cable TV operation agrees to function only as a passive and contemporaneous retransmitter of programs originating elsewhere and the Federal Communications Commission agrees that the operator will not be required, so long as SBA financial assistance is outstanding, to make its facilities available for any other use. Proposed § 120.2(d)(4)(v) has accordingly been changed.

To the extent that the proposed regulation is changed, the change is less restrictive than the language it replaces, and will benefit a class of small business concerns heretofore ineligible for SBA financial assistance; and since no submissions have been received favoring retention or narrowing of the existing exception, it is not necessary to invite public comment prior to its adoption.

Except as stated, the proposed regulation is adopted without change, as set forth below, effective December 21, 1976.

MITCHELL P. KOBELINSKI,
Administrator.

(72 Stat. 337, as amended, 15 U.S.C. 636, sec. 5, 72 Stat. 385, 15 U.S.C. 634.)

§ 120.2 Business Loans and Guarantees.

Basic principles governing the granting and denial of applications for financial assistance:

(d) Financial assistance will not be granted by SBA:

(4) If the applicant is engaged in the creation, origination, expression, dissemination, propagation or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form, or content. Financial assistance to such applicants is barred in order to avoid Government interference, or the appearance thereof, with the constitutionally protected freedoms of speech and press. *Provided, however*, That nothing herein shall preclude finance to any otherwise eligible applicant engaged in one or more of the following activities:

(i) Printing: A firm solely engaged in commercial or job printing, if there is no common ownership with any concern ineligible under this subparagraph (4) and the printer has no direct financial interest in the commercial success of the material so produced.

(ii) Publishing, etc.: Publishers of shoppers' newspapers or circulars con-

sisting of advertising material only, without editorial, narrative or filler material. All other publishers, including so-called "vanity" publishers, as well as producers, importers, exporters or distributors of communications, including newspapers, magazines, books, greeting cards, sheet music, pictures, posters, film, tape, live broadcasts, recordings or reproductions of sight, sound or musical programs or products, or theatrical productions, are ineligible. For an exception to the foregoing rule, see paragraph (d)(v) of this section.

(iii) Advertising and technical material: Firms producing advertisements and promotional material for a client's goods or services, or of technical or instructional material relating to such goods or services.

(iv) Reproduction: Firms providing motion picture, videotape, sound recording or theatrical technical production facilities, or the technical reproduction of motion picture, videotape or sound recordings without editorial or artistic participation therein, without a direct interest in the commercial success of material so produced, and without common ownership between the concern providing such services and the concern interested in such success.

(v) Cable TV: Cable TV operations only where operators are solely engaged in the passive and contemporaneous retransmission of programs originating elsewhere even though such operator may have the capacity to originate live or taped programs as required by other Federal regulations. A Cable TV operation required by the Federal Communications Commission to maintain a public access channel is eligible to receive SBA financial assistance provided it first (1) obtains a waiver from the Federal Communications Commission of the requirement that the access channel be available to the public so long as SBA financial assistance is outstanding; and (2) agrees that so long as SBA financial assistance is outstanding, it will limit its operations to the passive and contemporaneous retransmission of programs originating elsewhere, without any use of its program origination capacity.

(vi) Education: Vocational, technical and other nonacademic schools which do not also teach academic subjects; and nursery and pregrade schools if they are not primarily engaged in teaching academic subjects.

(vii) Distributors of books, etc. General merchandise stores also selling books, newspapers, magazines, records, etc., and general book or music (record) stores. Specialty stores primarily selling products that promote or advocate ideas, including ideological, political or philosophical viewpoints, and specialized delivery, distribution or transportation concerns limited to the distribution of ineligible material (such as books, newspapers, etc.), are ineligible.

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans.)

[FR Doc. 76-37455 Filed 12-20-76; 8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER A—GENERAL

[Docket No. 76N-0475]

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Subpart B—Redelegations of Authority From the Commissioner of Food and Drugs

REGULATORY HEARINGS

The Food and Drug Administration (FDA) is amending its delegations of authority regulation relating to holding hearings and appointing review boards by adding a new delegation; effective December 21, 1976.

This new delegation is being added as a result of promulgation of new FDA procedural regulations for regulatory hearings published in the FEDERAL REGISTER of November 2, 1976 (41 FR 48262). The new delegation will encompass all regulatory hearings held by the agency, including informal hearings, under sections 304 as amended (21 U.S.C. 334) and 514, 515, 516, 518, and 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360d, 360e, 360f, 360h and 360j) as added by the Medical Device Amendments of 1976.

Further redelegation of the authority delegated by this amendment is not authorized. Authority redelegated by this amendment to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis, unless prohibited by a restriction written into the document designating him as "acting," or unless it is not legally permissible.

An official delegated the authority to serve as the presiding officer may serve in that capacity in a particular hearing only if his service would not conflict with § 2.505(b) of Subpart F. Thus, he may be the presiding officer only if he is not biased or prejudiced and has not participated in the investigation or action. If he is disqualified under § 2.505(b), he may designate another official who meets the requirements of § 2.505(b) to be the presiding officer.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), § 5.21 is amended by adding new § 5.21(d) to read as follows:

§ 5.21 Delegations regarding hearings and review boards.

(d) The Directors and Deputy Directors of Bureaus, Regional Food and Drug Directors, and District Directors are authorized to serve as the presiding officer, and to designate other Food and Drug Administration employees to serve

as the presiding officer, at a regulatory hearing and to conduct such a hearing pursuant to the provisions of Subpart F of Part 2 of this chapter. An official can serve as the presiding officer in a particular hearing only if he satisfies the requirements of Paragraph (b) of § 2.505 with respect to the action that is the subject of the hearing. Such officials are delegated authority vested in the Secretary of Agriculture by 7 U.S.C. 2217 (43 Stat. 803) to administer or to take from any person an oath, affirmation, or deposition for use in any prosecution or proceeding under, or in enforcement of, any law as cited in this part.

Effective date: This amendment shall be effective December 21, 1976.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)).)

Dated: December 14, 1976.

JOSEPH P. HILE,
Associate Commissioner for
Compliance.

[FR Doc. 76-37216 Filed 12-20-76; 8:45 am]

[Docket No. 76C-0427]

PART 8—COLOR ADDITIVES

Listing of D&C Green No. 8 for Use in Externally Applied Drugs and Cosmetics; Correction

In FR Doc. 76-33995 appearing at page 51006 in the FEDERAL REGISTER of Friday, November 19, 1976, paragraphs (a) (1) and (b) of § 8.4072 are corrected to read as follows:

§ 8.4072 D&C Green No. 8.

(a) *Identity.* (1) The color additive D&C Green No. 8 is principally the trisodium salt of 8-hydroxy-1,3,6-pyrenetrisulfonic acid.

(b) *Specifications.* D&C Green No. 8 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practices:

- Volatile matter (at 135° C), not more than 15 percent.
- Water-insoluble matter, not more than 0.2 percent.
- Chlorides and sulfates (calculated as sodium salt), not more than 20 percent.
- The trisodium salt of 1,3,6-pyrenetrisulfonic acid, not more than 6 percent.
- The tetrasodium salt of 1,3,6,8-pyrenetetrasulfonic acid, not more than 1 percent.
- Pyrene, not more than 0.2 percent.
- Lead (as Pb), not more than 20 parts per million.
- Arsenic (as As), not more than 3 parts per million.
- Mercury (as Hg), not more than 1 part per million.
- Total color, not less than 65 percent.

Dated: December 15, 1976.

JOSEPH P. HILE,
Associate Commissioner
for Compliance.

[FR Doc. 76-37887 Filed 12-20-76; 8:45 am]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

[Docket No. 76F-0023]

PART 121—FOOD ADDITIVES

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

SLIMICIDES

The Food and Drug Administration is amending the food additive regulations to provide for safe use of 1,2-benzisothiazolin-3-one as a component of slimicides in the manufacture of paper and paperboard that contact food; effective December 21, 1976; objections by January 21, 1977.

Notice was given by publication in the FEDERAL REGISTER of February 10, 1976 (41 FR 5862), that a food additive petition (FAP 3H2927) had been filed by ICI United States, Inc., Wilmington, DE 19897, proposing that § 121.2505 *Slimicides* (21 CFR 121.2505) be amended to provide for the safe use of 1,2-benzisothiazolin-3-one as a slimicide in the manufacture of paper and paperboard that contact food.

The Commissioner of Food and Drugs, having evaluated the data in the food additive petition and other relevant material, concludes that § 121.2505 should be amended as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c) (1), 72 Stat. 1786 (21 U.S.C. 348(c) (1))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976, (41 FR 24262)), § 121.2505 (c) is amended by alphabetically adding a new item in the list of substances as follows:

§ 121.2505 Slimicides.

(c) * * *	Limitations
List of substances:	
1,2-benzisothiazolin-3-one	At a level of 0.06 pound per ton of dry weight fiber.

Any person who will be adversely affected by the foregoing regulation may at any time on or before January 21, 1977, file with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Five copies of all

documents shall be filed and should be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This amendment is effective December 21, 1976.

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

Dated: December 15, 1976.

JOSEPH P. HILE,
Associate Commissioner
for Compliance.

[FR Doc. 76-37386 Filed 12-20-76; 8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7448]

PART 11—TEMPORARY INCOME TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Temporary Regulations Relating to Non-bank Trustees of Pension and Profit-sharing Trusts Benefiting Owner-Employees

This document amends § 11.401(d)(1)-1 of the Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974 (26 CFR Part 11), relating to nonbank trustees of pension and profit-sharing trusts benefiting owner-employees.

Section 401(d)(1) of the Internal Revenue Code permits a person which is not a bank to be the trustee of a qualified pension or profit-sharing trust benefiting owner-employees if such person demonstrates to the satisfaction of the Commissioner that such person will administer the trust in a manner consistent with the requirements of section 401. Such a demonstration must be made by filing a written application.

Under § 11.401(d)(1)-1, the applicant is generally required to demonstrate its ability to act within the accepted rules of fiduciary conduct, experience and competence with respect to accounting for the interests of a large number of individuals, and familiarity with other activities normally associated with the handling of retirement funds. Thus, the applicant must be prepared to comply with specified rules of fiduciary conduct. In addition, it must possess such attributes as continuity, permanent location, financial responsibility, and fiduciary experience.

Section 11.401(d)(1)-1(g)(3) contains a special rule that applies to certain credit unions, savings and loan associations and similar financial institutions. This special rule was designed to expedite the approval of well-qualified credit unions and other financial institutions. However, it has not had the desired effect. Therefore, the special rule is now revised.

As revised, the special rule provides that an applicant will be approved to act as the trustee of qualified pension and profit-sharing trusts benefiting owner-employees ("Keogh Plans") if three requirements are satisfied:

(1) The applicant must be a credit union, industrial loan company, or savings and loan association. (Other financial institutions may be designated later by the Commissioner.)

(2) The trust assets must be invested solely in deposits in the applicant.

(3) Deposits in the applicant must be insured (up to the dollar limit prescribed by applicable law) by an agency or instrumentality of the United States or a State.

Credit unions and other financial institutions that satisfy the revised special rule will be automatically approved on December 22, 1976. They will then be permitted to act as the trustee of Keogh Plans and individual retirement accounts and as the custodian of custodial accounts described in section 401(f) of the Internal Revenue Code. They will not be required to submit a written application. However, this automatic approval does not apply to a financial institution that fails to satisfy any one of the three requirements set out above.

ADOPTION OF REGULATIONS

To provide new rules for approving credit unions and other financial institutions to act as trustees of qualified pension and profit-sharing trusts benefiting owner-employees, the Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974 are amended as follows:

Section 11.401(d)(1)-1(g)(3) is revised to read as follows:

§ 11.401(d)(1)-1 Nonbank trustees of trusts benefiting owner-employees.

(g) *Special rules.* * * *

(3) *Savings account.* (i) An applicant will be approved to act as trustee under this subparagraph if the following requirements are satisfied:

(A) The applicant is a credit union, industrial loan company, savings and loan association, or other financial institution designated by the Commissioner;

(B) The investment of the trust assets will be solely in deposits in the applicant;

(C) Deposits in the applicant are insured (up to the dollar limit prescribed by applicable law) by an agency or instrumentality of the United States or a State.

(ii) Any applicant who satisfies the requirements of this subparagraph is hereby approved, and (notwithstanding paragraph (b) of this section) is not required to submit a written application. This approval takes effect on the first day after December 22, 1976, on which the applicant satisfies the requirements of this subparagraph, and continues in effect for so long as the applicant continues to satisfy those requirements.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found to be impracticable to issue this Treasury decision with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Secs. 401(d)(1) and 7805 of the Internal Revenue Code of 1954 (88 Stat. 939 and 68A Stat. 917; 26 U.S.C. 401 and 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: December 16, 1976.

CHARLES M. WALKER,
Assistant Secretary of the
Treasury.

[FR Doc. 76-37613 Filed 12-17-76; 4:58 pm]

Title 29—Labor

CHAPTER XXV—PENSION AND WELFARE BENEFIT PROGRAMS

Amendment of Chapter Heading

Under the authority of section 505 of the Employee Retirement Income Security Act of 1974 ("the Act"), Pub. L. 93-406, 88 Stat. 894 (29 U.S.C. 1135), and Secretary's Order No. 13-76 (May 17, 1976), 29 CFR Chapter XXV is amended as follows:

The chapter heading of Chapter XXV is changed to read "CHAPTER XXV—PENSION AND WELFARE BENEFIT PROGRAMS."

By Secretary's Order No. 13-76 the Secretary of Labor cancelled Secretary's Order No. 27-74, and, with certain exceptions, delegated authority and assigned responsibilities for carrying out the programs and related activities to be performed by the Secretary of Labor under the Act to the Administrator of Pension and Welfare Benefit Programs. The amendment of the heading of 29 CFR Chapter XXV reflects the new delegation.

It is the general policy of the Department of Labor to allow time for interested parties to take part in the rule-making process. This amendment, however, is entirely administrative in nature. The public rulemaking process, therefore, is waived and this amendment is effective on December 21, 1976.

WILLIAM J. CHADWICK,
Administrator of Pension
and Welfare Benefit Programs.

DECEMBER 14, 1976.

[FR Doc. 76-37469 Filed 12-20-76; 8:45 am]

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

Reporting and Disclosure Requirements; Correction

In FR Doc. 76-11859 appearing at page 16957 in the FEDERAL REGISTER of April 23, 1976, paragraph (c)(4)(ii) of § 2520.104-5 on page 16962 is corrected to read as follows:

§ 2520.104-5 Deferral of certain reporting and disclosure requirements relating to the summary plan description for welfare funds.

- (c) * * *
- (4) * * *

(ii) The provisions of sections 104(a)(1)(D) and 104(b)(1) of the Act that require filing with the Secretary and furnishing to participants and beneficiaries receiving benefits a summary description of material modifications to the plan and changes in information required to be included in the summary plan description except that no summary description is required to be furnished for material modifications and changes in the information required to be included in the summary plan description if any such modification or change has been incorporated in the initial summary plan description furnished on or before March 31, 1977.

Issued in Washington, D.C., this 9th day of December 1976.

WILLIAM J. CHADWICK,
Administrator of Pension
and Welfare Benefit Programs.

[FR Doc. 76-37470 Filed 12-20-76; 8:45 am]

**Title 32—National Defense
CHAPTER VI—DEPARTMENT OF THE NAVY**

**PART 737—NAVAL PROCUREMENT DIRECTIVES, 1974 EDITION
Miscellaneous Amendments**

Pursuant to the authority conferred in 5 U.S.C. 301, 10 U.S.C. 2202, 2301-2314, 32 CFR § 1-108, and Secretary of the Navy Instruction 4200.29, the Chief of Naval Material, in accordance with the policies and directions of the Assistant Secretary of the Navy (Installations and Logistics), amends 32 CFR Part 737. Part 737 is a codification of the Navy Procurement Directives, 1974 Edition (NAVMAT P-4202), which implement within the Department of the Navy the provisions of the Armed Service Procurement Regulations (32 CFR, Subchapter A).

The Navy Procurement Directives have since been revised by revisions No. 3 of December 20, 1974; No. 4 of April 15, 1975; and No. 5 of July 30, 1976. The amendments to Part 737, which are non-originate in nature, reflect these revisions and relate entirely to internal naval management practices and policies. It has been determined that invitation of public comment on these changes prior to adoption would be unnecessary and is therefore not required under the public rule-making provisions in Parts 298 and 701 of 32 CFR.

32 CFR Part 737 is therefore amended as follows:

1. § 737.1-101 is revised as follows:

§ 737.1-101 Purpose of Navy Procurement Directives (NPD).

The Navy Procurement Directive (NPD) (NAVMAT P-4202) is published by the Chief of Naval Material in accordance with the policies and direction of

the Assistant Secretary of the Navy (Installations and Logistics) pursuant to the authority contained in SECNAVINST 4200.29 of August 3, 1973. In accordance with § 1-108 of this title, it serves to (a) Supplement the ASPR (Armed Services Procurement Regulations) [Subchapter A (Parts 1 through 33) of this title 32] and other Department of Defense publications concerned with procurement, and to (b) promulgate at the departmental level policies and procedures concerned primarily with procurement which are not covered by ASPR or other DOD publications.

§ 737.105-2 [Amended]

2. In § 737.105-2, fifth and sixth lines, the words "Chief of Naval Operations and the Commandant of the Marine Corps" are changed to "Chief of Naval Operations, the Chief of Naval Research, and the Commandant of the Marine Corps."

§ 737.108 [Amended]

3. In paragraph (d) of § 737.108, 12th and 13th lines, the words "the Navy Stock List of Publications and Forms, section 12," are changed to "the microfiche edition of NAVSUP Publication 2002, Navy Stock List of Publications and Forms, Section III, under Stock Numbers beginning with 0528."

4. Section 737.1-111-50 is revised as follows:

§ 737.1-111-50 Fraud in connection with procurement and property disposal.

(a) Where management is alert to its responsibilities in maintaining appropriate safeguards against the commission of fraud in the procurement and disposal of government property, it can more effectively protect the government property, it can more effectively protect the government against the type of fraudulent actions described in SECNAVINST 4385.1 series.

(b) Heads of procuring activities (§ 1-201.14 of this title) shall assure that the procedures set forth below to assure integrity in procurement operations and disposal of government property are followed by activities reporting to them:

(1) Perform periodic, selective reviews of procurement and property disposal operations and related areas to determine that an adequate system of checks and balances has been provided. Reviews shall include, but not be limited to, such areas as determination of requirements, preparation and adoption of procurement specifications and standards, qualification approval, solicitation and evaluation of bids and proposals, cost/price analysis and negotiations, award of contract, ordering under open-end procurements, contract administration, contract termination, receipt control, administration of payments, transportation, inventory control and sale and disposal of government property.

(2) Conduct frequent spot-checks to determine:

(i) compliance with existing safeguards by all military and civilian personnel, and

(ii) the need for possible modification of existing procedures as a result of changed conditions.

(3) Assure that all personnel fully understand the distinctions that have been drawn between proper and improper modes of conduct as defined in SECNAVINST 5370.2 series (Part 721 of this title). Provide opportunities for meaningful discussion, placing special emphasis on conflict of interest matters and the issues involved.

(4) Identify for special management attention those positions requiring continued, close association with the contractor or his representatives and involving duties or decisions which strongly affect the contractor's interest.

(5) Consider adherence to high standards of integrity in selecting personnel for promotion and in making assignments to key positions.

(6) Take prompt administrative steps or assist appropriate authorities in criminal or civil actions against military and civilian personnel involved in fraudulent activities. Similarly, provide necessary assistance and information in reply to inquiries concerning suspected wrongdoing or abuse of authority. In this regard, forthright cooperation with the Federal Bureau of Investigation and the Naval Investigative Services is essential.

5. Paragraph (c)(8) of § 737.1-201 is revised as follows:

§ 737.1-201 Definitions.

- (c) * * *

(8) "Administrative Contracting Officer (ACO)," insofar as Navy field contract administration offices are concerned, is the commanding officer or officer-in-charge who is currently a contracting officer (§ 1.202.3 of this title). The term also includes any authorized representative of the commanding officer or officer-in-charge acting within the limits of his contracting officer authority.

6. Section 737.1-363 is revised as follows:

§ 737.1-363 Participation by contract administration officers in RFP preparation evaluation of proposals and source selection.

(a) When feasible, contract administration offices shall be requested to review, prior to completion of drafting, the RFP (Request for Proposal), Schedule, General Provisions, Specifications, or other provisions of proposed major weapon systems contracts for the purpose of planning for contract administration and for determining the adequacy of such contractual requirements for contract administration purposes. In addition, contract administration offices may be requested to participate in the technical evaluation of proposals and in source selection, in order to provide guidance to the purchasing activity on contract administration matters and on the ability of the contractor to perform the type of work contemplated. Contract administration offices may also be requested to participate in negotiation. Such participation is in addition to field pricing support provided the PCO (Procuring Con-

tracting Officer) as required by § 3-801 of this Title 32.

(b) The selection of one or more contract administration offices to participate in procurement document preparation, evaluation of proposals and source selection, should be based on the familiarity of their personnel with the kind of weapon system to be procured and/or the likelihood of award to a contractor under their cognizance. Contract administration offices may be requested to participate similarly in procurements for items other than weapon systems when considered necessary by the procuring activity, purchasing office, project manager or requiring activity.

§ 737.1-401-55 [Amended]

7. Paragraph (c) (2) of § 737.1-401-55 is revised as follows:

(c) * * *

(2) *Formal and constructive changes.*

(i) In those cases where Navy actions (or inactions) alleged by the contractor, after appropriate evaluation, constitute a change, the Contracting Officer should promptly formalize such constructive change(s) in writing, irrespective of whether the contract contains the "Notification of Changes" clause, § 7-104.86 of this title. Negotiation and settlement of such changes should be handled in the normal fashion—i.e., in accordance with § 1-406(c) (ix) of this title and the contract's provisions. The procedures outlined in paragraph (c) (2) (iii) of this section are for use on an exception basis where the contractor has not presented a full disclosure of pertinent facts or a timely determination of Navy responsibility is not feasible.

(ii) With respect to those formal written changes as to which the contractor alleges a factual or other inter-relationship with a claim, activities should exert every effort to equitably adjust such changes coupled with allowance for any disruption or delay impact determined to be appropriate by the procuring agency.

(iii) In exceptional cases where disruption, delay or other claimed impacts are known to exist and cannot be currently resolved, the procuring activity may proceed with equitable adjustments covering the inter-related formal changes coupled with usage of qualified release. The qualified release should specifically identify the inter-relationship with the contractor's claim such as delay or disruption impacts reserving to the contractor the right to pursue and demonstrate support for a separate equitable adjustment therefor under the contract.

8. In paragraph (c) (4) (v) of § 737.2-401-55, eighth line, the words "hereby depose and say that: (i) the facts" are changed to "hereby depose and say that, to the best of my knowledge and belief: (i) the facts * * *"

9. In paragraph (e) (3) (i) of § 737.1-401-55, after the fifth line and before the sixth line, the following phrase is added: "and the Deputy Chief of Staff for Installations and Logistics, Headquarters, Marine Corps."

10. In paragraph (e) (3) (iii) of § 737.1-401-55, lines ten to fifteen, the following sentence is deleted: "In the event such review cannot be completed within ten (10) working days, the NMC Claims Board shall notify the NMC General Board of the reasons for the delay and the anticipated date of completion of review."

Further, in paragraph (e) (3) (iii), lines 29 through 34 are deleted and the following is substituted therefor: "Board designated executive shall fully brief his SYSCOM Commander and the Deputy Chief of Staff, Headquarters, U.S. Marine Corps, as appropriate, on each proposed claim settlement or final decision prior to NMC General Board action. To facilitate the above-mentioned briefings, the SYSCOM and MARCORPS Claims Board * * *"

11. A new section, § 737.1-401-58 is added to Part 737 after § 737.1-401-57 and before § 737.1-403, and it provides as follows:

§ 737.1-401-58 Assignment of purchase actions by systems commands to field activities within the Navy Field Procurement Systems (NFPS).

(a) *Definition.* The Navy Field Procurement System (NFPS) consists of those field activities of the Department of the Navy, including offices and branch offices, which make purchases under the delegated authority of the Commander, Naval Supply Systems Command NAVSUP Publication 467, "Field Purchasing," identifies those field activities within the NFPS with delegated procurement authority in excess of \$250.

(b) *Authority to assign purchase actions.* In obtaining the material and services required for the performance of its assigned mission, each of the systems commands within the Naval Material Command is authorized to request other activities to carry out requisite purchase functions. This authority should not be used for the purpose of assigning to field activities within the NFPS purchase actions that should properly be handled at the Systems Command Headquarters level, e.g., where the contracts directorate of the command may have available capacity or may be in the process of making related purchases.

(c) *Considerations.* The following considerations shall be taken into account in assigning purchase actions:

(1) That the purchase organization at each field activity of the Naval Air, Sea, and Electronic Systems Command has been established to support the research, production, or other technical mission of the particular field activity;

(2) That the central area buying activities of the NFPS are responsible for providing purchase support to the naval activities located in the given area served;

(3) That the Naval Regional Procurement Offices (NRPOs) and Naval Supply Centers assigned regional procurement functions furnish overall procurement and procurement management support for the geographic area served; and

(4) That the activities in paragraphs (c) (2) and (3) of this section, in that

order, are responsible for making those purchases which are in excess of either the purchase authority or capability of the activities of the NFPS located within the geographic regions served.

(d) *Procedures.* To establish uniform and more effective methods of assigning purchase actions and task or work orders involving procurement generated by the systems commands named in paragraph (c) (1) of this section, the following procedures shall be followed:

(1) Purchase actions, including purchase requests, purchase requisitions, Military Interdepartmental Purchase Requests (DD Form 448), task/work orders involving procurement, and other procurement requirements originated at the Systems Command Headquarters level, shall be reviewed by the contracts directorate. The review shall be conducted to assure the retention by the command of requirements which, because of high dollar value, complexity, or other considerations warrant purchase action at the headquarters level.

(2) The Naval Supply Systems Command (Deputy Commander, Procurement Management) shall be advised in writing at the time a decision is made by a systems command to assign to Navy field purchasing activities new procurement actions that will require business clearances in excess of \$1,000,000 or the responsibility for ASPR 3-406, 3-409, or 3-410 type contracts (§§ 3-406, 3-409, and 3-410 of this title) whose total cumulative value is expected to exceed \$1,000,000.

(3) When a field purchasing activity receives a purchase action which originated from a systems command and has reason to believe that procurement should be effected at the systems command level, the field activity shall coordinate the matter with the Naval Supply Systems Command (Deputy Commander, Procurement Management) before proceeding with the procurement.

§ 737.1-403-51 [Amended]

12. In paragraph (b) (1) (iv) of § 737.1-403-51, sixth and seventh lines, the words "and the Naval Regional Procurement Office, Los Angeles: 2,000,000" are changed to "the Naval Regional Procurement Office, Long Beach, and the Naval Regional Procurement Office, Philadelphia: \$2,000,000."

13. Paragraph (b) (2) (viii) (A) of § 737.1-403-51 is revised to provide as follows:

(A) For the Naval Air Systems Command, Naval Electronic Systems Command, Naval Sea Systems Command: \$2,000,000."

14. Paragraph (b) (2) of § 737.1-403-51 is amended by adding a paragraph (b) (2) (xvii) after paragraph (b) (2) (xvi), which provides as follows:

(xvii) *Nonpersonal services contracts.* See § 737.22-102.

§ 737.1-103-53 [Amended]

15. In paragraph (b) (1) of § 737.1-403-53, lines 19 and 20, the symbol "SH-

SR(s)-SS" is changed to "SEA"; after line 28 which says, "Office, Naples----- NAP," add the following:

"Naval Regional Procurement Office, Philadelphia, Newport Division----- NPT
 Naval Supply Center, Puget Sound, Bremerton----- NSC, BR
 Naval Air Station, Patuxent River, MD----- PAX";

in lines 72, 73, and 74, delete the following:

"Naval Ordnance Laboratory, White Oaks, Silver Spring, MD----- NOL"

and substitute:

"Naval Surface Weapons Center, White Oak Laboratory, White Oak, Silver Spring, MD----- WOL";

and, in lines 98 and 99 delete the following:

"Naval Weapons Laboratory, Dahlgren, VA----- DL"

and substitute:

"Naval Surface Weapons Center, Dahlgren Laboratory, Dahlgren, VA----- DL"

16. Part 737 is amended by adding §§ 737.1-406-51 and 737.1-406-52 after § 737.1-406-50, which provide as follows:

§ 737.1-406-51 Negotiating complex requests or claims for equitable adjustments pursuant to contract clauses.

Circumstances may arise where a contractor's assertions involve difficult or complex legal, factual, or fiscal issues requiring extensive fact-finding and analysis of government liability. Examples include late or defective government furnished property or information, complex delay and disruption issues under formal change orders, and formal suspensions of work or stop work orders. In such circumstances, the request or claim for equitable adjustment shall be subject to the requirements of § 737.1-401-55 applicable to claims.

§ 737.1-406-52 Contractor employee compensation and insurance/pension reviews.

(a) NAVPROs (Naval Plant Representative Offices) and SUPSHIPS (Supervisors of Shipbuilding, Conversion and Repair) are responsible for determining the final allowability of contractor costs, including costs for contractor employee compensation, insurance, and pensions. As part of the effort necessary to make determinations applicable to employee compensation, insurance, and pensions costs, NAVPROs/SUPSHIPS may use the services of the cognizant DCASR (Defense Contract Administration Service Region) to conduct the reviews required by § 1-406(c) (1) and (2) of this title.

(b) Reviews conducted by DCAS shall be conducted in accordance with DCAS regulations. NAVPRO/SUPSHIP personnel may serve on DCAS/DCAA review teams. Such reviews will not duplicate

review areas covered by reviews made by NAVPROs/SUPSHIPS, or by the Navy Material Command Insurance Examiner, unless specifically requested.

(c) DCAS reports of compensation and insurance/pension reviews shall be distributed only to the NAVPRO or SUPSHIP, and the cognizant DCAA auditor, except for copies used by DCAS for internal use. Action on recommendations in reports is the prerogative of the NAVPRO or SUPSHIP served. A copy of each report shall be provided the cognizant systems command and the Chief of Naval Material by the NAVPRO or SUPSHIP.

(d) Requests for DCAS services should be confirmed in writing to Defense Contract Administration Services, DCAS-AF, Room 8A489, Cameron Station, Alexandria, VA 22314. A copy should be sent to the Chief of Naval Material (MAT 024), Washington, DC 20360 and higher headquarters of the NAVPRO/SUPSHIP.

(e) When the services of the DCASR are used, the Navy will pay for the cost of travel and per diem, and, subject to prior approval of the Navy, for costs of the services of an independent actuary.

17. Section 737.1-407 is amended by adding a paragraph (j) which provides as follows:

§ 737.1-407 Functions of Defense Contract Audit Agency (DCAA) offices.

(j) Defense Contract Audit Manual (DCAAM 7640.1), also referred to as "CAM" includes the policies, procedures, standards and techniques governing Defense Contract Audit Agency personnel in the execution of the contract audit mission. This manual and revisions are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The cost is \$27.75 for an indefinite subscription which will include the manual and future revisions.

§ 737.1-702-50 [Amended]

18. In paragraph (b) of § 737.1-702-50, lines 19, 20, and 21, the following is deleted:

Naval Ship Systems Command, Department of the Navy, Washington, D.C. 20360.

§ 737.1-950 [Deleted]

19. Section 737.1-950, *Naval Contractor Experience List*, is deleted.

20. Paragraph (b) (1) of § 737.1-1004 is amended by adding paragraphs (b) (1) (iii) and (b) (1) (iv), which provide as follows:

§ 737.1-1004 Announcement of contracts valued at \$1,000,000 or more.

(b) * * *
 (1) * * *

(ii) That the proposed announcement has been coordinated with appropriate offices of the Chief of Naval Operations (OPNAV), the Commandant of the Marine Corps, as appropriate, cognizant program managers or sponsors to insure the accuracy of the wording and data to be released; and

(iv) The OPNAV codes or other identifications of the persons with whom the staffing was conducted.

§ 737.1-1007 [Amended]

21. Section 737.1-1007 [Amended] Paragraph (b) of § 737.1-1007, which provides "A copy of each release shall be forwarded to the Chief of Naval Material (MAT 02E)" is deleted.

22. Paragraph (a) of § 737.1-2100-2 is amended by adding paragraph (a) (6), which provide as follows:

§ 737.1-2100-2 Applicability.

(a) * * *

(6) Foreign Military Sales (FMS) requirements where the FMS requirement is:

(i) to be included under a contract for Navy requirements for the same or similar item, or

(ii) under a separate FMS contract and where the period of performance thereunder either overlaps or is consecutive with performance under a Navy contract for the same or similar items. The ASPR threshold for APP preparation shall be applicable to the combined estimate of the Navy/FMS requirements. At a minimum, the APP must include sufficient information to clearly show, by text and milestone chart, the FMS requirement's impact on the Navy's requirements in the areas of contractor performance, cost and delivery.

§ 737.3-201-50 [Amended]

23. In paragraph (a) of § 737.3-201-50, lines 14 and 15, the following words are deleted: "For disaster areas see § 737.1-850."

§ 737.3-210-3 [Amended]

24. In paragraph (e) 4., lines 58 and 59, the name "Ling-Temco-Vought" is changed to "Vought Corporation;" in lines 64, 65, 66, and 67, the words "This Class Determination and Findings shall be effective from date of execution through [insert expiration date]" are changed to "This Class Determination and Findings shall be effective for one (1) year from the effective date of the Basic Ordering Agreement, and shall apply to all orders issued during the effective period unless such authorization is suspended or cancelled by the purchasing office;" lines 68 through 74 are deleted; and, line 76, the number "(xxvi)" is deleted.

25. A paragraph (d) is added to § 737.3-217-2, after line 15, which provide as follows:

§ 737.3-217-2 Applicability.

(d) contracts awarded to the Small Business Administration in accordance with Section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

§ 737.3-306-52 [Amended]

26. In paragraph (b) of § 737.3-306-52, in lines 11, 12, and 13, delete the following words, "See § 737.3-306-56 for sample format of RAN's for exceptions (11) through (16)."

27. In paragraph (d) (2) of § 737.3-206-52, line 6, the word "Assistant" is changed to "Assistant Deputy Chief of Staff."

28. Paragraph (c) of § 737.3-306-53 is revised as follows:

§ 737.2-306-53 Class Determinations and Findings (CDF's).

(c) *Delegation of authority to make certain CDFs.* With respect to Basic Ordering Agreements (BOAs) for the overhaul, repair or modification of existing equipment under Exemption (10) (10 U.S.C. 2304(a)(10) and § 3-210 of this title) (See § 737.3-410-2), the authority to make CDFs is delegated to the Commanders, Naval Air, Electronics, Sea and Supply Systems Commands with a power of redelegation to a level no lower than the Director of a purchasing office as defined in § 1.201-24 of this title.

(1) *Limitations.* This authority shall be, in every case, subject to the following express limitations:

(i) Such CDFs shall only support the overhaul, repair or modification of equipment or weapon systems to be procured on a selected or specified source (sole source) basis through orders placed under BOAs;

(ii) They shall be limited to the overhaul, repair, or modification of existing equipment or systems;

(iii) They shall exclude the performance of any research and development effort;

(iv) They shall exclude the procurement of any parts, components or materials not an integral part of the work to be performed.

(v) They shall specifically list the items or equipment upon which the work will be performed, together with the proposed sources for such work; and shall include a statement identifying the specific expiration date.

(2) *Format.* The suggested format incorporating the conditions listed in (1) above is illustrated in § 737.3-210-3.

(3) *Preparation and submission.* (1) ARAN and the CDF shall be prepared in the same manner as they would be for submission to the Assistant Secretary of the Navy (I&L):

(ii) Each such CDF shall be numbered consecutively by the activity.

(iii) One copy of each such CDF, together with the associated RAN, shall be forwarded to the Chief of Naval Material (MAT 023) promptly after execution.

29. Paragraph (b) of § 737.3-408 is revised as follows:

§ 737.3-408 Letter contracts.

(b) *Reporting Letter Contract Status.* See § 737.21-103-1.

30. Section 737.3-410-2 is revised as follows:

§ 737.3-410-2 Basic ordering agreement.

(a) *General.* (1) Basic Ordering Agreements (BOAs) are normally written to provide for the procurement of author-

ized supplies and services covering as wide a range as is practicable. However, separate BOAs may be negotiated when it is considered necessary to restrict the use of a BOA to the procurement of specific supplies or services or when it is considered necessary to authorize the Contract Administration Office (CAO) to issue orders. Such BOAs are referred to as specialized BOAs.

(2) Specialized BOAs providing for the placement of orders by the CAO shall contain a provision substantially as follows:

Each order issued hereunder shall cite (insert applicable negotiation authority and class determination and findings (CDF) number), unless earlier suspended or cancelled by notice from the purchasing office. Orders for items not identified in the CDF and basic ordering agreement are considered unauthorized.

(3) The requirement of § 3-410.2(c) (2) (i) of this title for a determination at the time each order is placed that it is impracticable to obtain competition is satisfied when there is a selected or specified source (sole source) CDF.

(4) The Basic Ordering Agreement shall provide a time frame for the furnishing of contractor price quotations for unpriced orders issued. The period should be as short as practicable, usually 30 days, and normally should not exceed 60 days from receipt of the order. When the Contracting Officer, upon notification by the contractor that pricing cannot be established within the specified period, determines that a longer period is necessary, he shall document the contract file indicating the basis for the determination.

§ 737.3-507-50 [Amended]

31. In § 737.3-507-50, second line, the sum "\$2,500" is changed to "\$10,000."

32. New §§ 737.3-805, 737.3-805-1, and 737.3-805-2 are added to Part 737 after § 737.3-803 and before § 737.3-807, and they provide as follows:

§ 737.3-805 Written and oral discussions.

§ 737.3-805-1 General.

This part provides guidance for the conduct of technical discussions and price negotiations in negotiated procurements.

§ 737.3-805-2 Competitive negotiation.

(a) *Background.* Unrealistically priced contracts have caused budgetary and contract performance problems; underpriced contracts inevitably lead to either (1) disruption of other programs in order to provide the necessary funding, or (2) reduction within the program of efforts needed to ensure an optimal product. These result in widespread present and future cost excesses which are intolerable in an era of increasingly austere budgets. Therefore, it is necessary to ensure that negotiations are conducted in a manner that promotes realism.

(b) *Applicability.* The provisions of this part are applicable to cost type, research and development, and other complex contracts where factors other than price

serve as the primary basis for award. In less complex contracts where price is the predominant basis for award, the two-step negotiation procedures described in § 3-805.2 of this title regarding price negotiation will be followed to avoid unnecessary repetition and loss of credibility through the improper use of best and final offers.

(c) *Action.* Contract negotiations will be conducted in accordance with the following:

(1) Technical discussions are intended to ensure that the provisions of the solicitation are clearly understood by offerors and that the government evaluators fully understand the proposals and their strengths and weaknesses in order to adequately discriminate for purposes of source selection. Accordingly, those aspects of proposals which are unclear, improperly substantiated or fail to meet the requirements of the solicitation must be discussed with offerors. All offerors selected for discussions must be afforded adequate opportunity to meet the requirements of the solicitation. However, the strengths, weaknesses, or overall evaluation of any offeror's proposal with respect to the other proposals must not be divulged either directly or indirectly. The conduct of discussions must avoid leveling proposals to the point where the technical discrimination necessary for source selection is destroyed and cost, however, weighted, assumes disproportionate importance. This requires the exercise of sound judgment based upon such factors as the degree of effective competition and the selection criteria given the solicitation.

(2) During the conduct of price negotiations, the need for realism should continually be stressed to offerors. The solicitation criteria and the evaluation of cost proposals should emphasize realism and the proper substantiation of proposed costs. This can be accomplished best by comparison with independent government cost estimates. Offerors must be afforded the opportunity, following discussions, to submit revisions to their proposals. However, to ensure the realism of initial proposals and to avoid the need for successive rounds of best and final offers, offerors should continually be advised that changes to initial proposals made in adjusted offers will be evaluated against the realism criteria and appropriate justification in terms of the discussions and negotiations which have transpired. Under no circumstances will a best and final offer be solicited for purposes of driving offerors to an unreasonably low price or for the sole purpose of attempting to lower an otherwise reasonable price.

(3) The planning and conduct of source selections and negotiations must stress the need for the necessary security to ensure that cost proposals and/or the standings of offerors with respect to cost are not divulged to any person beyond those whose duties require that knowledge. The proper control of negotiations and the achievement of realistic initial cost proposals require that unauthorized disclosures be precluded.

§ 737.3-807-53 [Amended]

33. In § 737.3-807-53, second through fifth lines, the words "data on DD Form 1107 (Change Order Price Analysis) or DD Form 784 (Cost Analysis for Contract Price Redetermination)," are changed to "data on DD Form 633-5 (Contract Pricing Proposal (Change Orders)) or DD Form 633-6 (Contract Pricing Proposed (Price Redetermination))."

34. Part 737 is amended by deleting the following sections:

- § 737.3-1000 [Deleted]
- § 737.3-1000-1 [Deleted]
- § 737.3-1004 [Deleted]
- § 737.3-1005 [Deleted]
- § 737.3-1006 [Deleted]
- § 737.3-1007 [Deleted]
- § 737.3-1008 [Deleted]
- § 737.3-1050 [Deleted]
- § 737.3-1051 [Deleted]
- § 737.3-1100 [Deleted]
- § 737.3-1100-1 [Deleted]
- § 737.3-1100-2 [Deleted]

35. Section 737.6-103-2 is revised as follows:

§ 737.6-103-2 Nonavailability in the United States.

(a) Each request for approval to purchase a foreign end product as provided in § 6-103.2(d)(4) shall be submitted to the Chief of Material (MAT 02) in the form of a determination. The determination shall include:

- (1) A reference to the Buy American Act (41 U.S.C. 10a-d);
- (2) Identification of the contracting activity;
- (3) Identification of contractor;
- (4) Description of item being procured;
- (5) The unit and quantity;
- (6) The unit price and estimated delivery cost of the foreign end product;
- (7) The unit price and estimated delivery cost of the unavailable domestic end product;
- (8) A brief statement indicating the earliest practicable date the domestic end item can be made available, if not immediately available to meet requirements;
- (9) Location of project (for construction only);
- (10) A brief statement establishing the necessity for the procurement and indicating considerations which have been given to the feasibility of foregoing the requirement;
- (11) A statement establishing the non-availability of any similar or substitute domestic end items, indicating both the required characteristics available only in the foreign end item and the deficiencies of the domestic items; and
- (12) A statement describing the relationship of the requirement to the production of any item on the Master Urgency Planning List.

§ 737.6-103-5 [Amended]

36. In § 737.6-103-5, after line 52, (Group/Class No. 39), add

"4010----- Chain and Wire Rope,"

in lines 106 through 109, delete the following:

"7440----- Automatic Data Processing Systems: Industrial, Scientific, and Office Types";

and add the following:

"70----- General Purpose Automatic Data Processing Equipment."

37. Section 737.6-203-1 is revised as follows:

§ 737.6-203-1 Nonavailability in the United States.

Each request for approval to purchase a nondomestic construction material on the basis of "nonavailability" as provided in § 18-508.1(b)(1) of this title shall be submitted to the Chief of Material (MAT 02) in the manner, and subject to the requirements, prescribed in § 737.6-103-2.

38. Part 737 is amended by adding § 737.6-203-2, after § 737.6-203-1, which provides as follows:

§ 737.6-203-2 Evaluation of bids and proposals.

(a) Proposed awards requiring a determination in accordance with § 18-508.1 and § 18-508.2 of this title shall be submitted to the Chief of Naval Material (MAT 02) and shall contain the following information:

- (1) Description of the materials, including unit and quantity;
- (2) Estimated costs;
- (3) Location of the construction project;
- (4) Name and address of the proposed contractor; and
- (5) Detailed justification of the impracticability of using domestic materials.

§§ 737.6-204 and 737.6-204-3 [Deleted]

39. Part 737 is amended by deleting §§ 737.6-204 and 737.6-204-3.

40. Part 737 is amended by adding § 737.6-706, after § 737.6-705-3, which provides as follows:

§ 737.6-706 Determination of contractor responsibility for the purpose of Foreign Military Sales (FMS) contracts.

(a) *Background.* Under the Foreign Military Sales Act, the United States may enter into contracts for the procurement of defense articles or defense services for sale to friendly foreign countries. In awarding contracts for FMS requirements, the United States, as in satisfying its own requirements, must assure itself that the contractor is responsible and has the wherewithal to meet its contractual commitment. There may be serious diplomatic and military consequences when a contractor fails to per-

form an FMS contract in accordance with its terms. In view of the importance of the timely delivery of a quality FMS item, within cost, the cognizant contracting officer must, in making a determination of responsibility under § 1-904 of this title, have every assurance that the contractor will in fact perform as he promises.

(b) *Action.* (1) Under § 1-903.3 of this title, special standards of responsibility may be developed when necessary to ensure adequate contract performance. The use of such standards, as may be appropriate, is encouraged with respect to FMS contracts. Any special criteria shall be set forth in the solicitation. In addition, the solicitation shall inform the offerors that due to the nature of the procurement all doubts as to responsibility shall be resolved against the offeror.

(2) When a Foreign Military Sales (FMS) contract requires that a product be obtained from a particular firm, the Navy procuring activities shall advise the foreign government of any contractor deficiencies that may adversely affect contract performance. In such event, a recommendation shall be made either to forego the requirement or provide a qualified United States contractor substitute.

41. Part 737 is amended by adding § 737.7-104-1, after § 737.7-104, which provides as follows:

§ 737.7-104-1 Equitable adjustments covering material and energy-related shortages.

(a) *Discussion.* The current material and energy-related shortage conditions introduce additional risk factors and contingencies into on-going current procurement negotiations. In order to eliminate or substantially reduce certain of these contingencies which are near-term in nature and which can be specifically identified as to type prior to contract award (or prior to definitization of contract prices), it will be necessary and prudent to provide protection covering such specific near-term contingency(s) in lieu of accepting contingencies in contract pricing therefor.

(b) *Policy.* The clause as prescribed in paragraph (c) of this section may be used in Navy fixed-price-type contracts (including both FFP and FPI). The contractor's certificate as to contract price contingencies shall be made part of the contract file. Use of the clause is also encouraged in contracts with small business concerns.

(c) *Clause.*

EQUITABLE ADJUSTMENT CLAUSE

(MATERIAL AND ENERGY-RELATED SHORTAGES)

a. The prices agreed to under this contract contain no provision for the certain specific contingencies specified in subparagraph b. below. The contractor represents that these contingent items represent near-term financial exposures under this contract for which provision was requested in contract prices negotiated under this contract. In lieu of such provision, the Contracting officer agrees that, in the event the specific contingencies

outlined in subparagraph b. below occur, the prices under this contract will be equitably adjusted.

b. The following specific contingencies are identified:

c. The contractor shall notify the Contracting Officer within thirty (30) days of the occurrence of the above contingencies. Such notice shall include (i) the Contractor's proposal for equitable adjustment in the contract prices and (ii) support data, demonstrating the actual occurrence of the identified contingencies in such form as the Contracting Officer may require.

d. The aggregate of the increases in the contract prices made under this clause shall not exceed \$-----.

e. The price equitable adjustment shall not include material handling charges, overhead, general and administrative expenses, and profit.

42. Part 737 is amended by adding §§ 737.7-303 and 737.7-303-1 after § 737.7-300, and they provide as follows:

§ 737.7-303 Clauses to be used when applicable.

§ 737.7-303-1 Equitable adjustments covering material and energy-related shortages.

See § 737.7-104-1.

43. Part 737 is amended by adding §§ 737.7-601 and 737.7-601-1, after § 737.7-600, which provide as follows:

§ 737.7-601 Clauses to be used when applicable.

§ 737.7-601-1 Equitable adjustments covering material and energy-related shortages.

See § 737.7-104-1.

§ 737.7-602 [Amended]

44. The section heading in § 737.7-602 is changed from "Clause to be used when applicable" to "Civil Works," and after the fourth line and before the fifth the following is added:

CIVIL WORKS

DELEGATION TO NAVAL FACILITIES
ENGINEERING COMMAND

45. Part 737 is amended by adding §§ 737.7-607 and 737.7-607-1 before § 737.7-800, which provides as follows:

§ 737.7-607 Clause to be used when applicable.

§ 737.7-607-1 Equitable adjustments covering material and energy-related shortages.

See § 737.7-104-1.

§ 737.7-802-5 [Amended]

46. In § 737.7-802-5, lines six and seven, the words "contracts § 3-405" are changed to "contracts § 3-405 and other types of contracts § 3-406."

47. Part 737 is amended by adding §§ 737.7-803 and 737.7-803-1 after § 737.7-802-5.

§ 737.7-803 Clause to be used when applicable.

§ 737.7-803-1 Equitable adjustments covering material and energy-related shortages.

See § 737.7-104-1.

§ 737.10-301-50 [Amended]

48. In paragraph (b) of § 737.10-301-50, in lines 17 and 28, the term "(MAT 0212H)" is changed to "(MAT 024N)."

49. Section 737.10-351 is revised as follows:

§ 737.10-351 Authority of the Insurance Examiner, Procurement and Production Management Division, Headquarters Naval Material Command.

(a) The Insurance Examiner (MAT 024N) shall formulate insurance, bonding and indemnification policies and procedures for application in Department of the Navy procurements and shall supervise their execution pursuant to such administrative instruction as may be issued by the Chief of Naval Material. The Insurance Examiner is designated as the duly authorized representative of the Chief of Naval Material for the performance of the functions described in paragraph (c) below.

(b) The Insurance Examiner is available to procurement activities to provide guidance on insurance, bonding and indemnification matters. His telephone number is 202-692-8657/8/9 (commercial) or 222-8657/8/9 (autovon).

(c) The Chief of Naval Material or his duly authorized representative, is authorized to act by direction of the Secretary of the Navy, or as the duly authorized representative of the Head of a Procuring Activity, the contracting officer, or any other naval official designated in such a contract:

(1) To require or approve insurance whenever a contract provides that a contractor shall procure such insurance as may be required or approved by the Department, by the Secretary of the Navy, the Head of a Procuring Activity, the contracting officer, or by any other official of the Department;

(2) To execute, sign or endorse in the name of and by direction of the Secretary of the Navy any and all (i) lost policy releases; (ii) proofs of loss; (iii) subrogation agreements; (iv) endorsements of policies for claims and/or return premiums; (v) payment orders; and (vi) insurance drafts made payable to the Secretary of the Navy and not affecting the obligating of appropriations; and

(3) To advise and recommend to the Secretary of the Navy or other authorized interested officials of the Navy Department regarding

(i) Insurance drafts affecting the obligating or appropriations; and

(ii) Assignment to assume payment of premiums found to be due after the completion of a contract.

§§ 737.10-501-50 and 737.10-552 [Amended]

50. The term "(MAT 0212H)" is changed to "(MAT 024N)" at the following places. § 737.10-501-50, lines 12-13; § 737.10-552, paragraph (a), line nine, paragraph (b), lines 12 and 25, and paragraph (e), lines three and four; § 737.10-700-1, paragraph (b), line

three; and § 737.10-702, lines nine and ten.

51. Paragraph (a) (2) of § 737.16-812-51 is amended by adding the following after line three:

4. In the event the contractor obtains or receives any refund or rebate of, or credit for, taxes paid to the State of California or any political subdivision thereof, in connection with the performance of this contract, and for which the contractor was paid or reimbursed by the Government, the contractor agrees to pay over to the Government an amount equal to such refund or credit (including interest paid or credited to the contractor incident to such refund or credit to the extent that such interest was earned after the contractor was paid or reimbursed by the Government for such taxes). In the event the contractor receives any benefit in lieu of or in addition to such a refund or credit, the contractor agrees to pay over to the Government an amount equal to such benefit.

52. Paragraphs (a) (1) and (2) of § 737.17-208-1 are revised as follows:

§ 737.17-208-1 Investigations.

(a) * * *

(1) Obtain a formal advisory audit report from the cognizant Defense Contract Audit Agency (DCAA) Office;

(2) Clearly identify with audit request the areas which should be verified and any specific accounting information needed; a copy of the pertinent financial or cost data submitted by the contractor should accompany the request; and

53. Section 737.17-203-3 is revised as follows:

§ 737.17-203-3 Cases referred to the Navy Contract Adjustment Board.

Procuring activities shall provide the Navy Contract Adjustment Board with six (6) copies of any case referred to the Board for decision under the provisions of Public Law 85-804. In addition, one (1) copy shall be forwarded directly to the Director of Contract Financing (NCD-4), Office of the Comptroller General.

§ 737.17-208-5 [Amended]

54. In paragraph (b) (3) of § 737.17-208-5, line three, the numbers "(i), (ii), and (iii)" are changed to "(1), (2), and (3)," and in line five, the word "subparagraph (b)" is changed to "paragraph (a)".

§ 737.10-702-4 [Amended]

55. Section 737.20-702-4 is amended by adding a paragraph (c), which provide as follows:

§ 737.20-702-4 Project manager or procuring activity.

(c) The guidance in paragraphs (a) and (b) of this section is also applicable for use as appropriate with non-Navy CAO's.

56. Section 737.20-702-5 is revised as follows:

§ 737.20-702-5 Monitoring contractor's costs.

(a) *Introduction.* The complexities of weapons systems procurement require a high degree of competence in contract management. The objective is to assure that the items purchased by the Government are delivered on schedule for fair and reasonable prices. Because of the cost and technical risks involved, the administration of weapons systems contracts usually require more knowledge and surveillance of a contractor's operation than would be required under less critical contracts. In order to insure the most efficient and economical performance of major contracts, Naval Plant Representatives (NAVPROs) and Supervisors of Shipbuilding, Conversion and Repair (SUPSHIPS) will monitor contractor direct and indirect costs related to Government business.

(b) *Responsibility for cost monitoring.* Within each NAVPRO and SUPSHIP administering contracts with contractors who are not CWAS qualified (§ 3-10 of this title), and who are expected to have sales to the Government in excess of \$25,000,000 during the next 12 months on other than firm fixed-price and fixed-price with escalation contracts an individual or organizational element shall be designated as "cost monitor." The cost monitor shall be responsible to the Head of the NAVPRO/SUPSHIP for:

(1) Preparing and maintaining an annual consolidated written plan and schedule for performing reviews of contractor operations from the coordinated long range plans established by each of the team members (see paragraph (c) of this section). The purpose of this composite plan and schedule is to assure that the cost monitoring responsibilities summarized in § 737.1-406-50 are being fully implemented, and that the technical and professional expertise of the various organizational units of the NAVPRO/SUPSHIP and the Defense Contract Audit Agency (DCAA) auditor are used without duplication of effort or skills;

(2) Coordinating the performance of the cost monitoring efforts of the NAVPRO/SUPSHIP;

(3) Coordinating the cost monitoring efforts of the NAVPRO/SUPSHIP with those of the DCAA auditor;

(4) Advising the Head of the NAVPRO/SUPSHIP of situations where the contractor should correct conditions, policies, or practices which are not considered the most economical and efficient for the performance of government contracts, and recommending corrective action, including issuance of formal written notices to the contractor advising of specific costs that will not be allowed if incurred;

(5) Coordinating NAVPRO/SUPSHIP actions to assure that the procuring contracting officer, project manager, the head of a procuring activity, DCAA, and other responsible officials are informed of relevant matters significantly affecting the most economical and effective performance of government contracts;

(6) Coordinating actions to assist NAVPRO/SUPSHIP, DCAA, and other government personnel in obtaining access to pertinent contractor policies, procedures, and related financial data, and obtaining the assistance of the Head of the NAVPRO/SUPSHIP when such access is being denied or impaired;

(7) Maintaining an inventory of NAVPRO/SUPSHIP, DCAA, and other government reports on significant issues relating to monitoring costs;

(8) Continuously monitoring the status of recommendations made to the contractor concerning cost performance; and

(9) Maintaining current organizational charts of the contractor's operations compatible with the contractor's budgetary system.

The plan required by paragraph (b) (1) above must be tailored to the contractor, taking into account the extent of competition in awarded contracts, the contractor's operating methods, the nature of work being done, procurement cycle stage, business and industry practices, types of contracts involved, degree of technical and financial risk, ratio of government/commercial work and extent that performance efficiencies have been previously demonstrated. The plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at a stage early enough to enable preventive action to be taken. Reviews required by ASPR and the contracting officer must be included in the plan.

(c) *Contractor operations review.*—

(1) *Selecting operations for review.* It is not possible to review all elements of a contractor's entire operation each year. Therefore, the next best alternative is to select for review those operations that have the greatest potential for charging government contracts with significant amounts of unacceptable costs such as those resulting from inefficient and uneconomical operations. To select these cost-risk areas on a sound and orderly basis, it is first necessary that an overview be obtained of the contractor's entire operation. Prior to the beginning of each government fiscal year, the NAVPRO/SUPSHIP cost monitor should arrange for a joint meeting between NAVPRO/SUPSHIP personnel, the DCAA auditor and other directly interested government representatives to coordinate selection of the areas to be subject to the review during the coming year. Documentation and other data to be obtained for use in the selection process will include:

(i) Contractor's total budget package broken down by functions for the coming year and latest survey of the budgetary system. (DCAA auditor responsibility.)

(ii) Detailed organizational charts for the contractor's entire operation. (NAVPRO/SUPSHIP responsibility.)

(iii) An outline of the contractor's accounting system to understand the flow of costs by function. (DCAA auditor responsibility.)

(iv) The extent of government participation in the dollars attributable to the operations and cost accounts under consideration. (DCAA auditor responsibility.)

(v) A complete list of recent reviews and audits performed by the NAVPRO/SUPSHIP, the DCAA auditor, and other government representatives that would impact upon the selection of areas to be reviewed in the current year. This listing should show outstanding weaknesses and deficiencies in the contractor's operations. (NAVPRO/SUPSHIP responsibility.)

(vi) Evidence of under and overstaffing. (NAVPRO/SUPSHIP—DCAA auditor responsibility.)

(vii) Significant departures from established productivity standards. (NAVPRO/SUPSHIP responsibility.)

(viii) Major financial variances from budgets in prior years. (DCAA auditor responsibility.)

(ix) Evidences of idle or underused capacity. (NAVPRO/SUPSHIP DCAA auditor responsibility.)

(2) *Planning for reviews.* The purpose of the meeting described in paragraph (c) (1) of this section is to consider all of the data identified and develop a mutually acceptable annual plan for reviews of the contractor's operation. The plan shall provide coverage for each significant operational area of the contractor over a period of 2-3 years and shall be modified during subsequent meetings as necessary to reflect current conditions. The schedule and resource limitations of the participating organizations will be considered during preparation of the annual plan. The plan will identify the organizations having the primary responsibilities for performing the review, i.e.; the NAVPRO/SUPSHIP, DCAA, or jointly by NAVPRO/SUPSHIP and DCAA. When appropriate, the participating organizational units of the NAVPRO/SUPSHIP shall also be identified in the plan:

(i) Reviews of contractor operations involving minimal or no financial and accounting considerations will be performed by the NAVPRO/SUPSHIP and the NAVPRO/SUPSHIP will sign reports on these reviews.

(ii) Accounting and financial reviews of contractors' operations involving minimal or no technical considerations will be performed by the DCAA auditor, and the auditor will sign reports on these reviews.

(iii) Other reviews involving significant technical and financial/accounting aspects will be performed jointly by the NAVPRO/SUPSHIP and DCAA and the reports on these reviews will be signed by the heads of the respective organizations.

Some operations reviews such as the purchasing and estimating system reviews are assigned to the responsible reviewing organization by ASPR. These assignments will continue to be recognized. All others will be performed in accordance with the above criteria. The plan shall be formally approved by both the head of

the NAVPRO/SUPSHIP and the head of the local DCAA Resident Office.

(d) *Joint reviews.*—(1) *Objective.* The objectives of Joint NAVPRO/SUPSHIP DCAA auditor reviews of contractor operations are:

(i) To optimize the utilization of DCAA NAVPRO/SUPSHIP personnel in the performance of selected operations reviews; and

(ii) To generate joint reports of the reviews that contain findings, conclusions, and recommendations mutually agreed upon by the DCAA auditor and the NAVPRO/SUPSHIP to improve the effectiveness and economy of contractor operations.

(2) *DCAA auditor responsibility.* Organizationally, the DCAA is separate from, and independent of purchase and contract administration offices. DCAA auditors are professionals trained in accounting, auditing, and financial matters. DCAA functions and relationships are set forth in §§ 737.1-407 and 737.1-408. Briefly, DCAA audit offices are responsible for performing all necessary contract audit for DoD and providing accounting and financial advisory services regarding contracts and subcontracts to all DoD components responsible for procurement and contract administration. Section 3-801.5 of this title. Responsibility of Field Pricing Support Personnel, provides that the auditor is responsible for submission of information and advice based on his analysis of the contractor's books and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs. It also states that the auditor is responsible for performing that part of reviews and cost analysis which requires access to the contractor's books and financial records supporting proposed costs or pricing costs or pricing data regardless of the dollar amount involved. Finally, it provides that only the auditor shall have general access to the contractor's financial books and records for this purpose. The NAVPRO/SUPSHIP will utilize the auditor's services whenever such expertise is needed; particularly in regard to the contractor's financial management reports, books, and records. The auditor will be responsible for reviewing the financial and accounting aspects of the contractors' budgetary system.

(3) *Differences.* The finding, conclusions, and recommendations resulting from joint reviews shall be mutually agreed upon by the NAVPRO or SUPSHIP and the Resident Auditor. In those instances where Navy and DCAA field personnel are unable to resolve, among themselves, differences of opinion on significant joint report findings, conclusions, and recommendations, report copies with pertinent explanation shall be forwarded simultaneously to NAVMAT and DCAA Headquarters, via channels, for advice.

(4) *Exit conference with contractor.* During the course of the review there may be several information briefings with contractor management personnel

to exchange information. Every opportunity should be afforded each party, to either update the information provided or to conduct additional reviews to preclude misconception that could develop as a result of obtaining incomplete or inaccurate data. An exit conference with contractor management personnel provides the opportunity to explain NAVPRO/SUPSHIP and DCAA findings, conclusions, and recommendations.

(5) *Reports on joint reviews.* Reports on joint reviews of contractor's operations shall be prepared for submission to the contractor by the DCAA auditor and the NAVPRO or SUPSHIP and signed by the heads of both offices. Joint review reports shall be submitted to the contractor by an accompanying transmittal letter signed by the Head of the NAVPRO/SUPSHIP. To the maximum practical extent, the report will be prepared in the following format:

Cover page.

Table of contents.

Summary (see (A) below).

Background of operational area reviewed.

Purpose of review.

Scope of review.

Summary evaluation.

Statement of conditions and recommendations (see (B) below).

Status of corrective action taken regarding prior recommendations (see (C) below).

Concluding remarks (see (D)).

Exhibits and schedules (see (E) below).

(a) *Summary—(i) Background of operational area reviewed.* The background paragraph should provide information regarding the area under review. It should indicate the overall significance of the area and a statement where appropriate, and any other background data which may impact the review, such as recent contractor reorganizations in the area being reviewed, major changes in operating procedures, major changes in volume or mix of business, major contract awards or terminations affecting the area, observations or disclosures from other reviews, and other similar background data as appropriate.

(ii) *Purpose of review.* The purpose paragraph will clearly identify the particular area reviewed, the purpose, and the period reviewed. This paragraph will also include the following restriction on report release: "This report may not be released to any Federal agency outside the Department of Defense without prior approval of the signatories except where an agency requests the report in connection with the negotiation or administration of a contract by the agency."

(iii) *Scope of review.* The scope paragraph should normally include a standard phrase such as the following: "The financial aspects of this joint review were performed in accordance with generally accepted auditing standards and included such tests of accounting records and other auditing procedures as were considered necessary in the circumstances. In addition, the scope of the technical review should also be stated. Where pertinent, the paragraph may also identify any relevant contractor records, documents, policies, and procedures examined, and special techniques used such as: statistical sampling, regression analysis, ration delay, etc. Any factors which restricted the scope of the review should also be clearly stated.

(iv) *Summary evaluation.* One of the principal objectives of the report is to adequately expose any significant adverse conditions found during the review to insure that necessary corrective action is taken. Accordingly, the summary evaluation should include a brief, pointed statement on the overall results of the evaluation. Specific favorable internal controls or contractor procedures should be recognized but particular emphasis should be placed on those conditions where improvement is needed. This paragraph should also include a brief summary of the effect (dollar or other) of the conditions and their underlying causes. The summary conclusions should relate to and be consistent to have, at the same time, a long list of significant deficiencies and an overall favorable conclusion. The summary evaluation should be presented in clear, concise, and specific terms so that the reader will not have to make arbitrary, possibly erroneous, deductions or assumptions, about the conclusions.

(B) *Statement of conditions and recommendations.* A comprehensive statement of conditions and recommendations for corrective action is required for each deficiency or weakness found and should be presented as follows:

TITLE OF SUBJECT/AREA TO BE DISCUSSED

(1) *Statement of condition.* The conditions found during the review should be clearly described. Specific examples of adverse conditions should be included. The scope of the examination and the result of any tests made should be described in sufficiently precise terms. Time periods of the tests should be highlighted if deficiencies are more prevalent during certain time frames. The criteria that the receiver used as a basis for comparison with the actual condition should be described sufficiently to permit the reader to grasp the significance of finding. The cause or the underlying reasons for the conditions should be explained as specifically as possible.

(ii) *Cost impact.* The effect of the adverse conditions on government contracts in terms of dollar amounts should be shown whenever possible. It is recognized that there may be times when dollar impacts are not discernible. When actual dollar amounts are not available, the reasons for such unavailability should be explained, and reasonable estimates should be used wherever possible. In brief, the report should indicate clearly and specifically what the reviewer considers the effect to be in the circumstances.

(iii) *Recommendations addressed to the contractor.* The recommendations should be a natural and logical fallout of the preceding paragraphs. Recommendations should be constructive in nature and as definitive as the situation warrants. The reviewer need not solve all procedural or functional problems but should indicate at least the framework for resolving the deficiency. It may be appropriate in certain complex situations to recommend that the contractor, with its resources, undertake a study directed toward remedying the deficiency.

(iv) *Contractor's reaction.* The contractor's reaction, as obtained during interim discussions or the exit conference (d) (4), should be noted as well as whether the contractor has agreed to undertake appropriate corrective measures. If the contractor is not prepared to furnish authoritative comments on the review findings at the time of the exit conference, it is considered appropriate to furnish a preliminary draft copy of the report to the contractor in order for him to fully understand the findings and recommendations. A reasonable timeframe (usually 2 weeks to 30 days) should be established for the contractor's reply. Reports should not be

held beyond the agreed-to deadline for receipt of the contractor's reaction.

(v) *Reviewer's rejoinder.* Any factual matters raised by the contractor's comments or reply should be included in the statement of condition. The extent to which the contractor concurs with the findings and recommendations and the contractor's proposed action should also be discussed.

(c) *Status of corrective action taken on prior recommendations.* This paragraph should show the status of corrective action taken by the contractor on recommendations made in prior reports on the same functional area. The paragraph should include a determination by the reviewer as to whether the corrective action taken is adequate. If corrective action is inadequate or has not been taken, the recommendation should be restated or a reference made to the updated discussion of the matter in the present report.

(d) *Concluding remarks.* This paragraph should be used to suggest specific time periods for corrective action on any report recommendations or other comments as appropriate. The report should be signed at the end of the narrative section of the report by both the Head of the NAVPRO/SUPSHIP and the head of the local DCAA Resident Office.

(e) *Exhibits and schedules.* Reports should contain any exhibits and supporting schedules necessary for adequate support of the review findings and a clear understanding of the recommendations. The contractor's operating and financial statements and pertinent excerpts from the contractor's policies and procedures may be included as exhibits in those circumstances where they will contribute to an understanding of the report.

(f) *Reports issued by NAVPROS or SUPSHIPS.* Reports issued solely by the NAVPRO/SUPSHIP will be prepared generally in accordance with paragraph (d) (5) above except when regulations provide otherwise.

(g) *Recommendations to Government activities.* NAVPRO/SUPSHIP findings resulting in recommendations to named government activities will be the subject of a separate report signed by the Head of the NAVPRO/SUPSHIP and forwarded through channels to the activities addressed in the recommendation.

57. Part 737 is amended adding §§ 737.20-702-7 and 737.20-702-8, after § 737.20-702-6, which provide as follows:

§ 737.20-702-7 Review of contractor's ADP (Automatic Data Processing) operations.

(a) *NAVPRO/SUPSHIP responsibility.* Each NAVPRO (Naval Plant Representative Office) and SUPSHIP (Supervisor of Shipbuilding, Conversion and Repair) administering contracts with contractors expected to have sales to the Government in excess of \$5,000,000 during the next 12 months on other than firm fixed-price and fixed-price with escalation contracts shall review the contractor's ADP operations periodically to assure that they are effective and economical. This review should be combined with a review required by § 3-1100.2 of this title and shall include a review of the end products of contractor's ADP equipment, and the data that might be produced by such equipment. The plan and schedule for the review must be tailored to the contractor concerned, taking into account the requirements of § 3-1100 of this title, the extent of competition in contracts being performed, the contractor's operating methods, the nature of the work being done, procurement cycle

states, types of contracts involved, degree of technical and financial risk, ration of Government/commercial work, and extent that performance efficiencies have been previously demonstrated. The plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at a stage early enough to enable preventive action to be taken. Review teams shall be headed by a representative of the NAVPRO/SUPSHIP and shall include as necessary one or more ADPE specialists provided by the Systems Command, one or more DCAA auditors, and appropriate NAVPRO/SUPSHIP personnel.

(b) *NAVAIR/NAVSEA responsibility.* The Commander, Naval Air Systems Command (NAVAIR) and the Commander, Naval Sea Systems Command (NAVSEA) shall provide necessary technical assistance to NAVPROS and/or SUPSHIPS managed by them, to conduct the reviews required by paragraph (a) of this section as well as the review required by § 3-1100.2 of this title applicable to contractor acquisition of ADPE. NAVAIR or NAVSEA shall also provide necessary technical assistance required by § 3-1100.2(c) of this title to Defense Contract Administration Services activities cognizant of contractors having a preponderance of Navy unexpended contract dollars. The selection of NAVAIR or NAVSEA to provide this service will be determined on the basis of preponderance of unexpended NAVAIR or NAVSEA contract dollars in contracts held by the contractor.

§ 737.20-802-8 Responsibilities of NAVPROs and SUPSHIPS for deobligation of unexpended dollar balances considered excess to known contractor requirements.

(a) *Responsibility.* NAVPROs (Naval Plant Representative Office) and SUPSHIPS (Supervisors of Shipbuilding, Conversion and Repair) shall monitor contract funding in order to determine when excess funds are available for deobligation.

(b) *Procedures.* (1) Contractually required reports, including Contract Funds Status Report (DD Form 1556) and the report required by the Limitation of Cost clauses, shall be examined to determine if there are excess contract funds. Also, when work under a contract or contract line item is physically completed, or has lapsed, a review shall be made to determine if there are any excess funds.

(2) When the determination has been made that unexpended dollar balances are excess to known contract requirements, the NAVPRO/SUPSHIP shall obtain a statement from the contractor as to the exact amount available for deobligation.

(3) When authorized by § 737.26-102 or the purchasing office (see § 1-406(c) (lviii) of this title) the NAVPRO/SUPSHIP will execute a bilateral contract modification releasing excess funds. Otherwise the NAVPRO/SUPSHIP shall provide a report of excess funds to the purchasing office, which may either mod-

ify the contract or authorize the NAVPRO/SUPSHIP to do so.

(4) In preparing modifications deobligating funds under contracts involving multiple accounting classifications, NAVPRO/SUPSHIPS may find it necessary to obtain a record of Navy payments by accounting classifications in order to determine which accounting classifications to credit. This information is available on a specific request basis from the AAA (Authorized Accounting Activity), which can be identified by the six digit code in the accounting classification and reference to the index of these codes in the NAV COMPT Manual, Volume II, Chapter 5.

(5) Should a deobligation by a NAVPRO/SUPSHIP be later determined to have been excessive, the NAVPRO/SUPSHIP shall obtain the required funds from or through the purchasing office and modify the contract accordingly.

§ 737.20-706-50 [Deleted]

58. Part 737 is amended by deleting § 737.20-706-50 in its entirety.

§ 737.20-706-52 [Amended]

59. In paragraph (a) of § 737.20-706-52, line six under "Disbursing office" chart, the words "NRFC Pearl Harbor, Hawaii" are changed to "NFO Pearl Harbor, Hawaii."

60. Paragraph (c) (2) (ii) of § 737.20-706-52 is revised as follows: "The ordering activity will designate NRFC Washington as the paying office for all other deliveries. Contracts for into-plane deliveries will designate payment by Defense Supply Agency Administrative Support Center, DCASC-MF, Cameron Station, Alexandria, VA 22314."

61. In paragraph (e) of § 737.20-706-52, line six, the words "NRFC Brooklyn" are changed to "NRFC Norfolk."

62. In paragraph (g) of § 737.20-706-52, lines two, three, and four, the following sentence is deleted: "Invoices for into-plane deliveries under contracts will be forwarded directly to NRFC Washington."

63. Part 737 is amended by adding the following sections: § 737.21-101-1; § 737.21-102, § 737.21-102-1, § 737.21-102-2, § 737.21-102-3, § 737.21-102-4, § 737.21-103, § 737.21-103-1, and § 737.21-501, which provide as follows:

§ 737.21-102 Preparation of reports of undefinitized change orders.

§ 737.21-102-1 General.

The backlog of undefinitized changes and unpriced orders constitutes a blank check to contractors and is a contingent liability against the government. In order to maintain the integrity of the basic contract agreement, as well as to minimize government risk, timely definitization is required. Reports of Undefinitized Change Orders and Unpriced Orders are designed to provide the Chief of Naval Material with a dollar and action profile of each of the systems commands in summary form. However, Heads of Procuring Activities are expected to have information from the activities reporting to them in much greater

depth than the summary reports so they can readily furnish the Chief of Naval Material pertinent details in such areas as backlogs in individual activities, their goals for reducing the backlogs, reasons for fluctuations, pricing/definitization progress for outstanding actions and other data of similar import, should the need arise.

§ 737.21-102-2 Head of procuring activity action.

(a) *Reporting responsibility.* Heads of Procuring Activities, with the exception of the U.S. Marine Corps which submits reports directly to ASD (I&L), shall prepare and forward consolidated reports on Unpriced Change Orders and Unpriced Order backlogs for Department of the Navy purchasing office and contract administration offices under their cognizance. The Commander, Naval Supply Systems Command will report on the Navy Inventory Control Points and other activities of the Navy Field Procurement System. Only those procurement actions estimated to exceed \$10,000 are to be reported.

(b) *Treatment of procurement actions for which DCAS, U.S. Air Force and others have responsibility for executing priced supplemental agreements.* These procurement actions will be included in the Report of Unpriced Change Orders; they will be excluded from the Unpriced Order Report.

(c) *Reporting procedures and submission schedules.* Report shall cover the periods ending June 30, September 30, December 31, and March 31, respectively. They shall be submitted to the Chief of Naval Material (MAT 0214) within 20 calendar days after the end of each reporting period.

(d) *Report format.* Quarterly reports shall be submitted on Exhibit A which is contained in § 737.21-102-3. When Exhibit A is reproduced, the notes may be deleted.

(e) *Report control symbol.* RCS DD-I&L(Q)1119(5200) applies.

§ 737.21-102-3 Preparation of reports of Unpriced Change Order, DD-I&L(Q)1119(5200) Format A.

(a) *Definition—Unpriced change order.* For the purpose of this report, an Unpriced Change Order is any of the following modification for which a final equitable adjustment in contract price or cost remains to be negotiated:

(1) Change Orders § 1-201.1 of this title issued pursuant to the Changes clause, or to other clauses of the contract invoking the Changes clause procedures;

(2) Supplemental Agreements used in preference to a change order when the authority to accomplish the modification is the Changes clause; or

(3) Other Supplemental Agreements used to reflect other agreements of the parties modifying the terms of the contract.

(4) *Exceptions.* Changes and other modifications to letter contracts; contract modifications for provisioned and other items; Orders under Basic Ordering Agreements (BOA's); and Job Or-

ders under Master Contracts for the Repair and Alteration of Vessels. None of these will be reported as Unpriced Change Orders.

(b) *Applicability and coverage.* Quarterly reports of Unpriced Change Orders shall be prepared for all unpriced change orders over \$10,000 issued by each Department of the Navy purchasing and contract administration office, and by DCAS, U.S. Air Force or U.S. Army administration office acting on behalf of Navy purchasing offices.

(c) *Dollar values reported.* The dollar value of an Unpriced Change Order is the amount obligated, or deobligated.

(d) *Aging.* The age of an Unpriced Change Order is calculated from the first of the month following the month the order was issued by the contracting office. Example: Order issued April 10; aging begins May 1.

§ 737.21-102-4 Preparation of report of Unpriced Orders, DD-I&L(Q)1119(5200).

(a) *Definition—Unpriced order.* For the purpose of this report, an Unpriced Order is any of the following procurement actions in which the provisioning or other terms of the contract or agreement authorize the contracting officer/

ordering activity to place orders for which firm prices will be negotiated at a subsequent date:

(1) Orders under Basic Ordering Agreement (BOA's)

(2) Job Orders under Master Contracts for the Repair and Alteration of Vessels; or

(3) Contract modifications requiring the contractor to furnish such items as spare parts, support equipment, technical manuals, supplies, repairs, services, etc.

(4) *Exceptions.* No letter contracts, or modifications under letter contracts, shall be included in the Report of Unpriced Orders.

(b) *Applicability and coverage.* Quarterly Reports of Unpriced Orders shall be prepared on each action over \$10,000 and summarized for Navy purchasing and contract administration offices. Actions under the cognizance of DCAS, U.S. Air Force or U.S. Army administration offices shall be excluded from this report.

(c) *Dollar values reported.* Paragraph (c) of § 737.21-102-3 applies.

(d) *Aging.* Paragraph (d) of § 737.21-102-3 applies.

(e) *Format for report of unpriced change orders and unpriced orders for the period ending.*

EXHIBIT A

REPORT OF UNPRICED CHANGE ORDERS AND UNPRICED ORDERS FOR THE PERIOD ENDING

(SYSCOM)

RCS DD-I&L(Q)1119(5200)

*UNPRICED CHANGE ORDERS	(1) ON HAND BEGINNING OF PERIOD		(2) ISSUED DURING PERIOD		(3) ON HAND END OF PERIOD		(4) LESS THAN SIX MONTHS		(5) SIX MONTHS TO TWELVE MONTHS		(6) MORE THAN TWELVE MONTHS	
	ACTIONS	DOLLARS	ACTIONS	DOLLARS	ACTIONS	DOLLARS	ACTIONS	DOLLARS	ACTIONS	DOLLARS	ACTIONS	DOLLARS
N SUPSHIPS (SEA use only)												
A NAVPROS (AIR & SEA use only)												
V HDOSYSCOM 02 (AIR, SEA & ELEX use only)												
Y TOTAL (For use of all SYSCOMS)												
DCAS												
AIR FORCE												
ARMY												
TOTAL												
**UNPRICED ORDERS												
N SUPSHIPS (SEA use only)												
A NAVPROS (AIR & SEA use only)												
V HDOSYSCOM 02 (AIR, SEA & ELEX use only)												
Y TOTAL (For use of all SYSCOMS)												

*Based on Existing Report on Unpriced Change Orders; Notes may be deleted when form is reproduced.

(a) Balance agreement in column (1), On Hand Beginning of Period, in this report shall agree with those appearing in column (3), On Hand End of Period, for the previous period.

(b) The sum of actions and dollars in columns (1) and (2) shall not be less than the actions and dollar total in column (3).

(c) The sum of actions and dollars in columns (4), (5) and (6) shall equal the actions and dollar total in column (3).

(d) The dollar value of unpriced change orders shall be the amount obligated.

(e) Exceptions noted in NPD 21-102.3(d)(iv) shall not be included in this report.

(f) All dollar values shall be treated as additions, whether they are increases or decreases, e.g.:

Order No. 1 plus	\$100
Order No. 2 minus	50
Order No. 3 plus	50
Total	\$500

****Notes on Existing Report on Unpriced Orders**

Notes (a) through (e) for reporting unpriced Change Orders likewise apply to Unpriced Orders, except that the NPD reference in Note (a) of NPD 21-102.3(d)(iv).

§ 737.21-103 Preparation of letter contract report.

§ 737.21-103-1 Reporting letter contract status.

(a) A Quarterly Letter Contract Report shall be submitted to the Chief of Naval Material (MAT 0214) not later

than the 10th working day after the end of the quarter. The Commander, Naval Supply System Command will report on the Navy Inventory Control Points and other activities of the Navy Field Procurement System. The report consists of three parts:

(1) Part 1, NAVMAT Form 4330/2

(Rev. 5-66), is the basic report listing all outstanding letter contracts and those that have been definitized during the reporting quarter. Preparation requires that appropriate information be shown in columns 1 through 10 for each letter contract. The dollar value of a letter contract shall include all modifications. Such modifications shall be treated as additions to the initial award and shall not be reported as separate line item entries on NAVMAT Form 4330/2. Data appearing in columns 1, 2, 3, and 6 shall remain the same for the life of the letter contract; information in columns 4, 5, 7, 8, and 9 shall be updated, when appropriate. Column 10 shall not be filled until the definitive contract has been signed by both parties. Once the definitization date has been entered in column 10, the item shall no longer be reported. Letter contracts that have been definitized during the quarter should appear last on the report. NAVMAT Form 4330/2 need be submitted in original only.

(2) Part 2, NAVMAT Form 4330/3 (9-68), serves the dual purpose of reporting current status of definitization of letter contracts aged 6 months or more and stating what has transpired in the past affecting definitization progress. In the space entitled "Detailed Reasons Why Contract Has Not Been Definitized," the explanation should be given in chronological form so that there is a clear outline of sequential actions. In the space entitled "Present Status," a one-line statement of status as of the end of the reporting quarter will be sufficient. NAVMAT Form 4330/3 need be submitted in original only.

(3) Part 3, NAVMAT Form 4330/27 (2-70), is a one-time report that shall be submitted on each newly awarded letter contract the first time the award is listed on NAVMAT Form 4330/2. The report is required in an original only, except where clearance must be obtained from the Chief of Naval Material (MAT 022). In such instances, the original of NAVMAT Form 4330/27 shall be furnished MAT 022 and a copy shall be included in the quarterly report to MAT 0214. The negotiation authority for the letter contract shall be indicated in parenthesis in Part II of this Form near the right-hand margin on the line provided for the Letter Contract Number. Also, on awards of \$1 million or more, the SYSCOM 02 or his designated

representative shall state briefly on the reverse of NAVMAT Form 4330/27 (2-70) the reason for determining that a letter contract was the proper contractual instrument for the procurement.

(b) NAVMAT Forms 4330/2 (Rev. 5-66), 4330/3 (9-68), and 4330/27 (2-70) are available through the Navy Supply System as "Cog-1" items.

(c) Report Control Symbol DD-I&L (Q)1119 applies.

§ 737.21-501 Miscellaneous procurement reports.

(a) *Purpose.* This Part 737 prescribes recurring reports covering contractual actions to fulfill statutory and managerial data requirements, and are not based on the reporting requirements of § 21 of this title.

(b) *Reports required.* The following annual reports will be submitted to the Assistant Secretary of Defense (Comptroller), Attn: Directorate for Information Operations. A copy of each annual report shall be provided to the Director of Banking and Contract Financing (NCD-4), Office of the Navy Comptroller.

(1) *Extraordinary contractual actions to facilitate the National Defense (PL 85-804)* will be submitted in duplicate within forty-five (45) days after the close of each calendar year in accordance with specific instructions and format provided in paragraph (e) of this section.

(2) *Grants for basic scientific research and transfer of title to Government equipment (PL 85-934)* will be submitted in duplicate within sixty (60) days after the close of each calendar year in accordance with specific instructions and format provided in paragraph (e) of this section.

(c) *Responsibilities for submission.*

(1) The Chief of Naval Material is responsible for submitting the annual report required in paragraph (b) (1) of this section.

(2) The Chief of Naval Research is responsible for submitting the annual report required in paragraph (b) (2) of this section.

(d) *Feeder reports.* Navy procuring activities shall prepare feeder reports of contractual actions occurring during the calendar year in the format prescribed in paragraph (e) of this section and shall submit them to the Chief of Naval Material (MAT 02) or Chief of Naval Research (ONR 600), as appropriate.

(e) *Instructions for preparation and formats.* (1) See Exhibits A and B for reports under Pub. L. 85-804.

(2) See Exhibits C and D for reports under Pub. L. 85-934.

(f) *Reports symbols.* (1) Report Control Symbol DD-I&L(a) 597 applies to the report required in paragraph (b) (1) of this section.

(2) Report Control Symbol DD-I&L (A) 598 applies to the report required in paragraph (b) (2) of this section.

(g) *Instructions and forms for preparing reports.*

EXHIBIT A—INSTRUCTIONS FOR PREPARING REPORT ON EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE (PUBLIC LAW 85-804)

1. A summary of all actions approved or denied under PL 85-804 as implemented by Section XVII of the Armed Services Procurement Regulation (ASPR) will be prepared in accordance with Exhibit B. Source data for the summary will be obtained from Final Records of Request for Adjustment supported by Memoranda of Decision (ASPR, Section XVII, Parts 2 and 4) and Memoranda of Approval covering the exercise of residual powers (ASPR, Section XVII, Part 3).

2. *Column a.* Data will be shown separately for actions involving a specific dollar cost (lines 1a through 1f) and those not involving such cost (lines 2a through 2f). The titles for types of actions shown in lines 1a, b, and c are mandatory. Titles shown for other lines are illustrative only and may be modified as desired. An example of a contingent liability is a contract containing an indemnity clause insuring the contractors from loss due to radiation hazards.

3. *Columns b, c, and d.* These columns will be used to report data for actions which are approved in whole or in part.

4. *Columns e and f.* These columns will be used to report data for action which are denied in their entirety.

5. *Approved actions for more than \$50,000.* To comply with the statutory reporting requirement, additional information is needed on approved actions of more than \$50,000. Each contingent liability or advance payment approved under authority of PL 85-804 will be considered to be in excess of \$50,000 for reporting purposes. For actions of more than \$50,000, one copy of each Final Record of Request for Adjustment supported by a copy of the Memorandum of Decision, and each Memorandum of Approval will be submitted with the summary report. Each Final Record and Memorandum of Approval will be annotated to indicate the line number of the summary on which the action is reported.

EXHIBIT B

Extraordinary Contractual Actions To Facilitate The National Defense (PL 85-804)		Department		Period From To	
Type of Action (a)	Actions Approved			Actions Denied	
	No. (b)	Amount Claimed or Requested (c)	Amount Approved (d)	No. (e)	Amount Claimed or Requested (f)
1. Actions Involving Specific Dollar Cost	XXX	XXXXXXXXXX	XXXXXXXXXX	XXX	XXXXXXXXXX
a. Amendments Without Consideration					
b. Correction of Mistakes					
c. Formalization of Informal Commitments					
d. (Other-Specify by type)					
e.					
f.					
2. Actions Not Involving Specific Dollar Cost	XXX	XXXXXXXXXX	XXXXXXXXXX	XXX	XXXXXXXXXX
a. Amendments Without Consideration		XXXXXXXXXX	XXXXXXXXXX		XXXXXXXXXX
b. Contingent Liabilities		XXXXXXXXXX	XXXXXXXXXX		XXXXXXXXXX
c. Advance Payments		XXXXXXXXXX	XXXXXXXXXX		XXXXXXXXXX
d. (Other-Specify by Type)		XXXXXXXXXX	XXXXXXXXXX		XXXXXXXXXX
e.		XXXXXXXXXX	XXXXXXXXXX		XXXXXXXXXX
f.		XXXXXXXXXX	XXXXXXXXXX		XXXXXXXXXX
Remarks					

EXHIBIT C—INSTRUCTIONS FOR PREPARING REPORT ON GRANTS FOR BASIC SCIENTIFIC RESEARCH AND TRANSFER OF TITLE TO GOVERNMENT EQUIPMENT (PUBLIC LAW 85-934)

1. Data will be reported in accordance with Exhibit D for each nonprofit education institution and each other non-profit institution to which (1) a grant was given during the report period for the conduct of basic scientific research, or (2) title to government equipment was vested or transferred either by grant or by contract. Definitions, policy, and administrative responsibilities are specified in Department of Defense Directive 3210.2.

2. Institutions will be listed in alphabetical order in column (a) of the format. The

number and value of grants will be entered in columns (b) and (c) and will be based on fully approved grant documents. No entry will be made in these columns where only contracts are involved. A total of the number and value of such grants will be shown at the end of the list.

3. If the grant document provides for vesting of title to equipment in the grantee agency, the estimated cost of such equipment will be entered in column (d); otherwise this column will be left blank.

4. If title to equipment is transferred by contract, as provided in ASPR, Section IV, Paragraph 116, the acquisition cost will be entered in column (e). Contractual transfers of equipment with a value of less than \$1,000 per item will be totalled and reported as footnote 2.

EXHIBIT D

Department _____
 Grants for Basic Scientific Research
 and
 Transfer of Title to Government Equipment
 (Public Law 85-934)

January-December _____

Name and Location of Institution (a)	Grants Approved		Title to Equipment Transferred by	
	Number (b)	Value in Dollars (c)	Grant ¹ (d)	Contract ² (e)
1. ABC Institute Akron, Ohio	1	\$50,000	\$1,000	-
2. LMN College Jersey City, N.J.	-	-	-	\$2,500
3. STV University Los Angeles, Cal.	2	38,500	-	-
4. XYZ Hospital Battle Creek, Mich.	1	10,000	500	1,500
Total	4	\$98,500	\$1,500	\$4,000

¹Included in total of Column (c).

²Value of Transfers of Equipment with a Value of Less Than \$1,000. \$ _____

63. Part 737 is amended by adding § 737.22-102, after "Subpart V—Service Contracts" and before § 737.22-200, which provides as follows:

§ 737.22-102 Procurement of nonpersonal services.

(a) *Scope.* This part applies to the procurement of all services where the determination required by the contracting officer, as set forth in § 22-102.4(a) of this title, is required and the procurement action will exceed \$10,000.

(b) *Policy.* As provided in § 22-102.1 (b) of this title, contracts for nonpersonal services, when properly issued and administered, represent an approved resource in the accomplishment of Navy programs. There are no firm rules for characterizing particular services as "personal" or "nonpersonal." However, the criteria set forth in § 22-102 of this title, for recognizing that a contract may be written so as to satisfy the requirements of a "nonpersonal" services contract, but may be administered, after ward, in such a way as to make it "personal" services. For instance, this can occur when a greater amount of supervision and control is exercised over the contractor or his employees than originally set forth in the statement of work. This must be avoided, and the potential for such misuse shall be considered when

making the nonpersonal services determination.

(c) *Review and approval.* All determinations of nonpersonal services within the scope of paragraph (a) of this section shall be reviewed by counsel and approved at a level higher than the contracting officer prior to the issuance of the solicitation. This review and approval procedure applies to determinations in support of new procurement, the proposed exercise of an option, placement of orders under task type contracts or BOA's, and to proposed modifications which are simply funding actions or of a strictly administrative nature. The review and approval of proposed exercise of options, etc., shall focus on whether the determination of nonpersonal services incident to the execution of the original contract is still current and valid for the new effort. With respect to annually recurring service contracts in support of base operations (i.e., repair, maintenance, and overhaul of base equipment, movement and storage of household goods, janitorial services, mess attendant services, base transportation services, etc.), follow-on annual review and approval will not be mandatory, provided, (1) There has been an initial review and approval at a level higher than the contracting officer, (2) the contracting officer makes the determination required

by § 22-102.4 of this title, and (3) the contractual requirements, terms and conditions are essentially unchanged. All doubtful cases will be referred to counsel in accordance with § 22-102.4 of this title.

(d) *Documentation.* The determination of nonpersonal services by the contracting officer shall at a minimum, contain: (1) A copy of the proposed work assignment,

(2) The determination required by § 22-102.4(a) (1) of this title, which shall fully address the criteria set forth in § 22-102.2 of this title, and

(3) If it is proposed to procure the requirement on a sole source basis, a complete justification establishing the impracticability of obtaining competition. This justification shall discuss the extent to which in-house capabilities are available and why they cannot be utilized, and shall also consider the potential for follow-on or added effort and whether or not such effort shall also be sole source.

§ 737.24-205-7 [Amended]

64. The section number of § 737.24-205-7 is changed from "§ 727.24-205-7" to "§ 737.24-205-7."

65. In § 737.24-205-7 the number "\$2,500" is changed to "\$10,000" at paragraph (a) (1), line one, and paragraph (a) (2), line three.

§ 737.26-101 [Amended]

66. In paragraph (b) § 737.26-101, lines 31 and 32, are changed from "only rarely should more time be required for complete definitization. It may be" to "only rarely should more time be required for complete definitization. When time in excess of 60 days is allowed for submission of price quotations, the 180 day period shall be adjusted accordingly (see § 4-303.3 of this title). It may be"

§ 737.26-102 [Amended]

67. Paragraph (c) of § 737.26-102 is deleted.

68. Paragraph (d) of § 737.26-102 is revised as follows:

§ 737.26-102 Execution of a contract modification releasing excess funds.

(d) *Procedures.* (1) The Administrative Contracting Officer shall, subject to limitations prescribed in paragraph (b) of the section, execute a bilateral contract modification reducing the dollar balance of the contract when it is determined that excess funds are available for deobligation. (See § 737.20-702-8.)

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 General (Civil Law).

DECEMBER 10, 1976.

[FR Doc.76-37341 Filed 12-20-76;8:45 am]