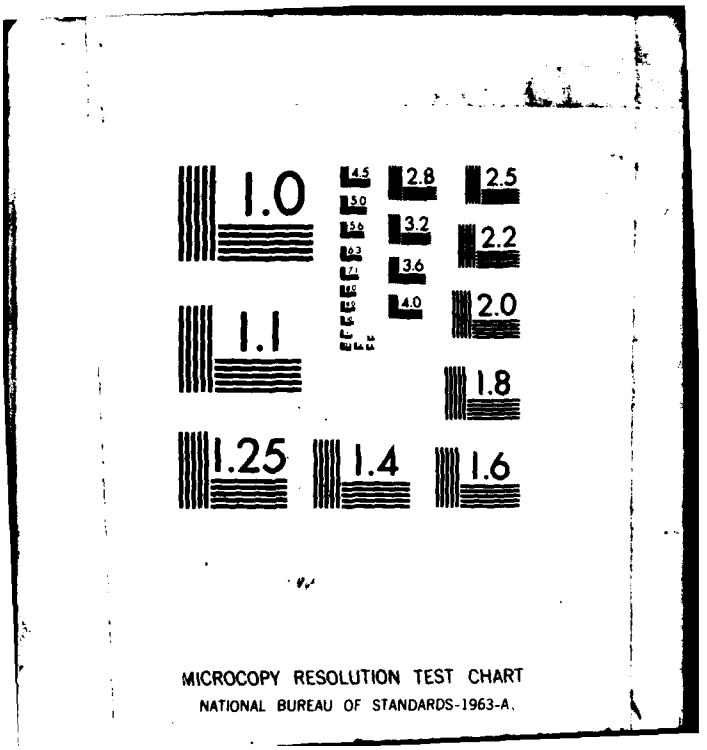
AD-A111 908 NATIONAL ARCHIVES AND RECORDS SERVICE WASHINGTON DC O--ETC F/G 5/4
CODE OF FEDERAL REGULATIONS 32. PARTS 1000 TO END.(U)
JUL 81

UNCLASSIFIED

NL




1.0
1.1
1.25
1.4
1.6
1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0
4.5
5.0
5.6
6.3
7.1
MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A.

AD A111908

code of federal regulations

30

National Defense

32

PART 1000 TO END

Revised as of July 1, 1981

DTIC
ELECTE
MAR 11 1982
S D
H

DISTRIBUTION STATEMENT A
Approved for public release;
Distribution Unlimited



82 03 11 050

(30)

code of federal regulations

National Defense

32

PARTS 1000 TO END

Revised as of July 1, 1981

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF JULY 1, 1981

With Ancillaries

Published by
the Office of the Federal Register
National Archives and Records Service
General Services Administration

as a Special Edition of
the Federal Register

DTIC
ELECTE
MAR 1 1 1982
D
H

Table of Contents

	Page
Explanation	v
Title 32:	
Subtitle A—Department of Defense (Continued):	
Chapter VII—Department of the Air Force (Continued)	5
Subtitle B—Other Regulations Relating to National Defense:	
Chapter XII—Defense Logistics Agency	49
Chapter XIV—The Renegotiation Board [Note]	221
Chapter XVI—Selective Service System	223
Chapter XIX—Central Intelligence Agency	281
Chapter XX—Information Security Oversight Offic	299
Chapter XXI—National Security Council	317
Chapter XXIV—Office of Science and Technology Policy	333
Chapter XXVII—Office for Micronesian Status Negotiations	347
Chapter XXVIII—Office of the Vice President of the United States	355
Finding Aids:	
Table of CFR Titles and Chapters	369
Alphabetical List of Agencies Appearing in the CFR	383
List of CFR Sections Affected	391

Cite this Code **CFR**

thus: **32 CFR 1001.101**

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16 ..... as of January 1
Title 17 through Title 27 ..... as of April 1
Title 28 through Title 41 ..... as of July 1
Title 42 through Title 50 ..... as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, July 1, 1981), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised semiannually as of January 1 and July 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 1, 1981.

THIS TITLE

Title 32—NATIONAL DEFENSE is composed of eight volumes. The parts in these volumes are arranged in the following order: Parts 1-39 (Volumes I, II and III), Parts 40-399, Parts 400-699, Parts 700-799, Parts 800-999, and Part 1000 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 1981.

The Armed Services Procurement Regulations (ASPR) comprise the first 3 volumes of Title 32. For the ASPRs the Code of Federal Regulations numbering system has been waived, for an explanation see the Explanation pages in Parts 1-39, Volumes I, II and III. A subject index for all the ASPRs appears in Volume III.

The current regulations issued by the Department of the Army appear in the volume containing Parts 400-699; those issued by the Department of the Navy appear in the volume containing Parts 700-799, and those issued by the Department of the Air Force appear in the two volumes containing Parts 800 to end.

For this volume, Gary J. Bruegging was Chief Editor. The Code of Federal Regulations publication program is under the editorial direction of Martha B. Girard, assisted by Robert E. Jordan.

Accession For
NTIS GRA&I ☑
DTIC TAB ☐
Unannounced ☐
Justification
$ GPO
$ 6.00
Distribution/
Availability Codes
Dist | Avail and/or Special
A 24

DTIC COPY INSPECTED 2



New Publication

List of CFR Sections Affected
(1964 through 1972)

A Research Guide

These two volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1964 through 1972. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 through 27) $14.00
Volume II (Titles 28 through 50) $13.00

ORDER FORM Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.
☐☐☐☐☐☐–☐

Order No._____

VISA MasterCard

Credit Card Orders Only
Total charges $_____ Fill in the boxes below.
Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
Expiration Date Month/Year ☐☐☐☐

Please send me___copies of the CODE OF FEDERAL REGULATIONS
Volume I $14.00 Stock No. 022-003-94233-5
Volume II $13.00 Stock No. 022-003-94234-3

Name—First, Last
Street address
Company name or additional address line
City State ZIP Code
(or Country)

PLEASE PRINT OR TYPE

For Office Use Only

Quantity	Charges
_____ Enclosed	
_____ To be mailed	
_____ Subscriptions	
Postage	
Foreign handling	
MMOB	
OPNR	
_____ UPNS	
_____ Discount	
_____ Refund	



would you like to know

if any changes have been made in these regulations since the revision date of this book without reading the FEDERAL REGISTER every day? If so, you **may wish to subscribe to the LSA (List of CFR Sections Affected.).**

LSA (List of CFR Sections Affected)

$10.00
per year

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register, and is issued monthly in cumulative form. Entries indicate the nature of the changes.

Also available on a subscription basis . . .

Federal Register Index $8.00
per year

Indexes covering the contents of the daily Federal Register are issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers: FR Indexes and the LSA (List of CFR Sections Affected) will continue to be mailed free of charge to regular FR subscribers.

Mail order form to:
Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

There is enclosed $_____ for _____ subscription(s) to the publications checked below:

..... **LSA (LIST OF CFR SECTIONS AFFECTED) ($10.00 a year domestic; $12.50 foreign)**

..... **FEDERAL REGISTER INDEX ($8.00 a year domestic; $10.00 foreign)**

Name_____

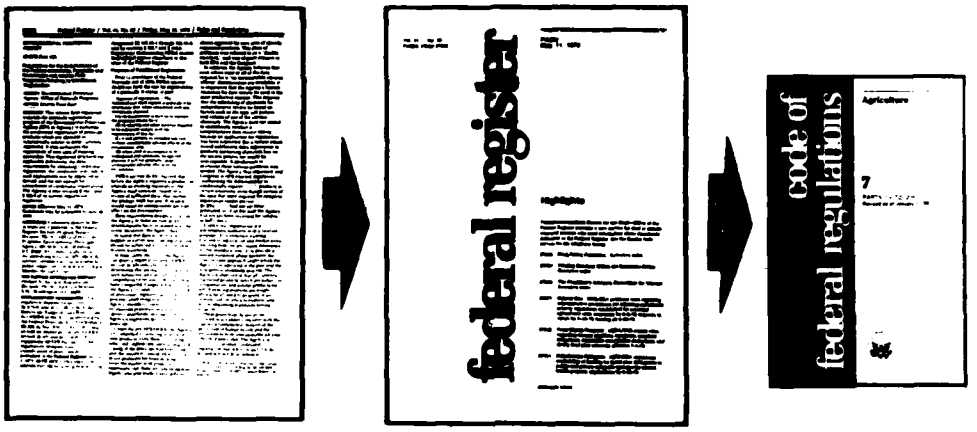
Street Address_____

City_____ State_____ ZIP_____

Make check payable to the Superintendent of Documents

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register**, published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps people up to date on the Federal regulations currently in effect.

The **Federal Register** contains many reader's aids—Highlights, Grant Information, list of hearings and Sunshine meetings—which simplify the user's job.

The **Code of Federal Regulations** (CFR) contains the annual codification of the final regulations printed in the **Federal Register**. Each of the 50 titles is updated annually.

Subscription Prices:

Federal Register
One year: $75 domestic; $145 foreign
Six months: $45 domestic; $90 foreign

Code of Federal Regulations
One year: $525 domestic; $656.25 foreign
Single volumes: Individually priced.

ORDER FORM Mail To Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No. _____

VISA

Credit Card Orders Only

Total charges $ _____ Fill in the boxes below

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month / Year ☐☐☐☐

Please send me . . . . . **Federal Register:** $75 per year domestic; $145 foreign
$45 per six-month domestic; $90 foreign

. . . . . **Code of Federal Regulations:** $525 per year domestic; $656.25 foreign

Name—First, Last

Company name or additional address line

Street address

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

FOR OFFICE USE ONLY	
Quantity	Charges
Enclosed	
To be mailed	
Subscriptions	
Postage	
Foreign handling	
MMOB	
OPNR	
UPNS	
Discount	
Refund	

Title 32—National Defense

(Parts 1000 to End)

SUBTITLE A—DEPARTMENT OF DEFENSE (Continued):

	Part
CHAPTER VII—Department of the Air Force (Continued)	1001

SUBTITLE B—OTHER REGULATIONS RELATING TO NATIONAL DEFENSE:

CHAPTER XII—Defense Logistics Agency	1201
CHAPTER XIV—The Renegotiation Board [Note]	
CHAPTER XVI—Selective Service System	1602
CHAPTER XIX—Central Intelligence Agency	1900
CHAPTER XX—Information Security Oversight Office	2001
CHAPTER XXI—National Security Council	2101
CHAPTER XXIV—Office of Science and Technology Policy	2400
CHAPTER XXVII—Office for Micronesian Status Negotiations	2700
CHAPTER XXVIII—Office of the Vice President of the United States	2800

Subtitle A—Department of Defense—(Continued)

CHAPTER VII—DEPARTMENT OF THE AIR FORCE—(Continued)

SUBCHAPTER W—AIR FORCE PROCUREMENT

Part		*Page*
1000	[Reserved]	
1001	General provisions	6
1003	Procurement by negotiation	18
1006	Foreign purchases	19
1007	Contract clauses	21
1008	Funding contract overruns	31
1009	Patents, data and copyrights	32
1011	Taxes	33
1012	Labor	38
1013	Government property	39
1016	Procurement forms	40
1017	Extraordinary contractual actions to facilitate the national defense	42
1018	Procurement of construction and contracting for architect-engineer services	43
1030	Appendixes to Headquarters U.S. Air Force Armed Services procurement regulations supplement	44
1031-1199	[Reserved]	

PRECEDING PAGE BLANK-NOT FILMED

SUBCHAPTER W—AIR FORCE PROCUREMENT

PART 1000—[RESERVED]

PART 1001—GENERAL PROVISIONS

Subpart A—Introduction

Sec.
1001.101 Purpose of subchapter.

Subpart B—[Reserved]

Subpart C—General Policy

1001.320 Industrial security.

Subpart D—Procurement Responsibility and Authority

1001.401 Responsibility of each procuring activity.
1001.402 Authority of contracting officers.
1001.403 Requirements to be met before entering into contracts.
1001.405-1 Selection.
1001.405-2 Appointment.
1001.405-50 Distribution of designation and termination of appointment instruments.
1001.405-51 Representatives of contracting officers.
1001.405-52 Organization placement and other duties of contracting officers.
1001.450 Secretary.
1001.451 Delegations of authority.
1001.452 General procurement authority.
1001.453 Designation of heads of procuring activities.
1001.454 Contracts for public utility services extending beyond current fiscal year but not exceeding 10 years.
1001.455 Procurement support in urgency areas or situations.
1001.456 Extraordinary actions to facilitate the national defense.

Subparts E–F—[Reserved]

Subpart G—Small Business Concerns

1001.706 Set asides.
1001.706-1 General.

Subpart H—[Reserved]

Subpart I—Responsible Prospective Contractors

1001.905-50 Air Force Contractor Experience List.

Subpart J—[Reserved]

Subpart K—Qualified Products

Sec.
1001.1108 Waiver of qualification requirement.

AUTHORITY: 10 U.S.C. Ch. 137 and 10 U.S.C. 8012.

SOURCE: 35 FR 4846, Mar. 20, 1970, unless otherwise noted.

Subpart A—Introduction

§ 1001.101 Purpose of subchapter.

Air Force ASPR Supplement is issued by order of the Secretary of the Air Force and supersedes the Air Force Procurement Instruction (AFPI) previously contained in this subchapter. Its purpose is to supplement Subchapter A, Chapter I of this title and other Department of Defense publications pursuant to § 1.108 of this title, to establish for the Department of the Air Force uniform policies and procedures relating to the procurement of supplies and services. It is emphasized that ASPR (Armed Services Procurement Regulation, Subchapter A, Chapter I of this title) is the primary Department of Defense regulation containing procurement policies and procedures, and is the first regulatory source to which procurement personnel should make reference.

[35 FR 4846, Mar. 20, 1970, as amended at 36 FR 13991, July 29, 1971]

Subpart B—[Reserved]

Subpart C—General Policy

§ 1001.320 Industrial security.

NOTIFICATION OF GOVERNMENT SECURITY ACTIVITY

Thirty days prior to the date of (5) below the contractor shall notify the Director Security Police shown in the distribution block of the DD Form 254, Contract Security Classification Specification, as to:

(1) The name, address, and telephone number of this contract company's repre-

sentative in the United States or overseas area, as appropriate.

(2) The contract number, and military contracting command.

(3) The highest classification category of defense information to which contractor employees will have access,

(4) The AF installations in the United States (in overseas areas identify only the APO number(s)) where the contract work will be performed,

(5) The date contractor operations will begin on-base in the United States or in the overseas area, and

(6) The estimated completion date of operations on-base in the United States or in the overseas area,

(7) Any changes to information previously provided under this clause.

[36 FR 8258, May 1, 1971, as amended at 37 FR 12626, June 27, 1972]

Subpart D—Procurement Responsibility and Authority

§ 1001.401 Responsibility of each procuring activity.

Procurement authorities of major commands, not designated "Head of a Procuring Activity," are as outlined in §§ 1001.450 through 1001.455 of this subchapter.

§ 1001.402 Authority of contracting officers.

(a) Only the following purchases may be made by individuals other than duly designated contracting officers.

(1) Imprest fund purchases made according to § 3.607 of this title.

(2) Purchases of fuel, oil, repairs, etc., made according to AFR 67-24 (USAF Invoice—AF Form 15 and Invoice Envelope—AF Form 15A) and AFM 77-1 (Joint Procedures for Management of Administrative Use of Motor Vehicles).

(3) Emergency purchases of medical supplies and equipment made according to paragraph 12, chapter 16, volume V, AFM 67-1 (USAF Supply Manual), followed by issuing a confirmatory purchase order by the base procurement office or a cash purchase receipt by a cash purchasing officer.

(b) The responsibility of contracting officers relative to sale contracts is set forth in chapter 11, volume VI, AFM 67-1.

§ 1001.403 Requirements to be met before entering into contracts.

Except that emergency procurements in combat areas or areas subject to hostile fire or immediately upon entry into DEFCON 2, will be accomplished in the manner prescribed by the commander of the combat theater or by the commander of the major command responsible for logistic support of AF units involved.

§ 1001.405–1 Selection.

In addition to the requirements in Subchapter A, Chapter I of this title, contracting officer appointments will be limited to Commissioned Officers and NCOs (Grades E-6, E-7, E-8, and E-9) who have been awarded AFSC 6516, 6534, 65170, or 65190; or fully qualified civilians who occupy a manning authorization listed under these AFSCs. Limited contracting officers' appointments may be made for the following categories of personnel:

(a) Commissioned officers who have more than 1 year procurement experience, with authority limited to blanket purchase agreements, delivery orders, purchase orders, and modifications thereto.

(b) NCOs in Grade E-5 who have completed the AAR 65170 course or equivalent OJT, with authority limited to blanket purchase agreements, delivery orders, purchase orders, and modifications thereto.

(c) Transportation and commissary personnel with authority limited to performance of procurement functions as authorized by this Subchapter. Normally, appointments will be limited to commissioned officers, civilians in Grade GS-9 and above and NCOs (E-8 and E-9) who have a minimum of 2 years of traffic management or commissary experience.

(d) Redistribution and Marketing (R&M) personnel in overseas commands with authority limited to the execution of sales contracts. Appointments will be limited to personnel who have been awarded AFSC 6416, 6424, or 6534; or fully qualified citizens who occupy a manning authorization listed under one of these AFSC's. Applicants must have a minimum of 3 years R&M experience.

[35 FR 15211, Sept. 30, 1970]

§ 1001.405-2 Appointment.

(a) (1) The commander or deputy commander of a base, division, wing, etc., and, in the case of AFLC activities, the Director of Procurement and Production (or other comparable official) will review and sign the request for designation of a contracting officer. In the case of AFSC activities the request for designation of a contracting officer will be reviewed and signed by the Director or Chief of procurement and Production (or equivalent); however, if this individual is the designating authority, the request will be reviewed and signed by the Officer (or civilian) immediately subordinate to him. Chief of the USAFE procurement centers will sign such requests for officers serving within the USAFE procurement centers. The request will include:

(i) A resume of his qualifications by the applicant.

(ii) A statement by the person signing the request that the qualifications contained in the resume were verified against the applicant's personnel file.

(iii) If the designee is not an employee of the requesting activity and his qualifications are known, a statement that the designee is qualified.

(iv) If the designee is not an employee of the requesting activity and his qualifications are not known, a summary of an interview of the designee by the chief or deputy chief of the procurement activity. The summary will include a statement that the designee is qualified. If the designee is located at a distance which makes it impractical and uneconomical to conduct an interview, this requirement will be waived. Justification for not having an interview will be included. However, the statement that the designee is qualified must still be made.

(2) Requests for designation of R&M personnel as Sales Contracting Officer will be signed by the Chief of the R&M activity and forwarded to the major command R&M staff office. Requests for designation of the Chief of an R&M activity shall be initiated by the major command R&M officer or his deputy.

(3) Request for designation of a representative of a contracting officer will be the same as indicated in this paragraph (a), except that:

(i) Unless it is impractical, the contracting officer desiring a representative will initiate the request, sign the statements, and conduct the interview instead of the chief or deputy chief of the procurement activity.

(ii) If the contracting officer takes the action in paragraph (a)(3)(i) of this section, the chief or deputy chief of the procurement activity will review the request prior to transmittal.

(iii) The approval of the designee's commander will be obtained when the designee is not under the jurisdiction of the designating authority.

(4) Requests for designation will be sent through channels to the appropriate designating authority. Requests for designation of personnel as contracting officer, who do not meet the full criteria in § 1001.405-1, together with the following additional information, may be submitted by the appropriate designating authority to Hq USAF (AFSPPLC), for review and approval.

(i) Complete justification of the proposed appointment.

(ii) Action taken to preclude recurrence of a situation where other than qualified personnel are recommended for appointment as a contracting officer.

(iii) A list of persons in the same office who are qualified for appointment, their present duties, and whether they are not appointed contracting officer.

(5) Designations and termination of representatives of contracting officers will be in letter form.

(b) Appointments will be reviewed at least annually by the appointing authority. Files will be updated and the appointing authority will determine whether contracting officers have maintained professional proficiency and otherwise remained qualified. Appointments will be terminated or reduced in scope if warranted.

[35 FR 15212, Sept. 30, 1970]

§ 1001.405–50 Distribution of designation and termination of appointment instruments.

Each designating authority will promptly distribute copies of instruments of designation and termination as follows:

(a) *Designation of contracting officers.* (1) Original to the individual designated.

(2) One true copy to the individual designated (to be furnished by that individual to the accounting and finance officer if requested by the latter).

(3) In the case of military personnel, one true copy to the activity having custody of the military field personnel records for permanent retention in the individual's personnel file.

(b) *Termination of contracting officer.* Distribution as provided in paragraph (a) of this section, except, paragraph (a)(2) of this section.

(c) *Designation of representatives.* (1) Original to the individual designated.

(2) One true copy to the contracting officer whom the representative serves.

(d) *Termination of representatives.* Distribution as provided in paragraph (c) of this section.

§ 1001.405–51 Representatives of contracting officers.

(a) The appointment of representatives of contracting officers will not be made unless it is determined that the duties of the individual cannot be performed by: (1) Appointment as a limited contracting officer, or (2) designation of a government agency or position in the contractual document as authorized by paragraph (c) of this section.

(b) The designating authority may designate an officer, warrant officer, civilian, or noncommissioned officer to act as representative of a contracting officer or his duly designated successor. The written designation will contain specific instructions as to the extent to which the representatives may take action for the contracting officer but will not contain authority to sign contractual documents.

(c) A Government agency or position (by title but not an individual by name) may be designated in the contractual document to perform specific functions under the contract. Such functions may include inspection, approval of shop drawings, testing, approval of samples, scheduling and signing work orders or equipment orders, determining number of hours for a job, and other functions of a technical nature not involving a change to the scope, price, terms, or conditions of the basic contract or order. The responsibilities and limitations of the agency or position will be set forth in the contract or in a separate letter. If a letter is used a copy will be furnished the contractor. The contracting officer will monitor the actions of the designated agency or position to insure that they do not exceed assigned functions. The functions assigned will not violate policies (e.g., base procurement centralization policy) which reserve certain actions or authorities to contracting officers or which require approval prior to placing the authority or procedure in effect.

(d) A person assigned to and performing his primary duty within a procurement office, and who is under the supervision of a contracting officer, does not require designation as a representative nor designation in a contractual document to perform his assigned duties. Such a person is considered to be an employee of the contracting officer, acting in his behalf and as such has the inherent authority to perform acts as assigned by the contracting officer. The contracting officer cannot authorize his employees to sign any contractual document or letter where the signature of a contracting officer is required.

§ 1001.405–52 Organization placement and other duties of contracting officers.

(a) Commanders and others having administrative supervision over contracting officers will bear in mind that acts exceeding the delegated powers of the contracting officer do not bind the government and will refrain from directing contracting officers to take action which might expose the contracting officer to serious consequences. The office of the contracting officer should be placed, in the local

organization at a level which will protect it from intraorganizational pressure which might lead the contracting officer to perform improper acts exposing him to personal risk and the Air Force to criticism.

(b) Except as provided in this subpart contracting officers will neither act as, nor perform the duties of, a contracting officer with respect to any contractual instrument obligating only nonappropriated funds. Contracting officers may act in an advisory capacity with respect to such instruments. Contracting officers are authorized to enter into and execute contracts funded, either partially or completely, with nonappropriated funds for construction work and architect engineer (A&E) services.

(c) Contracting officers will not be assigned additional duties which will interfere with their procurement duties.

§ 1001.450 Secretary.

The Secretary establishes policies for, and directs and supervises, the Department's activities with respect to procurement and related matters. The General Counsel, as his legal advisor, is the final authority on all legal questions relating thereto. By delegation of authority from the Secretary, policies established by him are implemented and other appropriate instructions are issued to lower echelons by the Deputy Chief of Staff, Systems and Logistics, USAF, and the Director of Procurement Policy.

§ 1001.451 Delegations of authority.

Certain specific delegation of authority instructions with respect to procurement are referenced in subsequent sections of this subpart. In addition to limitations and conditions applicable to individual delegations and included therewith, the provisions of the paragraphs below apply to all delegations of procurement and are published in this section to eliminate their repetition.

(a) All redelegations of authority as well as withdrawals or rescissions thereof will be made in writing over the personal signature and title of the person vested with the authority. Delegations and redelegations will be made to official positions and not to individuals by name, except in the case of designations of contracting officers and representatives of contracting officers.

(b) Delegations of authority do not affect the authority of the delegator to exercise any of the authority delegated or to issue instructions concerning the exercise of such authority.

(c) Authorities delegated may not be redelegated except as expressly provided in individual authorizations.

(d) Delegations of authority to air attaches may be exercised only by air attaches on duty in foreign countries. Delegations of authority to chiefs of AF foreign missions or chiefs of AF sections of joint military missions may be exercised only when the missions are not operating under the jurisdiction of an oversea command.

(e) In the absence of a person occupying a position to which authority has been delegated, the authority may be exercised by the person who is occupying the position in an "acting" capacity. "Absence" refers to absence from the installation on leave or temporary duty travel. In cases of extreme emergency "absence" may be construed to mean absence from the office regardless of whereabouts, except redelegations of authority which must be accomplished by the person occupying the position to which authority has been delegated.

(f) Approval of awards and manual approval of contracts authorized by delegations of authority will be made in person by the individual occupying the position to which the authority has been delegated. Execution of such approval by one individual for, or over the signature of, another is unauthorized. Persons serving in an acting capacity will execute authority as delegated, over their own name as acting chief, deputy chief, etc. Awards and contractual instruments in excess of the contracting officer's authority which require approval by higher authority will be reviewed by competent persons prior to manual approval.

(g) In the event that a person acts without the requisite authority, his action may, under certain circumstances, be later ratified.

(1) For purchases involving $2,500 or less, made by persons to whom requisite authority has not been delegated, the individuals designated below are authorized to ratify such a transaction in the case of persons under the jurisdiction of the major commands (other than AFLC and AFSC) by the commander of the respective major command with power of redelegation to the DCS/material or comparable office within the major command headquarters, and AFLC and AFSC by the commanders of the first echelon of command immediately subordinate to Hq AFLC and AFSC. Each such transaction will be submitted for review and possible ratification according to the following procedures:

(i) A statement of all pertinent facts of the transaction, accompanied by a file of all relevant documents and records will be forwarded (over the signature of the base commander or officer who has command over the installation in which the unauthorized act occurred) to the DCS/material or equivalent staff office of the respective major command or to the AFLC or AFSC activity designated the ratification authority. Cases involving tenant organizations will be forwarded to the major command to which the tenant is assigned. The statement will include description of any disciplinary action taken or an explanation why none was considered necessary and a description of action taken to prevent recurrence of the unauthorized act. In the case of tenant organizations of nontenant individual not under the jurisdiction of the installation commander, a statement pertaining to disciplinary action will be furnished by the appropriate commander. The individual having committed the unauthorized act will be responsible for furnishing to the contracting officer all the pertinent facts, records, and documentation concerning the transaction. The contracting officer will be responsible for reviewing and determining adequacy of all facts, records, and documentation furnished; preparing the statement of facts; and obtaining approval as to legal sufficiency from the local staff judge advocate as to whether the transaction is ratifiable or whether the matter should be processed under Part 17, Subchapter A, Chapter I of this title (Pub. L. 85-804) or as a GAO claim; and stating whether the prices involved are considered fair and reasonable.

(ii) The procurement staff officer within the DCS/material or equivalent staff office of the respective major command or the procurement staff office designated by the individual responsible for ratification at the AFLC or AFSC activity, will review the file, obtain any additional evidence required including approval as to legal sufficiency by the staff judge advocate, and prepare a recommendation as to whether the transaction should be ratified stating reasons therefor. Advice against ratification will include a recommendation as to whether the matter should be processed under Part 17, Subchapter A, Chapter I of this title (Pub. L. 85-804) or as a GAO claim. The complete file will be forwarded to the individual responsible for ratification as indicated in this paragraph (g).

(iii) When the complete file is received by the individual responsible for ratification, he may ratify if he deems it in the best interest of the government. No transaction will be ratified that would not otherwise have been valid if made by a properly authorized contracting officer.

(2) Purchases of more than $2,500 by persons to whom authority has not been delegated may be ratified by:

(i) The Deputy Chief of Staff, Procurement Hq AFLC, when the unauthorized action is by a person under the jurisdiction of AFLC.

(ii) The Deputy Chief of Staff, Procurement and Production, Hq AFSC, when the unauthorized action is by a person under the jurisdiction of AFSC.

(iii) The appropriate head of a procuring activity, when the unauthorized action is by a person who is under the jurisdiction of commands other than AFLC or AFSC: *Provided, however,* That all such proposed transactions must be reviewed by the Staff Judge Advocate, Hq AFLC, prior to ratification action.

(3) Transactions which have been ratified will be forwarded to the appropriate contracting officer for issu-

ing a purchase order or contract for payment purposes, citing 10 U.S.C. 2304(a)(3) if $2,500, or less, or 10 U.S.C. 2304(a)(10) if more than $2,500, or other negotiation authority, if appropriate.

(4) Contracting officers do not have the authority to ratify unauthorized acts.

(h) When contracting authority is limited as to dollar amount, the limitation includes:

(1) Any contractual instrument initially involving a sum in excess of the dollar limitation considering the aggregate of obligated and committed funds and any potential "connecting charge" or "termination liability" established therein.

(2) Contracts firmly negotiated for the total cost of the program, as stated therein, but which are funded for less than total cost of the program as firmly negotiated.

(3) The estimated dollar amount of supplies and services to be procured during the contract period of requirements and indefinite quantity contracts, even though no funds are committed or obligated thereby. Such contracts are required to include on their face as an administrative recital a bona fide estimate of such aggregate amount.

(4) Any contractual instrument in excess of the dollar limitation that increases the allotment of funds for reimbursement under a cost-reimbursement or time-and-materials type of contract.

(5) Any contractual instrument, regardless of total contract consideration, which accomplishes a change that would increase the cost to the Government by more than the dollar limitation were there not offsetting credits provided in the same contractual instrument.

(6) Except as otherwise authorized, any supplemental agreement defining change orders when the change orders being definitized accomplishes a change which increased the cost to the Government by more than the dollar limitation regardless of whether there are offsetting credits provided in the same supplemental agreement.

(7) Utility contracts—the estimated annual service charge plus the connection or termination charge, if any.

(i) When contracting authority is limited as to dollar amount, the limitation does not include:

(1) Contractual instruments which do no more than commit funds for engineering changes or provisioning items, whether or not there was any previous commitment for such items.

(2) Contractual instruments increasing fund obligations under partially funded contracts when not exceeding the firmly negotiated total cost of the program as stated in the prime contract.

(3) Contractual instruments obligating funds covering calls issued under terms of requirements and indefinite quantity contracts.

(4) Change orders.

(5) Contractual instruments which obligate funds for provisioning items where the approved contract contained an item for provisioning spares, ground handling and support equipment, etc.

(6) Communication Service Authorizations (CSA).

(7) Blanket Purchase agreements as set forth in § 3.605 of this title.

(j) Authorities vested in chiefs of AF foreign missions are likewise vested in AF sections of joint military missions.

(k) Requirements aggregating more than the dollar amount of the contracting authority delegated will not be broken down into more than one purchase transaction for the purpose of avoiding authority limitations.

(l) Authorities vested in deputy directors of procurement and production are likewise vested in technical associates performing procurement and production functions at comparable level.

§ 1001.452 General procurement authority.

The delegation referenced in this section is a general one, and all other existing or future delegations, regulations, or directives issued by competent authority, to the extent to which they would, expressly or by reasonable implication, limit the scope of or impose conditions or restrictions upon the exercise of the general authorities

cited in below referenced delegation instruments, will be controlling over it. This includes authority to enter into, execute, and approve contracts. This authority has been delegated to Deputy Chief of Staff, Systems and Logistics and the Director of Procurement Policy, DSC/S&L, by Secretary of the Air Force Order (SAFO) 6504 dated July 3, 1969 and redelegated to the Major Commands by Director of Procurement Policy (AF/LGP).

[35 FR 4846, Mar. 20, 1970 as amended at 37 FR 23909, Nov. 10, 1972]

§ 1001.453 Designation of heads of procuring activities.

(a) The Commanders of the commands specified in ASPR 1-201.14 are designated as a "Head of a Procuring Activity" (HPA). Each HPA may authorize an individual not below the level of the staff officer responsible for procurement within the Command headquarters to act for him in exercising ASPR prescribed responsibilities vested only in the HPA.

(b) The Director of Procurment Policy, DCS/S&L is the HPA for all Major Commands and Separate Operating Agencies listed below:

(1) Air Force Accounting and Finance Center.

(2) Air University.

(3) Air Force Communications Service.

(4) Air Force Reserve.

(5) Hq Command USAF.

(6) USAF Academy.

(7) USAF Security Services.

(8) USAF Southern Command.

(c) Commanders of Major Commands and Separate Operating Agencies who are not designated as a HPA but who have a need for one of the ASPR prescribed responsibilities vested in the HPA will submit a request for such responsibility to the Director of Procurement Policy, DCS/S&L, Hq USAF (LGP).

(d) The Commanders of the agencies set forth in paragraph (b) of this section are designated the "Designee" as defined in ASPR 1-201.23 to the Head of Procuring Activity and are authorized to perform any act or make determinations contemplated in ASPR or Air Force ASPR Supplements where such authority is vested in the "Head of the Procuring Activity or his Designee" with the power of redelegation not below the level of the staff office responsible for procurement within the headquarters of the Major Command or Special Operating Activity.

(e) The air attachés and chiefs of Air Force Foreign Missions are designated the "Designee" as defined in ASPR 1-201.23 and authorized to perform any act or make determinations contemplated in ASPR or Air Force ASPR Supplements where such authority is vested in the "Head of the Procuring Activity or Designee."

[37 FR 23909, Nov. 10, 1972]

§ 1001.454 Contracts for public utility services extending beyond current fiscal year but not exceeding 10 years.

(a) Contracts for public utilities. The authority to enter into contracts for public utility services has been redelegated to the HPA's and all Major Commands and Separate Operating Agencies as listed in § 1001.453(b).

(b) Contracts for communications services.

(1) The Director of Procurement Policy, DCS/S&L, Hq USAF has been authorized to enter into contracts for communication services for periods extending beyond the current fiscal year but not to exceed 10 years, under one or more of the following circumstances.

(i) When services are obtained for communication common carrier whose rates are regulated by a Federal, State, or other public regulatory body;

(ii) When the services are obtained by competitive means from other than communication carriers; and

(*a*) Where there are obtained lower rates, larger discounts, or more favorable conditions of service than those available under contracts the firm terms of which would not extend beyond a current fiscal year.

(*b*) Where nonrecurring or termination charges payable under contracts the firm term of which would not extend beyond a current fiscal year are eliminated or reduced.

(iii) The termination liability incurred under the contract, when added to the cumulative termination liabilities of existing contracts does

not exceed the termination liability ceilings imposed by public law or departmental administrative procedures.

(2) The authority of the Director of Procurement Policy, DCS/S&L HQ USAF, as described in paragraph (b)(1) of this section has been delegated by § 1001.453.

[37 FR 23909, Nov. 10, 1972]

§ 1001.455 Procurement support in urgency areas or situations.

Areas or situations of a military operational nature develop from time to time which require rapid procurement response to insure timely logistic support. HQUSAF (LSP) will designate such areas of situations as they arise. Commands may utilize this section to implement expedited procedures that are within the authority of the Commands. Authorities may be added to this section by Hq USAF. Judicious use will be made of these authorities to insure that urgent requirements are satisfied without degrading good management or business practices. The procedures and authorities of this section will apply only to procurements in support of that area or situation.

[35 FR, 17545, Nov. 14, 1970, as amended at 37 FR 23910, Nov. 10, 1972]

§ 1001.456 Extraordinary actions to facilitate the national defense.

Authority to take action under Pub. L. 85-804 is prescribed in § 1017.203 of this chapter.

[37 FR 23910, Nov. 10, 1972]

Subparts E-F—[Reserved]

Subpart G—Small Business Concerns

§ 1001.706 Set asides.

§ 1001.706-1 General.

(a) If Preinvitation Notices are used (§ 2.205-6 of this title) include the applicable small business size determination in the notice and in the transmittal to the "Commerce Business Daily" and require prospective bidders to state in their replies to the notice whether they qualify as a small business concern. Do not make a determination regarding a set-aside until replies to the notice have been received to determine the extent of available small business competition.

Subpart H—[Reserved]

Subpart I—Responsible Prospective Contractors

§ 1001.905-50 Air Force Contractor Experience List.

(a) *General.* The Directorate of Procurement Policy, Hq USAF/SPP, will maintain and publish an Air Force Contractor Experience List (AFCEL). The AFCEL and all correspondence disclosing the names of contractors on or proposed to be on the AFCEL will be marked "For Official Use Only" unless a security classification is required. The AFCEL will not be released outside the Government and information contained therein will not be made available for inspection by private individuals, firms or trade organizations. The AFCEL and the other Contractor Experience Lists attached thereto are the only official listings of this type that are authorized within the United States.

(b) *Purpose.* The purpose of the AFCEL is to identify contractors, including nonappropriated fund contractors, who have not performed satisfactorily or who have encountered difficulties that might endanger future performance. The AFCEL alerts contracting officers to these difficulties prior to placing new business with listed contractors. It also serves to identify conditions which the contractor must correct to justify removal from the AFCEL.

(c) *Limitation on use of the AFCEL.* The listing of a contractor on the AFCEL or on the other Contractor Experience Lists (CELs) attached thereto, will not be interpreted to mean that the list contractor will not be given an opportunity to bid or quote on a proposed procurement, that negotiations cannot be carried on with the contractor, or that award cannot be made to such contractor. The CELs have no relationship to the Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors,

and the inclusion of any contractor on a CEL will not in any sense be regarded as a determination of debarment or ineligibility. These procedures do not apply to contractors performing only outside the United States.

(d) *Reasons for listing contractors.* Contractors with one or more of the following letter coded deficiencies will be considered for the AFCEL.

(1) Code D—Contractors who have a less than satisfactory record in meeting contract delivery schedules on one or more contracts.

(2) Code Q—Contractors who fail to meet quality standards established by the contract.

(3) Code T—Contractors who have had one or more contracts terminated for default.

(4) Code F—Contractors whose contract performance has become unsatisfactory because of financial problems.

(5) Code M—Contractors whose performance is considered unsatisfactory or whose responsibility is questioned for other specific reasons.

(e) *Procedures.* (1) The procedures outlined below apply to initial recommendations for AFCEL listing and also to the addition of codes to an already listed contractor. Both purchasing and contract administration offices, as well as nonappropriated fund purchasing offices, may initiate recommendations for the AFCEL. The purchasing office will coordinate the intended AFCEL action with the contract administration office, or vice versa, as applicable, and will obtain supporting information needed to substantiate the recommendation.

(2) To initiate an AFCEL case, the chief of the purchasing or contract administration office (or higher level authority as determined by the major command concerned) will notify the contractor by letter of the proposed AFCEL recommendation. For nonappropriated fund cases, the notification letter will be signed by the chief of the central purchasing office, or by the base commander, as appropriate. Notification letters to contractors will identify the specific deficiencies in performance or financial condition and, except as indicated below, request a reply within 15 days to permit the contractor to present reasons why he should not be recommended for AFCEL listing. For Code T and Code F (bankruptcy or receivership) no request for reply will be made. For Code F, other than bankruptcy or receivership, the contractor will be requested to reply.

(3) If the contractor does not respond within 15 days, or if the response is considered unsatisfactory, immediately advise the contractor that he is being recommended for the AFCEL. Simultaneously submit the recommendations to HQ USAF/LGP through procurement channels. Recommendations for Code T and for Code F (bankruptcy or receivership) will be submitted simultaneously with the issuance of the notification letter specified in paragraph (e)(2) of this section. The major command will forward the recommendation within 15 days to HQ USAF with concurrence/nonconcurrence unless there are valid reasons for delay.

(4) Recommendations should be brief, but complete and factual. Copies of contracts and other lengthy documents are normally not required. All recommendations should include at least the following information:

(i) Complete identity of contractor, including name of firm, name of president or owner, address, and product line. If only one part of a company is recommended, specifically identify and indicate the relationship to the parent office.

(ii) Purchasing and contract administration offices, including autovon phone number.

(iii) Code(s) for which the contractor is recommended. See paragraph (d) of this section.

(iv) Contract number, effective date, type of contract, dollar value, items covered, and unusual pertinent provisions.

(v) Brief narrative of contract requirements not met, and the contractor's actual performance, or other reasons for the recommended listing. If contractor's performance is considered less than satisfactory for only certain product lines or services, identify such qualification specifically in the recommendation.

(vi) Brief outline of previous corrective actions taken by the contracting

officer, such as "show cause" or "cure" notices, including dates such actions were taken and results obtained.

(vii) State whether a preaward survey was conducted and if the recommendation was affirmative or negative.

(viii) Copy of notification(s) to contractor.

(ix) For Code D give original contract delivery dates and changes thereto, including reasons therefor, action taken to assure that delivery schedules are current and realistic, and a brief summary of the frequency, duration, and seriousness of late deliveries considered to be the fault of the contractor.

(x) For Code Q provide a brief current evaluation of the contractor's quality control system in addition to identifying the specific quality deficiency.

(xi) For Code T include reasons for the default termination and results of any appeal or other disposition of the case, if available.

(xii) For Code F describe how contractor's financial problems caused unsatisfactory contract performance. In cases of bankruptcy or receivership, provide latest known data.

(xiii) AFCEL recommendations from purchasing activities will include a copy of a statement from the cognizant contract administration office providing current performance evaluation on the specific contracts involved, pertinent overall performance, background information, and concurrence or nonconcurrence with the recommendation.

(5) The AFCEL Review Board at HQ USAF will review all recommendations prior to final approval by the Director of Procurement policy, HQ USAF/LGP.

(6) HQ USAF/LGP will advise the contractor by letter of the decision on AFCEL listing, with copies to all offices concerned.

(7) HQ USAF/LGP will publish an updated AFCEL quarterly and will distribute it to all major commands, DSA, and Navy for distribution to their procuring activities, including those dealing with nonappropriated funds. Interim changes will be published as required.

(8) AFCEL Review: (i) Each contractor on the current AFCEL will be reviewed by the recommending activity each quarter to keep the listing current and to determine if removal or retention is warranted. If the purchasing office is the recommending activity, contact the appropriate contract administration activity to obtain an evaluation of the contractor's current overall performance. Promptly recommend removal when the contractor has corrected the deficiency for which he was placed on the AFCEL and no other major definciencies exist. Specifically substantiate recommendations. If retention is recommended, also validate the letter coding.

(ii) Forward results of quarterly reviews by letter through procurement channels to arrive at HQ USAF/LGP by the 10th of February, May, August, and November of each year. HQ USAF/LGP will advise the contractor by letter if removal is approved, with copies to all offices concerned.

(iii) Recommend removal of a contractor who no longer has or seeks Government contracts after 1 year on the list unless there are valid reasons for retention.

(iv) Recommend removal of a contractor who is subsequently included in the Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors (AFR 70-23).

(v) Do not recommend removal of a contractor who has appealed any matter which caused AFCEL listing, other than Code T, until final resolution of the appeal with the contractor's position substantially upheld.

(vi) Do not recommend removal of a contractor who has listed for Code T until the termination for default is converted to a termination for convenience, the Armed Services Board of Contract Appeals substantially upholds the contractor's position, or until other contractor actions such as demonstrated improvement in overall delivery performance, financial condition or corrective action to preclude future default determinations for the same reason as that which caused AFCEL action, warrant removal consideration.

(vii) Do not recommend removal of a contractor who was listed under Code

F for filing a petition of bankruptcy or for receivership until such proceedings have been completed and the contractor has reestablished his financial capability or has been legally dissolved.

(viii) Whenever a listed contractor changes his name or address promptly notify HQ USAF/LGP. Identify whether the new name or address replaces or is in addition to the present listing. This includes contractors listed on the Navy or DSA CELs.

(f) *Navy and Defense Supply Agency (DSA) Implementation.* Navy Procurement Directive (NPD) 1-950, Navy Contractor Experience List (NCEL); Defense Supply Procurement Regulation 1-950, DSA Contractor Experience List (DSACEL); and DSA Regulation No. 8335.1, Contractor Experience List for Contract Administration Services provide information on Air Force, Navy, and DSA Contractor Experience Lists. DSAR No. 8335.1 also provides instructions to DCAS organizations on their recommendation of contractors for the AFCEL. Hq USAF sends the AFCEL to Navy and DSA for distribution with the NCEL and DSACEL.

(g) *Letters to contractors.* The following are formats for letters to contractor top management.

(1) Formats for initial notice to contractors for Codes D, Q, M and F (except bankruptcy or receivership).

Dear Mr. ———————— (president):

The Air Force maintains a listing of contractors whose performance record or financial condition has been determined to be unsatisfactory. This list is the Air Force Contractor Experience List (AFCEL). Further information on the AFCEL is contained in Air Force ASPR Supplement 1-905.50.

This is to notify you that (recommending activity) considers the (performance or financial condition) of your company to be unsatisfactory for the following reasons: (State specific deficiencies). We are considering recommending your firm for placement on the AFCEL (or for placement on the AFCEL for deficiencies other than those currently listed), based on the above unsatisfactory conditions. However, you are being afforded the opportunity at this time to provide reasons why this action should not be taken. Please provide your written response to this office within 15 days.

Sincerely,

(2) Format for notice to contractor of recommendation to HQ USAF.

(i) For Codes D, Q. M, and F (except bankruptcy or receivership).

Dear Mr. ———————— (president):

Your response of (date) has been carefully reviewed (or: no response has been received to my letter of (date)) and the basis for recommending your firm for the Air Force Contractor Experience List (AFCEL) is still considered appropriate. Therefore, I have recommended that your firm be placed on the AFCEL. If approved by HQ USAF, your firm will be listed in the next AFCEL publication. Your listing will be carefully reviewed at least quarterly, and at such time as there is assurance that you have taken effective action to correct the unsatisfactory condition, we will recommend that your company be removed from the AFCEL.

Being listed on the AFCEL will not prevent your firm from bidding on or submitting proposals for future contracts. However, the list will alert contracting officers to companies whose performance or financial conditions has been determined to be currently unsatisfactory.

We sincerely hope that you soon correct the condition(s) that prompted this recommendation.

Sincerely,

(ii) For Code T and F (bankruptcy or receivership).

Dear Mr. ———————— (president):

The Air Force maintains a listing of contractors whose performance record or financial condition has been determined to be unsatisfactory. This is the Air Force Contractor Experience List (AFCEL). Further information regarding the AFCEL is contained in Air Force ASPR Supplement 1-905.50.

This is to notify you that the (recommending activity) considers the (performance or financial condition) of your company to be unsatisfactory for the following reasons: (State specific deficiencies). Therefore, I have recommended that your firm be placed on the AFCEL. If this recommendation is approved by HQ USAF, your firm will be listed in the next AFCEL publication. The basis for listing your firm will be carefully reviewed at least quarterly, and at such time as conditions warrant, we will recommend that the name of your company be removed from the AFCEL.

Being listed on the AFCEL will not prevent your firm from bidding on or submitting proposals for future contracts. However, the list will alert contracting officers to companies whose performance or financial condition has been determined to be currently unsatisfactory.

We sincerely hope that you correct the condition(s) that prompted this recommendation.

Sincerely,

[35 FR 4846, Mar. 20, 1970, as amended at 37 FR 23910, Nov. 10, 1972]

Subpart J—[Reserved]

Subpart K—Qualified Products

§ 1001.1108 Waiver of qualification requirement.

Where products have been approved for inclusion on a Qualified Product List, waivers of the qualification requirement will be according to § 1.1108 of this title with an information copy to The Directorate of Engineering and Material Safety (MME), AFLC, and the Directorate of Systems Policy (SDM), Hq AFSC.

[36 FR 3524, Feb. 26, 1971]

PART 1003—PROCUREMENT BY NEGOTIATION

Subparts A–C—[Reserved]

Subpart D—Types of Contracts

Sec.
1003.410-1 Authority to negotiate.
1003.410-3 Call procurement arrangements.

Subpart E—Solicitation of Proposals and Quotations

1003.508 Information to offerors.

Subparts A–C—[Reserved]

Subpart D—Types of Contracts

§ 1003.410-1 Authority to negotiate.

(a)—(d) [Reserved]

(e) *Authority to negotiate.* Contracting Officers of AFSC ASD (PPI) are authorized to negotiate, write, and execute basic agreements, except with educational institutions. Contracting Officers of AFSC (PPFN) are authorized to negotiate, write and execute basic agreements with respect to educational institutions only. AF activities are encouraged to submit suggestions and recommendations to ASD (PPI) and/or AFSC (PPFN), as appropriate, for consideration in negotiating basic agreements.

(f) *List of approved basic agreements.* (1) AFSC ASD (PPP) will publish quarterly a list of all approved basic agreements and supplements issued by AFSC, ASD, and PPFN. Changes to the quarterly list will be published monthly until the succeeding quarterly list is issued.

(2) The quarterly list will indicate in alphabetical order, by contractor's name, the following information: (i) Contract or supplement number; (ii) date contract or supplement number assigned; (iii) type of contract covered by the basic agreement; (iv) date distributed; (v) procurement activity which negotiated the latest basic agreement.

(3) Request for copies of the list will be addressed to AFSC ASD (PPP).

(g) *Distribution of AFSC (PPFN) Basic Agreement.* Basic Agreements and supplements executed by PPFN with educational institutions will be distributed by PPFN. Request for copies will be addressed to PPFN.

(10 U.S.C. Ch. 137, 10 U.S.C. 8012)

[36 FR 3524, Feb. 26, 1971]

§ 1003.410-3 Call procurement arrangements.

(a) *Special Orders Clause.* Any call procurement arrangement issued according to this program will contain the following clause in addition to the clauses required or authorized for a contract of the type described for the procurement arrangement.

ORDERS (JANUARY 1963)

(a) Upon receipt by it of any Delivery Order issued hereunder by the Contracting Officer, the Contractor, pursuant to such order, shall furnish to the Government supplies or services of the type and at the prices set forth in the Schedule. Orders may be issued at the sole option of the Contracting Officer during the period set forth in the Schedule. It is understood and agreed that the Government undertakes no obligation hereby to issue orders hereunder. The provisions of this arrangement, including the Schedule, shall govern all orders issued hereunder during the aforementioned period.

(b) Delivery Orders for supplies or services shall be issued by the Contracting Officer in writing, dated, and numbered. They shall set forth (i) the supplies or services being ordered, (ii) the quantities to be furnished,

(iii) delivery or performance dates, (iv) place of delivery or performance, and (v) packing and shipping instructions, if any. Amendments to delivery orders may be issued by the Contracting Officer by written change order. Each delivery order of change order which increases the dollar amount, shall contain a citation of funds from which payment for the supplies or services ordered shall be made.

(10 U.S.C. Ch. 137, 10 U.S.C. 8012)
[35 FR 4849, Mar. 20, 1970]

Subpart E—Solicitation of Proposals and Quotations

§ 1003.508 Information to offerors.

Debriefings to provide information in addition to the preaward and postaward notices required by §§ 3.508-2 and 3.508-3(a) of this title are encouraged, however, such debriefings shall not be conducted prior to contract award. Their primary objective is to assist offerors in upgrading the quality of their future proposals, thus providing benefits to both industry and the Air Force. Additionally, meaningful and factual debriefings should reduce protests against award. After a request for debriefing is received, the debriefing will be conducted as soon as practicable after contract award; if more than one request for debriefing is received, debriefings will be held sequentially.

(a) Debriefings requests in connection with the formal source selection procedures of AFR 70-15 shall be forwarded to the source selection authority (SSA) for appropriate action. Requests for debriefings shall be referred to the procuring contracting officer for procurements not employing the formal procedures of AFR 70-15.

(b) Discussions will identify and explain those deficiencies of the offeror's proposal which were major factors for the offeror not being selected. Such deficiencies should be discussed only in relation to the requirements of the solicitation, avoiding any comparison with other offerors' proposals.

(c) Deficiency reports will not be released for any purpose, either prior to, or after contract award, except as required for the purpose of conducting written or oral discussions pursuant to § 3.805-1 of this title and paragraphs 14 (ch. 2) and 11 (ch. 3), AFM 70-10 (draft), May 1971.

(10 U.S.C. Chapter 137, 10 U.S.C. 8012)
[38 FR 15506, June 13, 1973]

PART 1006—FOREIGN PURCHASES

Subparts A-D—[Reserved]

Subpart E—Canadian Purchases

Sec.
1006.550 Basic agreement.
1006.551 Research contracts with Canadian educational institutions.
1006.552 Solicitation of Canadian sources for research and development.

Subparts F-G—[Reserved]

Subpart H—Balance of Payments Program—Procurement of Supplies and Services for Use Outside the United States and Procurement of Scientific and Technical Knowledge Involving Foreign Expenditures

1006.850-6 Format for BUSH contracts.

AUTHORITY: 10 U.S.C. Ch. 137, 10 U.S.C. 8012.

SOURCE: 35 FR 4849, Mar. 20, 1970, unless otherwise noted.

Subparts A-D—[Reserved]

Subpart E—Canadian Purchases

§ 1006.550 Basic agreement.

The Air Force has in effect a cost reimbursement type basic agreement and a fixed price type basic agreement with the Canadian Commercial Corporation. Required copies of the current basic agreement may be obtained from the Aeronautical Systems Division (ASKBB-10), Wright-Patterson AFB, OH 45433.

§ 1006.551 Research contracts with Canadian educational institutions.

The Canadian Government, through the Defense Research Board of Canada, has requested that all research procurements contemplated with educational institutions in Canada be cleared through a central point to prevent U.S. agencies from duplicating support of research projects already supported by Canadian Government agencies. Accordingly,

the following procedure will govern in the placement of research contracts with Canadian educational institutions.

(a) Unclassified Requests for Proposal will be forwarded directly to the institution, provided two copies are forwarded concurrently to the Defense Research Member (DRM), Canadian Joint Staff, 2450 Massachusetts Avenue NW., Washington, D.C. 20008. Unless the DRM advises that the proposed institution is not in a position to undertake the research, procurement action will proceed in a normal manner.

(b) Unsolicited research proposals received from Canadian institutions involving basic research will be forwarded to AFOSR/CCO. Those involving exploratory development, advance engineering, or advance development will be forwarded to AFSC (PPPR).

(c) Unclassified research contracts awarded to Canadian educational institutions will be forwarded directly to the institution, provided one copy is forwarded concurrently to the DRM and one copy concurrently to the Chairman, Defense Research Board, Headquarters, Department of National Defense, Ottawa, Canada. Unless the institution is advised to the contrary by DRM, it will execute the contract. Subsequent to the execution for the U.S. Government, the procuring contracting officer will notify the Defense Research Member, Washington, D.C., of the date of award.

(d) Requests for proposals involving U.S. classified defense information will be forwarded to Hq AFSC (SCL-21) for action.

[35 FR 4849, Mar. 20, 1970, as amended at 38 FR 15506, June 13, 1973]

§ 1006.552 Solicitation of Canadian sources for research and development.

(a) To carry out the President's mandate that full advantage be taken of the scientific talents of friendly countries through a mutual sharing of scientific and technical information, a program for closer collaboration with Canada in research and development has been adopted. This program together with the provisions of certain bilateral agreements between Canada and the United States, has made it desirable to state more specifically certain AF procurement policies and procedures in the area of research and development as they relate to Canada.

(b) It is AF policy to consider for solicitation qualified Canadian sources on an equal basis with qualified U.S. sources for the placement of Research and Development contracts. Such solicitation will include areas that may be agreed upon from time to time where it is evident that mutual benefit will accrue.

(c) Solicitation for the placement of such contracts should be made at a point in the research and development cycle at which the Air Force has an approved technical requirement necessitating the establishment of a research and development project which is normally assigned to and monitored by an AFSC division.

Subparts F and G—[Reserved]

Subpart H—Balance of Payments Program—Procurement of Supplies and Services for Use Outside the United States and Procurement of Scientific and Technical Knowledge Involving Foreign Expenditures

§ 1006.850–6 Format for BUSH contracts.

BUSH contracts will consist of a Cover Page (Standard Form 26, Award/Contract), Schedule, General Provisions for Fixed Price Supply Contract, additional General Provisions, when applicable, and BUSH Authorized Price List.

(a) Cover Page (Standard Form 26). Part 16, Subpart A, Chapter I of this title.

(b) Schedule Provisions.

(1) Scope of Contract (August 1967).

(i) The Contractor shall furnish and deliver in implementation of the Balance of Payments Program, U.S. end products as specified in the attached BUSH Authorized Price List at the unit price stated therein, when ordered by an authorized ordering activity in compliance with all terms and conditions of this contract.

(ii) The attached BUSH Authorized Price List is incorporated herein and

shall be hereinafter referred to as the "APL."

(2) Contractual Period.

Performance period of this contract will be effective ———— and ending ————. (August 1967)

(3) Office of Administration. (August 1967)

(i) The following office is assigned overall administrative responsibility for this contract:

(Insert BUSH Office Indigeneous Address.)

(ii) All correspondence written to U.S. Government activities concerning this contract shall be in the English language and all cost incident thereto is the responsibility of and shall be borne by the Contractor.

(4) Printing and distribution of APLs (August 1967).

The Contractor, at no cost to the U.S. Government, shall print, package and deliver to the Procurement Office using this contract—copies of the APL. Packaging shall be in accordance with instructions issued by the Contracting Office. In the event additional copies of the APL are requested by ordering activities, the Contractor will furnish them at no cost to the U.S. Government.

(5) Special Marking Instructions. (August 1967)

Notwithstanding any other provisions of this contract concerning markings for shipment, the Contractor shall prepare a DD Form 1387, Military Shipment Label, and attach this label to the outside shipping container of all items delivered to (Insert First Destination delivery point), for subsequent transshipment by the Government as otherwise provided for under the terms of this contract. Copies of these forms and preparation instructions may be obtained by contacting the office having overall administrative responsibility for this contract.

PART 1007—CONTRACT CLAUSES

Subpart A—Clauses for Fixed-Price Supply Contracts

Sec.

1007.103-2 Changes.
1007.104-61 Frequency authorization.
1007.104-70 F.O.B. origin.
1007.104-71 F.O.B. destination.
1007.104-78 Safety and accident prevention.
1007.104-100 Restrictions on printing.
1007.104-101 Use of Government facilities on no-charge basis.
1007.104-102 Procurement contracts requiring the provision of additional facilities under separate facilities contracts.
1007.105-2 Approval of contract.
1007.106-4 Escalation clause for platinum.

Subpart B—Clauses for Cost-Reimbursement Type Supply Contracts

1007.204-100 Restrictions on printing.
1007.204-101 Use of Government facilities on no-charge basis.
1007.204-102 Procurement contracts requiring the provision of additional facilities under separate facilities contracts.

Subparts C–E—[Reserved]

Subpart F—Clauses for Construction and Architect-Engineer Contracts

1007.602-9 Material and workmanship.
1007.603-48 Progress charts and requirements for overtime work.

Subparts G–O—[Reserved]

Subpart P—Clauses for Food Service Contracts

1007.5000 Scope of subpart.
1007.5001 General.
1007.5002 Definitions.
1007.5002-1 Contract for food services.
1007.5002-2 Contract for food service attendants.
1007.5003 Required clauses.
1007.5003-1 Scope of work.
1007.5003-2 [Reserved]
1007.5003-3 Contractor personnel.
1007.5003-4 Facilities and materials furnished by the Government.
1007.5003-5 Sanitary conditions.
1007.5003-6 Hours of operation.
1007.5003-7 Record and charge for meals served.
1007.5003-8 Manuals, regulations, technical orders and specifications.
1007.5003-9 Definitions.
1007.5003-10 Changes.
1007.5003-11 Inspection.
1007.5003-12 Payments.
1007.5003-13 Assignment of claims.
1007.5003-14 Federal, State, and local taxes.
1007.5003-15 Default.
1007.5003-16 Disputes.
1007.5003-17 [Reserved]
1007.5003-18 Convict labor.

Sec.
1007.5003-19 Contract Work Hours Standards Act—overtime compensation.
1007.5003-20 Equal opportunity.
1007.5003-21 Officials not to benefit.
1007.5003-22 Covenant against contingent fees.
1007.5003-23 Termination for convenience of the Government.
1007.5003-24 [Reserved]
1007.5003-25 Utilization of small business concerns.
1007.5003-26 Notice to Government of labor disputes.
1007.5003-27 Safety and accident prevention.
1007.5003-28 Gratuities.
1007.5003-29 Renegotiation.
1007.5003-30 Requirements.
1007.5003-31 Use, conservation, and responsibility for Government property.
1007.5003-32 Insurance.
1007.5004 Clauses to be used when applicable.
1007.5004-1 Examination of records.
1007.5004-2 Approval of contract.
1007.5004-3 Alterations in contract.
1007.5005 Schedule clauses.
1007.5005-1 Changes in price based on variation from estimate.

AUTHORITY: 10 U.S.C. Ch. 137, 10 U.S.C. 8012.

SOURCE: 35 FR 4851, Mar. 20, 1970, unless otherwise noted.

Subpart A—Clauses for Fixed-Price Supply Contracts

§ 1007.103-2 Changes.

(a) If considered desirable by the contracting officer the period of 30 days within which any claim for adjustment must be asserted can be increased to 60 days.

(b) For contracts in which it is anticipated that the contractor will submit Engineering Change Proposals the following clause is authorized as an addition to § 7.103-2 of this title, Changes clause.

ENGINEERING CHANGE PROPOSAL (JULY 1968)

If the Contractor submits a change proposal to the Government for consideration, he shall include a "not to exceed" amount of the equitable adjustment acceptable to him under the Changes clause if the Government orders such change pursuant to that clause. The change will be evaluated on the basis of such amount and if ordered, the equitable adjustment, therefor, shall not exceed such amount.

§ 1007.104-61 Frequency authorization.

When the clause in § 7.104-61 of this title is used, the procuring contracting officer will insert instructions in the contract schedule which are compatible with the guidance contained in paragraphs 3-1, 3-2, 4-2c and 4-3, AFM 100-31 (Electromagnetic Compatibility and Frequency Management).

[35 FR 11557, July 18, 1970]

§ 1007.104-70 F.O.B. origin.

(a) All central procurement contracts (except purchase orders issued on DD Form 1155 and contracts issued under small purchase procedures) which provide for delivery of supplies will contain the clause set forth below. Other contracts may contain this clause or a GBL clause adapted to the particular contract.

GOVERNMENT BILL OF LADING AND MAILING INDICIA (AUGUST 1966)

(a) When it is provided in this contract that the supplies shall be delivered other than FOB specified destinations, or freight prepaid, shipment(s) shall be made on U.S. Government Bills of Lading or U.S. Government Mailing Indicia. The required number of Government Bills of Lading and Mailing Indicia shall be furnished to the Contractor by the cognizant transportation or other activity. The Contractor shall acknowledge receipt of Government Bills of Lading and Mailing Indicia in the manner prescribed by the issuing office. As shipments are made, the Contractor shall prepare, or complete, and distribute Government Bills of Lading in accordance with instructions of the issuing office.

(b) U.S. Government Mailing Indicia shall be used in lieu of U.S. Government Bills of Lading when weight, cube character of commodity permit movement within the U.S. Postal System.

(c) The Contractor agrees that Government Bills of Lading and Mailing Indicia in excess of the requirements of this contract shall be returned to the issuing office(s) not later than submission time of final invoice for payment. The Contractor also agrees that no mailing charge is, or will be, included in the cost/price for postage fees in those instances wherein Government Mailing Indicia is authorized and used.

(d) For the purpose of this clause, the term supplies shall include correspondence, publications, and other written material.

(e) Paragraph (d) of the above clause will be omitted if mailing indicia is not to be fur-

nished the contractor for mailing written material. Based on the provisions of AFR 182-15(Official Mail—Policies and Procedures) and the particular procurement involved, the contracting officer will determine the feasibility of including mailing indicia for written material. A major area of consideration should be that the anticipated savings exceed the cost of implementation.

§ 1007.104-71 F.O.B. destination.

§ 1007.104-78 Safety and accident prevention.

Any contract, other than construction which is to be performed in whole or in part on the AF base or other AF installation under the direct control of the Government will contain the following clause.

SAFETY AND ACCIDENT PREVENTION (JUNE 1969)

In performing any work under this contract on premises which are under the direct control of the Government, the Contractor shall (i) conform to all safety rules and requirements prescribed in Air Force Manual 127-101, as in effect on the date of the is contract and (ii) take such additional precautions as the Contracting Officer may reasonably require for safety and accident prevention purposes. The Contractor agrees to take all reasonable steps and precautions to prevent accidents and preserve the life and health of Contractor and Government personnel performing or in any way coming in contact with the performance of this contract on such premises. Any violation of such rules and requirements, unless promptly corrected, as directed by the Contracting Officer, shall be grounds for termination of this contract in accordance with the default provisions hereof.

§ 1007.104-100 Restrictions on printing.

The inclusion of printing (the processes of hot-metal typesetting, preparation of lithographic negatives, presswork, and binding), within contracts for the manufacture and/or operation of equipment and for services such as architectural, engineering, and research, is prohibited. Accordingly, any contract which requires the reproduction of reports, data, or other written material will include the following clause.

RESTRICTIONS ON PRINTING (JUNE 1969)

Reproduction of reports, data or other written material, if required, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in the aggregate.[1] Reproduction of material in excess of the quantities cited above shall not be accomplished without express prior written authorization from the contracting officer. These restrictions do not preclude the writing, editing, preparation of manuscript or reproducible copy of related illustrative materials if required as a part of this contract. They do not apply to the printing of duplicating required by contractors for their own use in responding to the terms of this contract.

Deviations from the above clause may be granted by the contracting officer only after complying with the requirements specified in AFR 6-1 (Policies and Procedures Governing AF Printing and Duplicating).

[35 FR 4851, Mar. 20, 1970, as amended at 35 FR 8230, May 26, 1970]

§ 1007.104-101 Use of Government facilities on no-charge basis.

Where facilities have been placed with a prime contractor under a facilities contract, which provides that use on a no-charge basis in performing Government contracts may be authorized, and it is desired to permit the use of such facilities on a no-charge basis, the following provision, completed with appropriate information, will be placed in the Schedule of any negotiated supply, service, or research and development contract with that prime contractor, provided the Government receives adequate consideration and the contractor is not thereby placed in a favored competitive position. Paragraph (b) of the following provision will be included only when: (a) The price or fee of the prime contract is negotiated on the specific understanding that the use of the facilities without charge will be permitted in the performance of the specified subcontract items by the specified subcontractors, and (b) the subcontractor is not thereby placed in a favored competitive position.

[1] The aggregate number of production units is to be determined by multiplying pages times copies. For purposes of this paragraph a production unit is one sheet, size 11" x 17" or less (10¾" x 14¼" maximum image), one side only, one color.

80-109 O—81——3

USE OF GOVERNMENT FACILITIES ON A NO-CHARGE BASIS

(a) The Contractor is authorized to use, in the performance of this contract, the Government-owned facilities provided to it under Facilities Contract ————, in effect on the date of this contract, on a no-charge basis.

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

Subcontractor	*Facilities contract number*	*Subcontract item*
.....	.....	.....
.....	.....	.....

(c) If the Contractor enters into other subcontracts with subcontractors who have Government-owned facilities provided to them under Facilities Contracts which provide that no-charge use may be authorized, the Contracting Officer may authorize the use of such facilities on a no-charge basis, *provided* (i) he determines that such use will not give the subcontractor a favored competitive position, and (ii) this contract is amended to reflect adequate consideration to the Government for the use of such facilities on a no-charge basis. Such subcontracts shall specifically authorize the no-charge use, and require the manual approval of the Contracting Officer. No amendment to this contract will be required, as provided in(ii) above, if the Contracting Officer determines that an elimination of charge for use of such facilities will of itself result in an adequate decreased cost to the Government under this contract.

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

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

§ 1007.104-102 Procurement contracts requiring the provision of additional facilities under separate facilities contracts.

When a procurement contract, supplement, or change is negotiated on the basis that additional facilities will be provided to the contractor under a separate facilities contract and appropriate approval has been accomplished in accordance with § 1013.302 of this subchapter, the following clause will be inserted into the procurement contract:

PROVISIONING OF ADDITIONAL FACILITIES UNDER SEPARATE FACILITIES CONTRACT (JULY 1969)

(a) The terms and conditions of this contract are based on the providing to the Contractor of certain facilities. These are identified as specifically as practicable in the Schedule; and are of the estimated cost therein listed. The parties agree to enter into a separate facilities contract, as the case may be, under mutually acceptable terms and conditions, at the earliest practicable date. (The separate facilities contract, or the amendment to an existing facilities contract shall be in a form prescribed by the appropriate sections of the Armed Services Procurement Regulations in effect on the date such facilities contract or amendment is executed.) Such facilities shall be provided on a no-charge basis in accordance with the clause of this contract entitled: "Use of Government Facilities on No-Charge Basis."

(b) It is agreed that if such facilities are not provided at the time and to the extent provided in the Schedule, an equitable adjustment shall, upon timely written request of the Contractor, be made in the terms and conditions of this contract to the extent required by the failure to provide such facilities.

Note: If the procurement contract does not already contain the clause in § 1007.104-101 of this subchapter, "Use of Government Facilities on No-Charge Basis", insert the following in lieu of the last sentence of paragraph (a) of the clause above: "Such facilities shall be provided on a no-charge basis, and at the time that the facilities contract is executed, this contract shall be amended to include the clause in § 1007.104-101 of this subchapter entitled: "Use of Government Facilities on No-Charge Basis."

The estimated cost to be listed in the schedule pursuant to the above clause must include the total dollar value of the re-

quired facilities expenditures plus the acquisition cost of the items to be furnished directly from the industrial reserve or from other Government sources. The identification of the facilities required by the above clause "as specifically as practicable" requires a listing of the types of facilities to be provided, e.g., buildings, pavements, machine tools, and production, processing, handling, laboratory, or testing equipment. Such listing is to set forth the best estimated quantities of the facilities to be provided. Such listing will specifically provide that no industrial facilities costing $1,000 or less will be provided by the Government. If the contract does not qualify for no-charge use of the facilities under § 13.402 of this title, the last sentence of paragraph (e) of the clause above will be appropriately revised, including where applicable, terms under which all or part of the facilities are to be provided to subcontractors performing subcontracts under the procurement contract. Where a contractor is to be permitted to obtain the benefit of the use by certain of its subcontractors of Government facilities in the possession of such subcontractors, on a no-charge basis (as provided in paragraph (b) of the clause in § 1007.104–101 of this subchapter, paragraph (a) of the clause above will be modified to provide such authority).

§ 1007.105–2 Approval of contract.

Whenever the contract requires manual approval, other than by the contracting officer, prior to becoming effective, insert the clause in § 7.105–2 of this title, supplying the word "Secretary" in the blank space in that clause.

§ 1007.106–4 Escalation clause for platinum.

The following price escalation clause is authorized for use in advertised or negotiated fixed-price supply contracts for platinum.

PRICE ESCALATION (AUGUST 1967)

(a) The contractor represents that the unit prices set forth in this contract do not include any contingency allowance to cover the possibility of increased costs of performance resulting from increases in the prices which the Contractor is charged for the platinum required in the performance of this contract.

(b) Each contract unit price shall be subject to revision, pursuant to the provisions of this clause, to reflect changes in the cost of platinum.

(c) The platinum price set forth elsewhere in the Schedule of this contract shall be used by the Contractor in computing his unit price for each item for which the Contractor is required to furnish platinum. Within 60 days after completion of deliveries under the contract the Contractor shall submit to the Government a certified statement setting forth the number of troy ounces of platinum which the Contractor has furnished in the performance of the contract and the price paid per troy ounce. This statement shall be supported by invoices showing payment to the supplier of the material: *Provided however,* That written concurrence of the Contracting Officer will be obtained prior to purchase of any platinum subject to price revision under this clause, the price of which exceeds 110 percent of the price per troy ounce set forth in the contract.

(d) Upon receipt of the contractor's statement and invoices showing the amount of platinum which the contractor has furnished in performance of the contract, the difference between the price per troy ounce set forth in the contract for computation of unit prices and the price per troy ounce actually paid by the contractor shall be computed and multiplied by the number of troy ounces of platinum which the contractor has furnished in the performance of the contract. Any difference between the price per troy ounce allowed for computation of unit price in the contract and the price per troy ounce actually paid by the contractor shall be adjusted by a "Change Order" to the contract either increasing or decreasing the unit price per item and the total amount of the contract.

(e) In the event of any total or partial termination of any item of this contract for the convenience of the Government, the month in which notice of such termination is received by the contractor if prior to the month in which delivery is required by this contract, shall be considered the month in which delivery of such terminated or partially terminated item is required for the purpose of determining the current materials prices under paragraphs (c) and (d) hereof: *Provided, however,* That as to the quality of such items which is not terminated for convenience, the month in which delivery is required by this contract shall continue to apply for determining said prices. In the case of termination of any item for default on the part of the Contractor, any price revision shall be limited to the quantity of each item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of notice of termination for default.

(f) As used in this clause the phrase "the month in which delivery of supplies is required to be made in accordance with the terms of this contract" shall mean any month in which under the terms of this contract a specific quantity of units of the sup-

plies called for by this contract is required to be delivered: *Provided, however,* That in case of the failure of the Contractor to make the delivery of such quantity shall have arisen out of causes beyond the control and without the fault of negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of such failure, and the delivery schedule set forth in this contract shall be amended accordingly.

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

Subpart B—Clauses for Cost-Reimbursement Type Supply Contracts

§ 1007.204-100 Restrictions on printing.

In accordance with the requirements of § 1007.104-100 of this subchapter, insert the clause set forth therein.

§ 1007.204-101 Use of Government facilities on no-charge basis.

In accordance with the requirements of § 1007.104-101 of this subchapter, the clause set forth therein.

§ 1007.204-102 Procurement contracts requiring the provision of additional facilities under separate facilities contracts.

In accordance with the requirements of § 1007.104-102 of this subchapter, insert the clause set forth therein.

Subparts C-E—[Reserved]

Subpart F—Clauses for Construction and Architect-Engineer Contracts

§ 1007.602-9 Material and workmanship.

The following clause will be included in all contracts for construction where it is contemplated that Material Approval Submittals will be required.

PREPARATION OF MATERIAL APPROVAL SUBMITTALS (AUGUST 1967)

The submittals contemplated by the clause herein entitled "Material and Workmanship" shall be accomplished on and in accordance with instructions pertaining to AFPI Form 1 (to be converted to AF Form 3000), Material Approval Submitted.

§ 1007.603-48 Progress charts and requirements for overtime work.

The following clause will be included in all contracts for construction where it is contemplated that Progress Schedules and Reports will be required.

PREPARATION OF PROGRESS SCHEDULES AND REPORTS (AUGUST 1966)

The reports contemplated by the clause herein entitled "Progress Charts and Requirements for Overtime Work" shall be accomplished on and in accordance with instructions pertaining to AFPI Forms 78 (to be converted to AF Form 3064) and 78A (to be converted to AF Form 3065)

Subparts G-O—[Reserved]

Subpart P—Clauses for Food Service Contracts

§ 1007.5000 Scope of subpart.

This subpart sets forth clauses for procuring services by contract for managing, processing, preparing, and serving food for authorized dining halls, and contracts for food service attendants.

§ 1007.5001 General.

This subpart applies to all AF procuring activities. Requirements type contracts according to § 3.409-2 of this title, and this subpart will be established for contractual feeding.

§ 1007.5002 Definitions.

§ 1007.5002-1 Contract for food services.

The term "contract for food services" means any contract for procuring services for managing, processing, preparing, and serving food for an authorized dining hall.

§ 1007.5002-2 Contract for food service attendants.

The term "contract for food service attendants" means any contract for procuring services for preliminary preparation and serving of food, maintaining sanitation of food service facilities, and providing bus boy services.

§ 1007.5003 Required clauses.

§ 1007.5003-1 Scope of work.

(a) Insert the following clause in contracts for food services.

SCOPE OF WORK (DECEMBER 1967)

The Contractor shall furnish food handling service consisting of (i) management and operation of food handling facilities, kitchens, and dining halls, and (ii) receipt, storage, handling, processing, cooking, packaging, serving and disposal of food at the locations and for the period of time set forth in the Schedule. Except for flight meals or box lunches food will be served cafeteria style with service to include "bus boy" table clearing during meals, and the preparation and serving of short order and snack type meals when required.

(b) Insert the following clause in contracts for food service attendants.

SCOPE OF WORK (JUNE 1960)

The contractor shall provide complete kitchen police service for the dining halls listed in the Schedule, in accordance with the specifications, terms and conditions of this contract.

§ 1007.5003-2 [Reserved]

§ 1007.5003-3 Contractor personnel.

CONTRACTOR PERSONNEL (DECEMBER 1967)

(a) The Contractor shall furnish supervisory, administrative and direct personnel (including cashier and supply personnel) to accomplish all work required.

(b) The Contractor shall furnish personnel who are trustworthy, competent and well qualified for their work. The Contractor shall at Government expense furnish a medical certificate certifying that all employees in kitchen, dining halls and food processing facilities and in any way coming in contact with the handling of food used in carrying out the provisions of this contract are free from any communicable disease. Such personnel shall at all times be subject to inspection and physical examination by Government medical authorities to insure that proper sanitary standards are maintained.

(c) Contractor employees in kitchens, dining halls and food processing facilities shall wear uniforms of suitable type and design as approved by the Contracting Officer and also aprons, caps, and hair nets where appropriate. Such apparel shall be furnished by the Contractor and worn only in a clean and sanitary condition.

(d) The names of all personnel to be employed at the site of work together with such information concerning their history as the Contracting Officer may request, will be furnished to the Contracting Officer prior to commencement of their employment on work under this contract to determine their suitability and qualifications for security approval. No person will be employed at the site of work until after approval by the Contracting Officer. The Government will furnish contractor personnel authorized to work at the site of service such identification as is required by the Government. Such identification will be returned to the Government at the time the person to whom it is issued ceases to be employed at the site of work.

(e) The Contracting Officer may, if he finds it to be in the best interest of the Government, direct the Contractor to remove, and the Contractor shall remove, any employee from assignment to perform services under this contract.

§ 1007.5003-4 Facilities and materials furnished by the government.

FACILITIES AND MATERIALS FURNISHED BY THE GOVERNMENT (DECEMBER 1967)

(a) The government shall furnish the Contractor for work under this contract the facilities, fixtures and equipment as listed in Exhibit "A." Reasonable office space, but not office supplies and equipment, other than that normally supplied at the operating facilities, will be furnished, if requested by the Contractor. The Government shall furnish all Government forms authorized and directed for use.

(b) The Government shall furnish all foods, subsistence, and packaging materials required for the performance of this contract.

§ 1007.5003-5 Sanitary conditions.

SANITARY CONDITIONS (JUNE 1958)

The Contractor shall maintain all kitchens, dining halls, food processing facilities, garbage and disposal cans, racks and other property used by the Contractor in the performance of this contract in a clean and sanitary condition. Except for the cutting of grass, the Contractor shall be responsible for the proper order and cleanliness of grounds and immediate surroundings of buildings used by it. The use of tobacco and tobacco products by contractor personnel while on duty will be limited to those areas designated by the Government for smoking.

§ 1007.5003-6 Hours of operation.

HOURS OF OPERATION (JUNE 1958)

The Contracting Officer may change the feeding periods, but not the total number of hours, without additional cost to the Gov-

ernment by giving the Contractor notice 24 hours in advance of such change. Should any change result in any greater or less number of hours of operation it will be considered a change within the clause of this contract entitled "Changes." Serving lines will be promptly opened and closed at the times fixed in the Schedule. Sufficient contractor personnel will be present at all times to efficiently and expeditiously render all services required by the contract including, but not limited to, serving, clearing tables, and cleaning up after serving.

§ 1007.5003-7 Record and charge for meals served.

RECORD AND CHARGE FOR MEALS SERVED (DECEMBER 1967)

(a) The Food Service Officer or his representative will insure a meal count is accomplished by the current prescribed method of counting the number of military personnel, contractor personnel, and other authorized personnel to whom meals are served and will furnish a consolidated report of all meals served to the Contractor at the end of each month for use as evidence to support its monthly invoices submitted to the Finance Officer. The Contractor may also maintain a separate meal attendance record. In the event of any discrepancy between the Food Service Officer's consolidated report and the Contractor's meal attendance record, the Contractor may submit the matter to the Contracting Officer for decision pursuant to the clause of this contract entitled "Disputes."

(b) Where prices are to be charged for meals, the Government shall establish the rate of charge thereof. Any cash charged for meals made at the time meals are served will be collected by the Contractor and forwarded to the Food Service Officer or his representative.

(c) Contractor personnel are authorized to purchase their meals during their tenure of duty at the rate established in accordance with paragraph (b) above. The Contractor shall not invoice or be paid for meals served contractor personnel.

§ 1007.5003-8 Manuals, regulations, technical orders, and specifications.

MANUALS, REGULATIONS, TECHNICAL ORDERS, AND SPECIFICATIONS (JUNE 1958)

(a) All manuals, regulations, technical orders, and specifications, including amendments thereto, which are referred to in this contract are incorporated herein by reference. Copies of manuals, regulations, technical orders and specifications, and amendments thereto, referenced in this contract may be obtained from the Contracting Officer upon request.

(b) If directed in writing by the Contracting Officer, any amendment to manuals, regulations, technical orders or specifications or any additional manuals, regulations, technical orders or specifications which supersede, supplement, or are in addition to those referenced in (a) above shall be complied with and followed. If compliance with such amendment, or superseding or additional manuals, regulations, technical orders or specifications directed by the Contracting Officer shall cause a change in the Contractor's cost, it shall be a change within the meaning of the clause of this contract entitled "Changes."

§ 1007.5003-9 Definitions.

Insert the clause in § 7.103-1 of this title, and add the following:

(d) The Food Service Officer, when performing his functions as indicated in this contract, is a representative of the Contracting Officer under (b) above.

§ 1007.5003-10 Changes.

CHANGES (DECEMBER 1967)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes in or additions to specifications, issue additional instructions, required modified or additional work or services within the scope of the contract, and change the place of delivery, method of shipment, or the amount of Government-furnished property. If any such change causes an increase or decrease in the cost of, or in the time required for, the performance of this contract, an equitable adjustment shall be made in the contract price, or time of performance, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

§ 1007.5003-11 Inspection.

INSPECTION (NOVEMBER 1967)

All services, including the preparation of meals, pastries, bread and rolls, meat cutting, materials, foods, and facilities, fix-

tures, and equipment used by or under the control of the Contractor shall be subject to inspection and tests by representatives of the Government at all times. The Contractor will immediately remedy all conditions which are found by the Contracting Officer not to be in conformance with the requirements of this contract.

§ 1007.5003-12 Payments.

PAYMENTS (JUNE 1958)

The Contractor shall be paid, upon the submission of invoices of vouchers, the prices stipulated in the Schedule of services performed in accordance with the terms of this contract, less deductions, if any, as herein provided.

§ 1007.5003-13 Assignment of claims.

In accordance with § 7.103-8 of this title, insert the clause set forth therein.

§ 1007.5003-14 Federal, State and local taxes.

In accordance with Part 11, Subpart B of this title, insert the appropriate clause(s) form § 7.103-10 of this title.

§ 1007.5003-15 Default.

Insert the clause set forth in § 7.103-11 of this title.

§ 1007.5003-16 Disputes.

Insert the appropriate clause from § 7.103-12 of this title.

§ 1007.5003-17 [Reserved]

§ 1007.5003-18 Convict labor.

In accordance with Part 12, Subpart B of this title, insert the clause set forth in § 7.104-17 of this title.

§ 1007.5003-19 Contract Work Hours Standards Act—overtime compensation.

In accordance with Part 12, Subpart C of this title, insert the clause set forth in § 7.103-16 of this title.

§ 1007.5003-20 Equal opportunity.

In accordance with Part 12, Subpart H, of this title, insert the clause set forth in § 7.103-18(a) of this title.

§ 1007.5003-21 Officials not to benefit.

Insert the clause set forth in § 7.103-19 of this title.

§ 1007.5003-22 Covenant against contingent fees.

Insert the clause set forth in § 7.103-20 of this title.

§ 1007.5003-23 Termination for convenience of the Government.

In accordance with Part 8, Subpart G, of this title, insert the appropriate clause from § 7.103-21 of this title.

§ 1007.5003-24 [Reserved]

§ 1007.5003-25 Utilization of small business concerns.

In accordance with § 1.707-3, of this title, insert the applicable clause(s) set forth in § 7.104-14 of this title.

§ 1007.5003-26 Notice to Government of labor disputes.

In accordance with § 7.104-4, of this title, insert the clause set forth therein.

§ 1007.5003-27 Safety and accident prevention.

Insert the clause prescribed by § 1007.4047 of this subchapter.

§ 1007.5003-28 Gratuities.

Insert the clause set forth in § 7.104-16 of this title.

§ 1007.5003-29 Renegotiation.

Insert the applicable clause from § 7.103-13 of this title.

§ 1007.5003-30 Requirements.

Insert the clause prescribed by § 7.1102-26(b) of this title.

§ 1007.5003-31 Use, conservation, and responsibility for Government property.

To insure that all parties are aware of the contractor's liabilities and duties in connection with Government property, the exhibit A to be attached to each contract will be separately entitled "Fixtures," "Facilities," and "Equipment" listing the items in each group. For this purpose, (a) Facilities will be considered as buildings and nonserverable attachments to the buildings, such as built-in refrigerators, (b) Fixtures will be large items not easily movable, such as stoves, and (c) Equipment will be the smaller

items such as dishes, silverware, pots, and pans.

USE, CONSERVATION, AND RESPONSIBILITY FOR GOVERNMENT PROPERTY (JUNE 1958)

(a) In the event the Air Force fixtures, facilities and equipment set forth in Attachment A, or replacements for such equipment and facilities made necessary by fair wear and tear of the original facilities and equipment, are not available for use by the Contractor at the time or times required for the performance of the contract, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the hours of operation or contract price or both and any other contractual provision affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(b) Except for the fixtures and facilities listed in Attachment A, the Contractor, upon delivery to it of any Government-furnished property, assumes the risk of, and shall be responsible for, any loss thereof or damages thereto except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this contract. The Contractor shall use due care in the use of Government fixtures and facilities to prevent undue wear and breakage.

(c) Title to all Government-owned fixtures, facilities, and equipment used by the Contractor, and all materials and subsistence issued to the Contractor, shall remain in the Government.

(d) The Food Service Officer shall be responsible for maintaining such records as are necessary in connection with Government fixtures, facilities and equipment made available to the contractor for use.

(e) The Contractor shall be responsible for the proper conservation and use of all food, subsistence and materials issued to it by the Government and, except for normal spoilage and waste for this type of operation, shall be liable for any loss thereof except as such food, subsistence and materials are consumed in the performance of this contract.

(f) The Contractor shall inventory all fixtures, facilities, equipment, subsistence and materials quarterly and furnish the Contracting Officer a certified copy of such inventory.

NOTE: Paragraph (f) is not to be included in contracts for food service attendants.

§ 1007.5003-32 Insurance.

INSURANCE (JUNE 1958)

The Contractor shall, at its own expense, procure and thereafter maintain the following kinds of insurance with respect to performance under this contract:

(a) Workmen's Compensation insurance, or equivalent workmen's compensation coverage, as required or prescribed by law, with minimum employer liability limit of $100,000 for accidental bodily injury or death, or for occupational disease.

(b) Comprehensive, General Liability, including coverage of food products with minimum limits of $100,000 per person and $300,000 per accident or occurrence, and $10,000 per accident or occurrence for property damage.

§ 1007.5004 Clauses to be used when applicable.

§ 1007.5004-1 Examination of records.

In accordance with the requirements of § 7.104-15, of this title, insert the clause set forth therein.

§ 1007.5004-2 Approval of contract.

Whenever the contract requires manual approval, other than by the contracting officer, prior to becoming effective, insert the clause in § 7.105-2 of this title.

§ 1007.5004-3 Alterations in contract.

According to instructions for use in § 7.105, of this title, insert the clause in § 7.105-1 of this title.

§ 1007.5005 Schedule clauses.

§ 1007.5005-1 Changes in price based on variation from estimate.

To provide for an increase or decrease in the contract price for meals served, depending on a variation from the Government's estimate or the number of meals compared to the meals actually served, the following clause will be inserted in the schedule. The scales of variation in both quantity and price are fixed and are designed to enable a contractor to place his bid on the Government's estimated quantity at a price which will not include a contingency amount because of possible variation from the Government's estimate.

CHANGE IN PRICE BASED ON VARIATION FROM ESTIMATE (OCTOBER 1959)

(a) If the actual number of meals served under this contract to other than Contractor personnel, varies from the number of meals estimated (in accordance with (b)

below) to be served during any calendar month, the price paid the Contractor for meals served in that month shall be adjusted in accordance with the following formula:

If actual meals served during month is following percent of estimated meals for month	Prices for meals served will be the following percent of basic contract prices subject to the limitations in column 3	Total payment shall not
70 to 84	112	Exceed 84% est reqmts × 108% basic price.
84 to 92	108	Exceed 92% est reqmts × 104% basic price.
92 to 100	104	Exceed est reqmts × basic price.
100 to 110	94	Be less than est reqmts × basic price.
110 to 120	93	Be less than 110% est reqmts × 94% basic price.
120 to 130	92	Be less than 120% est reqmts × 93% basic price.

(b) Adjustments in price by reason of this clause will be made at the end of each calendar month for the meals served during that month. The basis for determining the estimated number of meals to be served in a given month will be obtained by dividing the total estimated number of meals for the entire contract period by the total number of days in that period and multiplying the results by the number of days in the month involved.

(c) If the number of meals served in any calendar month (to other than contractor personnel) varies from the estimated requirements for that month by more than 30 percent of such requirements, the Contractor and the Contracting Officer will negotiate an equitable adjustment in the contract price for that month in the manner provided in the Changes clause of this contract.

PART 1008—FUNDING CONTRACT OVERRUNS

Sec.
1008.1 Purpose.
1008.2 Overrun criteria.
1008.3 Funding contract cost overruns.
1008.4 Office of primary responsibility (OPR).
1008.5 Disposition of documentation.

AUTHORITY: Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

SOURCE: 41 FR 34962, Aug. 18, 1976, unless otherwise noted.

§ 1008.1 Purpose.

This part establishes the policy and procedures for funding contract overruns resulting from Air Force Wright Aeronautical Laboratories funded contracts and is applicable to all staff agencies and assigned Laboratories.

§ 1008.2 Overrun criteria.

Overruns are defined as any increase in contract funding requirements on cost type contracts which result from technical, schedule, estimating errors, or direct/indirect actions taken by government agencies or persons. Determination of which contract financing requirements are to be considered overruns is the responsibility of the procuring contracting officer based on the recommendations of the administrative contracting officer.

§ 1008.3 Funding contract cost overruns.

(a) Contract overruns should be funded with appropriations of the same type and year as those originally cited on the contract involved. Contract overrruns on contracts citing program control years (current and first prior) appropriations will use locally available funds when available. All requests for funds for contract overruns will be documented with a 12 point letter to Assistant for Operations, Air Force Wright Aeronautical Laboratories, from the Laboratory programming office.

(1) Program element, project, task.

(2) Total contract funding and distribution by year and appropriation.

(3) Total amount of overrun and distribution by year and appropriation.

(4) Contractor and location.

(5) Contract number.

(6) Date of original contract.

(7) Date of change applying last fiscal year funds.

(8) Date funds required.

(9) Forecast obligation date.

(10) Statement of funds available and source (reprogramming or expired appropriations).

(11) Auditors report or contract Funds Status Report.

(12) Reason for overrun, background, impact, steps taken to avoid or correct situations, etc.

(b) For overruns larger than $50,000 or overruns which exceed locally available funds, the letter described in § 1008.3(a) above must be forwarded to Air Force Systems Command, Programs and Budget, Andrews Air Force Base, Washington, D.C. 20331.

(c) All requests for overrun funding and associated documentation/justification will be reviewed and coordinated by Assistant for Operations, Air Force Wright Aeronautical Laboratories before funding or review by Air Force Systems Command, Programs and Budget.

[41 FR 34962, Aug. 18, 1976; 41 FR 47431, Oct. 29, 1976]

§ 1008.4 Office of primary responsibility (OPR).

Assistant for Operations, Air Force Wright Aeronautical Laboratories is designated the OPR for managing the funding of contract overruns.

§ 1008.5 Disposition of documentation.

(a) Correspondence and related information maintained by Assistant for Operations, Air Force Wright Aeronautical Laboratories pertaining to the funding of contract overruns will be incorporated with other supporting data and will be destroyed after final payment or when purpose has been served, but no later than one year after final payment. (Authority: Air Force Manual 12-50, Disposition of Air Force Documentation, Table 70-1, Rule 7.)

(b) Correspondence and related information applicable to contract cost overruns forwarded to the appropriate program manager will be incorporated into the official Research and Development case file and retired with the contract to which it relates. (See: Air Force Manual 12-50, Table 80-2, Rule 1.)

PART 1009—PATENTS, DATA AND COPYRIGHTS

Subpart A—Patents

Sec.
1009.110 Reporting of royalties—anticipated or paid.

Subpart B—Rights in Technical and Other Data and Copyrights

1009.203-50 Clause as to rights in technical data.
1009.203-51 When a value engineering incentive or value engineering program Requirement Clause is included in contract.
1009.203-52 Release of restricted data.

AUTHORITY: 10 U.S.C. Ch. 137, 10 U.S.C. 8012.

Subpart A—Patents

§ 1009.110 Reporting of royalties—anticipated or paid.

(a) The schedule of Basic Ordering Agreements will contain a provision substantially as follows:

REPORTING OF ROYALTIES (SEPTEMBER 1969)

Whenever the contractor furnishes a price quotation under this BOA, he shall furnish the royalty information required by § 9.110 of this title. The dollar limitation stated therein shall be deemed to apply to each order.

[35 FR 5035, Mar. 25, 1970, as amended at 35 FR 8230, May 26, 1970]

Subpart B—Rights in Technical and Other Data and Copyrights

§ 1009.203-50 Clause as to rights in technical data.

Each contract including a Data Clause will include the following provision:

RIGHTS IN DATA (DECEMBER 1967)

The rights obtained by the Government in technical data are set forth in the Rights in Technical Data Clause incorporated in the contracts, and nothing elsewhere in this contract or in any documents incorporated by reference in this contract shall be construed as in any way altering such rights except as restricted by the express terms, if any, of this contract as to data called for

and furnished for provisioning purposes only.

[35 FR 5035, Mar. 25, 1970]

§ 1009.203-51 When a value engineering incentive or value engineering program Requirement Clause is included in contract.

When a value engineering incentive or value engineering program requirement clause (Part 1, Subpart Q of this title) is included in the contract, the following will be inserted in the clause in § 1009.203-50 of this subpart immediately before the words "The rights obtained * * *" "Except as provided in clause entitled (insert applicable clause), the rights obtained by the Government * * *."

[35 FR 5035, Mar. 25, 1970]

§ 1009.203-52 Release of restricted data.

(a) Release of data subject to the previous restrictive provisions of Data Clause (Mar. 1, 1963) in § 9.203 of this title outside the Government for procurement or manufacturing purposes may be made without the contractor's permission, to another contractor, only for the purpose of manufacture required in connection with repair or overhaul where an item is not procurable commercially so as to enable the timely performance of the overhaul or repair work. Whenever such data is to be released or disclosed outside the Government for such overhaul or repair purposes, the contracting officer will cause the action specified in paragraph (d) of this section to be taken.

(b) Release of data subject to the restrictive provisions of the Rights in Technical Data Clause (August 1969) in § 9.203 (b) of this title outside the Government for manufacture or procurement may be made without the written permission of the party named in the contract in which the data was delivered only for emergency repair or overhaul work or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of work. Whenever such data is to be released or disclosed outside the Government for such repair or overhaul work, the contracting officer will cause the action specified in paragraph (d) of this section.

(c) The data specified in paragraphs (a) and (b) of this section will not be released until a request therefor has been made by the overhaul or repair contractor, and it has been determined and a finding to that effect made by the contracting officer, approved by the Director of Procurement or his deputy, that the item or process concerned is not otherwise procurable or available to enable timely performance of the work set forth in paragraphs (a) and (b) of this section.

(d) (1) Include in the overhaul or repair contract the following clause:

> Certain data which may be furnished by the Government to the contractor under this contract have been obtained by the Government subject to restriction upon disclosure. Such data or restricted portions are marked with an appropriate legend. Contractor will abide by the restrictions appearing on such data and will not reproduce such data in whole or in part without reproducing such restrictions.

(2) Require that the legend authorized by the sections of this title cited in paragraphs (a) and (b) of this section and appearing on the data is reproduced on the copies of data distributed.

[35 FR 5035, Mar. 25, 1970. Redesignated at 37 FR 23911, Nov. 10, 1972]

PART 1011—TAXES

Subparts A-B—[Reserved]

Subpart C—State and Local Taxes

Sec.

1011.351 Texas sales and use tax—construction contracts.
1011.353 New York State sales and use tax—fixed price construction contracts.
1011.354 Los Angeles City License Tax.
1011.354-1 Cost-type contracts.

AUTHORITY: 10 U.S.C. Ch. 137, 10 U.S.C. 8012.

Subparts A–B—[Reserved]

Subpart C—State and Local Taxes

§ 1011.351 Texas sales and use tax—construction contracts.

(a) A construction contractor (or subcontractor) may purchase materials exempt from Texas Limited Sales, Excise and Use Tax if his contract (or subcontract) provides separate amounts applicable to the performance of services and furnishing of the materials.

(b) Instructions for Preparation of Construction Contracts in Texas.

(1) The following statements will be included in Invitations for Bids on fixed price construction contracts to be performed in Texas:

The contract to be awarded will be a construction contract which contains separate amounts applicable to the performance of the services and the furnishing of the materials as defined in Article 20.01(T)(2), Title 122A, Revised Civil Statutes of Texas, and Ruling No. 9, Comptroller of Public Accounts. The bidder awarded the contract, must obtain a Limited Sales, Excise and Use Tax Permit as provided by Texas Law. Exemption from Texas Limited Sales. Excise and Use Tax for materials to be incorporated by the contractor (and his subcontractors) into the structure or improvement of real estate must be secured under the terms of cited law and regulation and bid prices should not include any element for this tax on such materials.

The contract will be awarded to bidders on the basis of the total of the amounts bid applicable to material to be incorporated into the structure or improvement and the amounts applicable to the performance of services and other obligations of the construction contract.

(2) The following will be printed on the bid form (construction):

Materials to be incorporated into the structure or improvement upon real estate.	$
Service and other obligations of Construction Contract	$
Total	$

(3) The contract should include the separate amounts and total price bid and an additional general provision as follows:

This contract contains separate amounts applicable to the performance of the services and the furnishing of materials as defined in Article 20.01(T)(2), Title 122A, Revised Civil Statutes of Texas. The contractor has or will obtain a Limited Sales, Excise or Use Tax Permit, as provided by Texas law and regulation.

If the contractor awards any subcontract of $10,000 or more under this contract, such subcontract(s) shall contain separate amounts applicable to the performance of services and the furnishing of materials.

Notwithstanding any other provisions of this contract, the contract price does not include any amount for Texas Limited Sales, Excise or Use Tax on Materials to be incorporated by the Contractor (or subcontractors in compliance with the above) into the structure or improvement of real estate. The Government agrees to furnish the contractor, upon request, appropriate tax exemption certificates. In the event the Contractor is required to bear the burden of excluded tax, by reason of failure to furnish exemption certificates, or otherwise, without fault of the Contractor, the price will be correspondingly increased.

(4) Modifications of such contracts should, where appropriate, similarly indicate separate amounts applicable to such materials and for services and the exclusion of subject tax.

[35 FR 4857, Mar. 20, 1970]

§ 1011.353 New York State sales and use tax—fixed price construction contracts.

(a) A construction contractor may purchase materials free of New York Sales and Use Tax if his contract (or subcontract) is for repair of real property. If sale of the repairs is made to the Government, such sale, including charges for material and labor, would also constitute an exempt transaction. This is in contrast to a capital improvement contract where the contractor is classified as a taxable consumer of the materials used in construction. Use of the clause in paragraph (c) of this section will assure that bidders do not include in applicable New York sales or use taxes in their bids on fixed price contracts for repair of real property.

(b) Procurement personnel should coordinate with the local staff judge advocate in determining whether a contemplated construction project is for repair or capital improvement of real property. Repairs are usually inci-

dental to continued use of the structure and intended to keep it in an efficient operating condition, while capital improvements materially add to the value of the real property, materially prolong its life, or adapt it to a new and different use.

(c) The following clause will be included in IFB's, RFP's, RFQ's, resultant fixed price contracts for repair projects to be performed in the State of New York:

NEW YORK STATE AND LOCAL SALES AND USE TAXES—REPAIR PROJECT

Work called for by Items———of this contract (IFB, RFP, RFQ) is considered to be in the nature of repairs to real property. Since the New York State Sales and Use Tax Law exempts such projects when purchased by the Federal Government (sec. 116(a), New York Sales/Use Tax Law), no sales or use taxes should be paid by the contractor on either materials purchased for incorporation into the project or services rendered in fulfillment thereof. However, the contractor is subject to sales or use taxes on equipment, tools, and supplies rented or purchased for the project but not incorporated therein. The contractor therefore certifies that purchases of the type mentioned in the preceding sentence have been included in the contract price.

If, notwithstanding the foregoing, the contractor is required to pay or bear the burden for New York State and local sales or use taxes on materials incorporated or services rendered in fulfillment of this project, including any interest or penalty incurred thereon, the contract price shall be correspondingly adjusted to cover same: *Provided*, That such taxes, interest or penalty were not incurred through the fault of negligence of the contractor or his failure to follow the instructions of the Contracting Officer. The contract price shall be correspondingly decreased, if following an adjustment under this clause, the contractor obtains a credit, refund or drawback of such taxes, interest or penalty. The contract price shall be similarly decreased if the contractor, through his fault or negligence of failure to follow the instructions of the Contracting Officer does not obtain a refund, credit or drawback of such taxes, interest or penalty. Interest paid or credited to the Contractor incident to a refund of such taxes shall inure to the benefit of the Government to the extent that such interest was earned after the Contractor was paid or reimbursed by the Government for such taxes.

The contractor shall promptly notify the Contracting Officer of any matter which may result in a price adjustment under this clause, and shall take action as directed by the Contracting Officer. The contract price shall be equitably adjusted to cover the costs of such action, including interest, penalties, and reasonable attorneys' fees.

(d) Cost type and time and materials contracts: Under a cost type or time and materials contract, title to direct materials vests in the Government prior to use or consumption by the contractor. The Government's acquisition of title should therefore be treated as an exempt retail sale of such materials, whether or not physically incorporated into the construction. Under such contracts, neither the contractor's purchase of direct materials nor the sale of the construction to the Government, whether in the nature of repairs or capital improvements, would be taxable.

[35 FR 4857, Mar. 20, 1970]

§ 1011.354 Los Angeles City License Tax.

(a) *Instructions to contractors.* It is the intention of the military departments to challenge the validity of the Los Angeles City License Tax as it is currently being applied to contractors and subcontractors selling manufactured end items directly or indirectly to the Government under fixed-price contracts and cost-type contracts. Test litigation will soon be instituted to accomplish this purpose. A form letter of instructions, see Instructions to Contractors, has been approved by the Armed Services Tax Group (DOD) for issuance to contractors concerned. The letter sets forth the procedures to be followed by Government contractors and subcontractors in the city of Los Angeles during the pendency of the test litigation. Issuance thereof to affected prime contractors (who should, in turn, instruct affected subcontractors) will be accomplished by cognizant ACO's Reports received from contractors concerning the Los Angeles Tax (see paragraph 6 of the Instructions to Contractors) will be forwarded to AFLC (MCJCO).

(b) *Special tax clauses.* (1) The special clauses in paragraphs (b) (3) and (4) of this section are intended for use in all contracts containing an ASPR tax clause (usually fixed-price or time and materials contracts), the perform-

ance of which will be accomplished either wholly or partially in the city of Los Angeles, Calif. A special clause will be inserted in contracts for services as well as supply contracts since the Los Angeles tax, measured by gross receipts of the preceding year, is normally allocated and charged through overhead to all contracts of the current year. Thus, a subsequent reduction in the amount of license taxes for a given year is likely to be reflected as a general reduction in overhead for all contracts which shared the original cost or burden for such taxes.

(2) Provision will be made in IFB's, RFP's, and RFQ's to allow for the incorporation of a special tax clause in resultant contracts where appropriate. Existing contracts need not be amended to incorporate such a clause, except where new work is added.

(3) The following provision will be inserted in affected contracts containing the tax clause in § 11.401-1 of this title.

LOS ANGELES CITY LICENSE TAXES

Notwithstanding any other provisions of this contract:

(a) The contract price includes allocable Los Angeles City License taxes, including those taxes (hereinafter referred to as "additional taxes") resulting from the application of principles expressed by the Los Angeles City Attorney in his opinion dated March 2, 1960. If, after the contract date, the contractor is not required to pay or bear the burden, or obtains a credit or refund of all or a portion of said taxes from the city of Los Angeles, the contract price shall be decreased by the amount of such relief or refund allocable to this contract, or that amount shall be paid to the Government, as the Contracting Officer directs. The contract price shall be similarly decreased if the Contractor, through his fault or negligence or failure to follow instructions of the Contracting Officer as provided in (b) below, is required to pay or bear the burden or does not obtain a refund of any such taxes. Interest paid or credited to the Contractor incident to a refund of these taxes shall inure to the benefit of the Government to the extent that such interest was earned after the Contractor was paid or reimbursed by the Government for these taxes.

(b) The Contractor shall comply with the instructions of the Contracting Officer in order to obtain a reduction, credit or refund of Los Angeles City License Taxes, and the contract price shall be equitably adjusted to cover the costs of such compliance, including reasonable attorneys' fees arising therefrom.

(c) The Contractor shall maintain accurate records showing the amount of Los Angeles License Taxes, and specifically the amount of additional taxes, included in the contract price.

(4) The following provision will be inserted in affected contracts containing the tax clause in § 11.401-2 of this title.

LOS ANGELES CITY LICENSE TAXES

Notwithstanding any other provisions of this contract:

(a) The contract price includes allocable Los Angeles City License Taxes, including those taxes (hereinafter referred to as "additional taxes") resulting from the application of principles expressed by the Los Angeles City Attorney in his opinion dated March 2, 1960. If, after the contract date, the Contractor is not required to pay or bear the burden, or obtains a credit or refund of all or a portion of said taxes from the city of Los Angeles, the contract price shall also be adjusted in accordance with the clause hereof entitled "Federal, State, and Local Taxes." As provided in said clause, the contract price shall also be adjusted if the Contractor, through his fault or negligence or failure to follow the instructions of the Contracting Officer, is required to pay or bear the burden or does not obtain a refund of such taxes.

(b) The contractor shall maintain accurate records showing the amount of Los Angeles License Taxes, and specifically the amount of additional taxes, included in the contract price.

[35 FR 4857, Mar. 20, 1970, as amended at 38 FR 15506, June 13, 1973]

§ 1011.354-1 Cost-type contracts.

Los Angeles City license taxes which are properly paid in accordance with the government's instructions are, to the extent allocable, reimbursable under the cost principles of Part 15, Subchapter A, Chapter I of this title. Special tax clauses are not required for cost-type contracts.

STATE AND LOCAL TAXES

INSTRUCTIONS TO CONTRACTORS LOS ANGELES CITY LICENSE TAX

(a) In an opinion dated March 2, 1960, regarding license taxes asserted to be due on Northrop Corp.'s activities under contracts

with the Federal Government, the Los Angeles City Attorney concluded that:

(1) Gross receipts derived from Government supply contracts, entered into on a CPFF or fixed-price with progress payment basis, are taxable in part at the rates provided in Los Angeles Municipal Code, section 21.167 ("Manufacture and Sale of Goods, Wares or Merchandise at Retail"), and in part at the rates provided in Los Angeles Municipal Code, section 21.190 ("Occupational and Professional License (Not Otherwise Specifically Licensed)").

(a) Gross receipts derived from sales of articles to the Government pursuant to contracts which require shipment of said articles on Government bills of lading to destinations outside the State of California are not exempt from the computation of the license tax by reason of Los Angeles Municipal Code, section 21.168-1 ("Exclusion from Gross Receipts").

(b) As you may previously have been advised, it is the intention of the military departments to challenge the legal validity of the above conclusions of the Los Angeles City Attorney, as made applicable to contractors and subcontractors selling manufactured and items directly or indirectly to the Government under fixed-price contracts and cost-type contracts. Arrangements are presently being made for a consolidated test case with ITT Gilfillan, Inc., and Hoffman Electronics Corp. serving as colitigants. Insofar as possible, all other claims for refund involving Government supply contractors and subcontractors should be held in abeyance pending results of the test litigation.

(c) Contractors who have not already made payment of license taxes imposed by Los Angeles Municipal Code, sections 61.166, 21.167, and 21.190, as construed in the aforementioned City Attorney opinion, for the years 1963 and 1964 should do so in accordance with the demands of the city. However, the payment of additional license taxes resulting from the application of principles expressed in the City Attorney's opinion is not to be construed as acquiescence in said opinion, and rights to effect refunds of such additional taxes should be timely preserved. This same procedure will be followed, at the appropriate times, with respect to license taxes becoming due in future years, until you are otherwise advised.

(d) Contractors who have withheld payment of such license taxes allegedly due for years prior to 1968, are hereby instructed immediately to pay the same in order to prevent the accrual of further interest and penalties. As in the case of license taxes for 1963 and subsequent years, rights to effect refunds thereof should be timely preserved.

(e) Payments made in accordance with these instructions should be accompanied by the following written statement: Payment of additional taxes resulting from the application of principles expressed by the Los Angeles City Attorney in his opinion dated March 2, 1960 is being made solely for the purpose of avoiding the accrual of further interest and penalties and is not to be construed as acquiescence by (name of contractor) in the legality of the city's demands for such payment. It is contemplated that (name of contractor) will eventually claim a refund of such amounts herein paid to the city of Los Angeles, in accordance with the administrative and judicial procedures set forth in applicable portions of the Los Angeles and California codes.

(f) Additional amounts of license taxes paid to the city of Los Angeles pursuant to these instructions should be currently reported to the contracting officer. In addition, the contracting officer should be advised, in pertinent detail, of any claim for refund which it becomes necessary to file in order to prevent expiration of statutory periods of limitation.

(g) In the case of *California Cigarette Concessions, Inc.* v. *City of Los Angeles*, 53 Cal. 2d 865, 350 2d 715, it was considered that the 2-year statute of limitations established by Section 339 Subdivision 1, California Code of Civil Procedures, applied to claims for refund of the Los Angeles License Tax. However, the California Supreme Court, in the case of *Volkswagen Pacific Inc.* v. *City of Los Angeles*, 7 Cal. 3d 48, dated May 10, 1972, subsequently held that refund claims are instead governed by the California Government Code, Division 3.6, "Claims and Actions Against Public Entities and Employees." These provisions of the California Government Code provide the following limitations:

(1) Administrative claims for refund must be filed within 1 year from the date of payment of the tax. (Sec. 911.2, Calif. Government Code.)

(2) For administrative claims filed prior to January 1, 1971, court appeals must be filed within (i) 6 months after denial of the administrative claim, whether or not the city gives notice of such denial, or (ii) 1 year from the date of payment of the tax, whichever is later (sec. 945.6, Calif. Government Code, as amended 1968).

(3) For administrative claims filed after January 1, 1971, court appeals must be filed within (i) 6 months after receipt of written notice from the city rejecting the refund claim, or (ii) 2 years from the date of payment of the tax, if written notice of rejection is not given (sec. 945.6, Calif. Government Code, as amended 1970).

(4) Administrative claims for refund are deemed automatically denied if no action is taken thereon by the city within 45 days after filing of the claim (secs. 935 (d), 912.4, Calif. Government Code).

(h) In view of the foregoing, Government contractors are instructed to comply with procedural requirements and time limitations imposed by Division 3.6, California Government Code. It is recognized, however, that compliance may no longer be possible in the case of taxes paid prior to January 1, 1972, due to reliance upon the decision in *California Cigarette Concessions, Inc.* v. *City of Los Angeles, supra.* As to such taxes, contractors are nevertheless instructed to institute claims and/or file court appeals, as appropriate, without further delay. Contractors should resist, on grounds of estoppel or other appropriate legal or equitable principles, any attempt by the city to apply limitations imposed by the California Government Code in bar of recovery of taxes paid prior to the *Volkswagen Pacific Inc.* decision.

These instruction relate only to license taxes, the refund of which would inure to the benefit of the Government pursuant to the terms of Government contracts. Similar instructions should be issued to affected subcontractors located in the city of Los Angeles.

[35 FR 4857, Mar. 20, 1970, as amended at 38 FR 15506, June 13, 1973]

PART 1012—LABOR

Subparts A–E—[Reserved]

Subpart F—Walsh-Healey Public Contracts Act

Sec.
1012.604 Responsibilities of contracting officers.

Subpart G—[Reserved]

Subpart H—Equal Opportunity

1012.808–2 Compliance reviews.

AUTHORITY: 10 U.S.C. Ch. 137, 10 U.S.C. 8012.

Subparts A–E—[Reserved]

Subpart F—Walsh-Healey Public Contracts Act

§ 1012.604 Responsibilities of contracting officers.

The contracting officer is also responsible for:

(a) Advising prospective contractors of possible applicable minimum wage determinations, by giving written or verbal information about such determinations in advance of our coincident with negotiated procurements, and by including the following provision in invitations for bids in the case of formally advertised procurements:

LABOR INFORMATION

Attention is invited to the possibility that wage determinations may have been made under the Walsh-Healey Public Contracts Act providing minimum wages for employees engaged in the manufacture for sale to the Government of the supplies covered by this Invitation for Bids. Information in this connection, as well as general information as to the requirements of the Act concerning overtime payment, child labor, safety and health provisions, etc., may be obtained from the Wage and Hour and Public Contracts Division, Department of Labor, Washington, D.C. 20210. Requests for information should state the Invitation number, the issuing agency and the supplies covered.

(b) Submitting report of any violations of representations or stipulations required by the Walsh-Healey Public Contracts Act to Hq USAF (AFSPPMA) through the Staff Judge Advocate, Hq AFSC, for transmittal to the Department of Labor.

[35 FR 4859, Mar. 20, 1970]

Subpart G—[Reserved]

Subpart H—Equal Opportunity

§ 1012.808–2 Compliance reviews.

From time to time, the OFCC and other compliance agencies issue notices with respect to companies whose EEO compliance status is questionable. Such notices may require special reviews, inquiries, consultations, etc., prior to award to those companies of any contract, regardless of dollar amount. Upon receipt by Hq USAF/SPP, the notice shall be forwarded to appropriate major commands for dissemination to all buying activities. Before awarding a contract to any firm listed in such a notice, the PCO shall contact the Hq USAF/SPP Labor Relations Office for instructions. Hq USAF, after consultation with the appropriate agencies, shall advise the PCO as to whether award can be made to the firm in question.

[36 FR 1252, Jan. 27, 1971]

PART 1013—GOVERNMENT PROPERTY

Subparts A–B—[Reserved]

Subpart C—Providing Government Production and Research Property to Contractors

Sec.
1013.302 Air Force approval authorities for facilities projects.

Subparts D–F—[Reserved]

Subpart G—Contract Clauses

1013.750 Bailment clauses for fixed price or price cost reimbursement.

AUTHORITY: 10 U.S.C. Ch. 137, 10 U.S.C. 8012.

Subparts A–B—[Reserved]

Subpart C—Providing Government Production and Research Property to Contractors

§ 1013.302 Air Force approval authorities for facilities projects.

Secretary of the Air Force Order (SAFO) No. 715.1, dated August 15, 1969, assigns the responsibility for overall management of industrial facilities, including acquisition, utilization, maintenance and disposal to the Deputy Chief of Staff, Research and Development (DCS/R&D).

(a) With the exception of facilities expansions supporting munitions programs (OASD/I&L approval required regardless of dollar value), SAFO 715.1 established the following approval delegations for industrial facilities projects:

$500,000 to $1,000,000—Hq. USAF (DCS/R&D), AFRPD and AFRPDI.

$500,000 or less and project not contained in approved Air Force Industrial Resources Financial Plan—Hq USAF (DCS/R&D), AFRPD, and AFRPDI.

$500,000 or less project contained in approved Air Force Industrial Resources Financial Plan—Hq AFSC (Commander/Vice Commander, DCS/P&P and Director/Deputy Director of Production); the Commanders, Vice Commanders or Deputy Commanders of AFSC Divisions and Organization (ASD, ESD, AMD, and SAMSO; and Hq AFLC (Commander/Vice Commander and DCS, Procurement).

$100,000 or less and project contained in approved Air Force Industrial Resources Financial Plan—Hq OAR (Commander/Deputy Commander and Director of Procurement (DCS Materiel)).

$25,000 or less and project contained in approved Air Force Industrial Resources Financial Plan—AFOSR and EOAR (Directors of Procurement); office two levels above the contracting officer for the facilities contract may approve real property nonrecurring maintenance project.

(b) Approval of industrial facilities projects consisting of items from the industrial reserve (no funding) and having a total acquisition value of $500,000 or less and contained in the approved Air Force Industrial Resources Financial Plan will be obtained from the above approval authorities except for expansions supporting munitions programs. Projects in excess of $500,000, and those projects not contained in the approved Air Force Industrial Resources Financial Plan will be submitted to Hq USAF (AFRPDI) for approval. The same project approval criteria are applicable for extending primary purposes of facilities contracts, except for the requirement for inclusion in the Approved Financial Plan.

(c) The above approval authority for purchase of industrial facilities items will not be redelegated below the above levels. The exercise of this authority is subject to all statutory and ASPR provisions, conditions and limitations affecting the furnishing of industrial facilities.

(d) Any Air Force procurement activity that is initiating a procurement contract which may eventually require the Air Force to provide facilities must obtain facilities approval from the appropriate approval authorities prior to proceeding with contract award or negotiation.

Procurement activities will not permit a facilities project at one location, or a normally integrated project for a weapon system to be submitted in two or more separate project increments, in order to by-pass approval levels cited above.

[35 FR 5176, Mar. 27, 1970, as amended at 35 FR 15212, Sept. 30, 1970]

80-109 O—81——4

Subparts D–F—[Reserved]

Subpart G—Contract Clauses

§ 1013.750 Bailment clauses for fixed price or price cost reimbursement.

The following clauses shall be used in contracts under which it is anticipated that military property may be required in support of contract performance and it is impracticable to provide such property under the Government property provisions of the contract. The availability of the property to be bailed will be determined by the procuring contracting officer prior to award of the contract specifically providing for use of bailed property.

(a) In procurements where the exact nature of the military property required is known, the contract shall identify each item to be provided by the Government and the following clause shall be used:

It is contemplated by the parties hereto that the Government will provide to the Contractor by separate bailment agreement the items listed below (in addition to any property listed in this contract as to be furnished by the Government) for use in the performance of this contract, and that an appropriate written agreement of bailment will be entered into by and between the parties hereto for that purpose. In the event of delay or failure of the Government to provide such property, as aforesaid, the provisions of the clause of this contract entitled "Government Property" relating to failure or delay in the furnishing of property shall be applicable. (List property).

(b) In procurements where the exact nature of the military property to be provided by separate bailment agreement is not known when the contract is signed, the contract shall define the extent to which the Government will be responsible for providing such property to the contractor. In such cases the following clause shall be used to permit the Government to furnish such property and thereby obtain an equitable adjustment:

It is anticipated that the Government may provide to the Contractor by separate bailment agreement such military property of the categories specified herein as may from time to time be deemed by the Contracting Officer to be necessary in the interest of the Government to so furnish, provided, however, the effect of such bailment upon the contract price shall be reflected by adjusting the contract price in accordance with the procedures set forth in the Changes clause of this contract, and the contract amended accordingly by supplemental agreement or change order to the payment of Contractor's final invoice under this contract. Any military property provided under this clause shall be subject to the provisions of a separate bailment agreement or agreements and this contract shall not be construed as effecting or committing the Government to the bailment of such property. (List categories.)

(c) Where a letter contract is awarded under the circumstances as set forth in § 3.408 of this title, and the exact nature of the military property which may be provided to the contractor under a separate bailment agreement is not known, the following alternate clause may be used:

It is anticipated that the Government may provide to the Contractor such items of military property specified herein as may from time to time be deemed by the Contracting Officer to be necessary in the interest of the Government to so furnish, provided however, the effect of such bailment shall be taken into account at the time of execution of the definitive contract contemplated hereby or considered in any adjustments in amounts finally payable to the Contractor in settlement of the Contractor's termination claim.

(d) The provisions of the above clauses which pertain to specifying the military property may be modified to reflect the use of such property already provided under an appropriate bailment agreement in support of other contracts with the same contractor. In such case reference will be made to the applicable bailment agreement (not the master bailment agreement).

[35 FR 5176, Mar. 27, 1970]

PART 1016—PROCUREMENT FORMS

Subpart A—Forms for Advertised and Negotiated Supply and Services Contracts

Sec.

1016.102-1 Request for Quotations (Standard Form 18).
1016.102-3 Solicitation, Offer, and Award (Standard Form 33).
1016.103 Amendment of Solicitation/Modification of Contract (Standard Form 30).

Subparts B–G—[Reserved]

Subpart H—Miscellaneous Forms

Sec.
1016.812 Release of Assignment Forms.

AUTHORITY. 10 U.S.C. Ch. 137 and 10 U.S.C. 8012.

Subpart A—Forms for Advertised and Negotiated Supply and Services Contracts

SOURCE: 38 FR 15507, June 13, 1973, unless otherwise noted.

§ 1016.102–1 Request for Quotations (Standard Form 18).

The Standard Form 18 (Request for Quotations) shall not be used to solicit firm offers, regardless of type of contract contemplated. When the Standard Form 18 is used, the solicitation shall not include any instructions or conditions which advises the quoter that the most favorable initial quotation may be accepted without discussion.

§ 1016.102–3 Solicitation, Offer, and Award (Standard Form 33).

(a) The Standard Form 33 (Solicitation, Offer and Award) shall be used as the prescribed form whenever a firm offer is solicitated, regardless of the type of contract contemplated, except when it is contemplated that the procurement will be consummated by an order or modification to an existing contract; in such instances, a letter or message request for proposal may be used.

(b) When reproduction of the original of the resultant contract is practicable and authorized by Air Force ASPR Supplement 20-401, offerors shall be requested to return not more than one signed copy of their offers.

§ 1016.103 Amendment of Solicitation/Modification of Contract (Standard Form 30).

The Standard Form 30 (Amendment of Solicitation/Modification of Contract) shall not be used to amend Request for Quotation (Standard Form 18) (ch. 1 of this title/Air Force ASPR Supplement 3-505).

(a) Whenever there is a requirement in the contract for the issuance of a work order, job order or other authorization for the contractor to perform work over and above that required by the contract terms and conditions, the contracting officer should use the forms prescribed in the contract to approve such work. If the contract does not prescribe a specific form, local devised forms or letters of authorization may be used. Authorizations should contain all conditions including price where possible: however, urgent authorization need not be delayed because of price or other conditions. When conditions are omitted, a time should be specified when the conditions will be resolved.

(b) All work orders, job or other authorizations must be definitized by use of standard form 30. Dependent upon the frequency of authorizations or other requirements for issuance of the standard form 30, the individual authorizations can be consolidated and incorporated into the contract, but it must be remembered that the contractor cannot be paid until the standard form 30, incorporating the authorizations, has been executed by both parties.

Subparts B–G—[Reserved]

Subpart H—Miscellaneous Forms

§ 1016.812 Release of assignment forms.

When the forms in paragraph (d) of § 16.812 of this title titled "Contractor's Assignment of Refunds, Rebates, Credit, and Other Amounts," are to be executed by contractors who have claims for refund of State and local taxes, the following parenthetical phrase will be added at the end of paragraph 1 of the form directly following the word "thereunder" (except those for refunds, rebates, or credits for taxes paid to the State or political subdivision thereof), and in addition, the following paragraph 4 will be added to the form contained in paragraph (d) of § 16.812 of this title "in the event the Contractor obtains or receives any refund, rebate, or credit for taxes paid to a State or any political subdivision thereof, in connection with

the performance of this contract, and for which the Contractor is paid or reimbursed by the Government, the Contractor agrees to pay over to the Government an amount equal to such refunds or credit (including interest paid or credited to the Contractor incident to such refund or credit to the extent 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 refund, rebate or credit, the Contractor agrees to pay over to the Government an amount equal to such benefit."

(10 U.S.C. Chapter 137, 10 U.S.C. 8012)

[35 FR 5329, Mar. 31, 1970]

PART 1017—EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE

Subpart A—[Reserved]

Subpart B—Request for Contractual Adjustment

Sec.
1017.203 Authority of other officers and officials.

Subpart C—Residual Powers

1017.301 Delegations of authority.

AUTHORITY: 10 U.S.C. Ch. 137, 10 U.S.C. 8012.

Subpart A—[Reserved]

Subpart B—Request for Contractual Adjustment

§ 1017.203 Authority of other officers and officials.

(a) The Director of Procurement Policy, DCS/S. & L., has been authorized by Secretary of the Air Force Order 640.11, dated December 9, 1971, to perform the following actions which obligate the United States for $50,000 or less:

(1) Deny any request for contractual adjustment under Subpart B, Part 17, Chapter I of this title.

(2) Approve, authorize, and direct appropriate action, subject to the limitations set forth in § 17.205 of this title, and to make all determinations and findings which are necessary or appropriate, in the examples of mistake and informal commitment described in §§ 17.204-3 and 17.204-4 of this title, including, where necessary thereto, authority to modify or release unaccrued obligations of any sort and to extend delivery and performance dates; and

(3) Submit to the Air Force Contract Adjustment Board for determination, together with his recommendation—

(i) Any case where he recommends a specific adjustment which he does not have authority to approve; and

(ii) Any doubtful or unusual case.

(b) The authority cited in paragraph (a) of this section has been redelegated to the Commanders, Air Force Logistics Command, and Air Force Systems Command, with authority to make successive redelegations, under such terms, conditions, and limitations as may be deemed appropriate, to the following within their respective commands:

(1) *Air Force Logistics Command.* To the Deputy Chief of Staff and the Assistant Deputy Chief of Staff, Procurement and Production. This authority may be redelegated to Air Materiel Area Commanders in cases where the amount requested would not obligate the Government in excess of $5,000.

(2) *Air Force Systems Command.* To the Deputy Chief of Staff and the Assistant Deputy Chief of Staff, Procurement and Production.

(c) The authority cited in paragraph (a) of this section has been redelegated to the Commanders of Procuring Activities set forth in § 1.201-14 of this title (except for AFLC and AFSC) in cases where the amount requested would not obligate the Government in excess of $5,000. This authority may be further redelegated, in writing, to their respective Directors of Materiel.

(d) Requests for contractual adjustment arising under contracts of commands and separate operating agencies to which authority has not been delegated shall be transmitted for appropriate action to the Air Force Logistics Command (PPMA).

(e) Requests submitted to the Air Force Contract Adjustment Board

shall be submitted in accordance with § 17.208-3 of this title and shall be accompanied by the recommendation of the following for the actions which they process:

(1) The Deputy Chief of Staff, Systems and Logistics or while he is so acting, of the person acting for the time being as Deputy Chief of Staff, Systems and Logistics, or of the Director of Procurement Policy, Office, Deputy Chief of Staff, Systems and Logistics; and

(2) The Commander Air Force Logistics Command, or the Deputy Chief of Staff, Procurement and Production, Air Force Logistics Command; or

(3) The Commander, Air Force Systems Command, or the Deputy Chief of Staff, Procurement and Production, Air Force Systems Command; or

(4) The Commander, or the Director of Materiel, of other Procuring Activities (as set forth in § 1.204-14 of this title) through which the request arose.

(f) Two copies of each redelegation made pursuant to paragraph (b) of this section shall be forwarded to the Air Force Contract Adjustment Board through HQ USAF (LGPMB).

(g) Notwithstanding the delegation of authority specified in this section, any request for information or action relative to the exercise of authority under Pub. L. 85-804 directed to another military department or another department or agency of the Government; and any reply prepared in the Air Force to a request received from another military department or another department or agency of the Government for information or action relative to the exercise of authority of Pub. L. 85-804, shall be sent to the Air Force Contract Adjustment Board through HQ USAF (LGPMB).

[38 FR 15507, June 13, 1973]

Subpart C—Residual Powers

§ 1017.301 Delegation of authority.

Authority to make or approve contracts for sales of Government property, subject to the standards specified in § 1017.302 of this part has been delegated to the Deputy Chief of Staff, Systems and Logistics and, while he is so acting, to the person acting for the time being as Deputy Chief of Staff, Systems and Logistics, and has been redelegated to the Director, Procurement Policy, Deputy Chief of Staff, Systems and Logistics.

[35 FR 4859, Mar. 20, 1970]

PART 1018—PROCUREMENT OF CONSTRUCTION AND CONTRACTING FOR ARCHITECT-ENGINEER SERVICES

Subparts A-F—[Reserved]

Subpart G—Labor Standards for Contracts Involving Construction

Sec.
1018.704 Administration and enforcement.
1018.704-1 Policy.

AUTHORITY: 10 U.S.C. Ch. 137 and 10 U.S.C. 8012.

Subparts A-F—[Reserved]

Subpart G—Labor Standards for Contracts Involving Construction

§ 1018.704 Administration and enforcement.

[35 FR 4860, Mar. 20, 1970]

§ 1018.704-1 Policy.

(a) *Davis-Bacon Act.* (1) All mechanics and laborers (those workers and working foremen who work predominantly with their hands or with tools and equipment, whether employed by a prime contractor or by a subcontractor) employed or working directly upon the site of the work will be paid not less than once a week. Each worker will be paid not less than the hourly rate shown on his classification in the wage determination.

(2) Fringe benefits payments will be paid in the amount specified in the wage determination. They may be paid by making payments in cash or by making payment to a fund, plan or program.

(3) Whenever any laborer or mechanic is to be employed in a classification not listed in the wage determination, you are required to submit a statement of the proposed additional classification and minimum wage rate,

including fringe benefit payments, if any, to the contracting officer for approval. Upon approval the additional classification and rate shall be posted with the wage determination at the jobsite.

(4) Violation of any part of this Act may result in the termination of your right to proceed with the work.

(b) *Contract Work Hours Standards Act—Overtime Compensation.* (1) Any laborer or mechanic doing any part of the work contemplated by this contract who is required or permitted to work more than 8 hours in any 1 calendar day or 40 hours in any week, whichever is the greater number of overtime hours, shall be compensated for such overtime hours at a rate not less than one and one-half times his basic hourly rate of pay.

(2) Violations of the provisions of this Act will result in your being liable to the affected employee for any amounts due, and to the United States for liquidated damages in the amount of $10 for each calendar day each employee is permitted to work in violation of the Act.

(c) *Copeland ("Anti-Kickback") Act.* (1) No laborer or mechanic will be forced, intimidated, threatened by dismissal from employment, or induced by any other manner to give up any part of the compensation to which he is entitled.

(2) Violation of This Act could result in the violator being fined not more than $5,000 or imprisoned not more than 5 years, or both.

(d) *Apprentices.* (1) Apprentices will be permitted to work as such only when they are registered, individually, under an apprenticeship program recognized by or registered with the U.S. Department of Labor.

(2) Prior to using any apprentices on the work required by this contract, you are required to furnish written evidence of their registration as well as the ratio allowed and the wage rate required to be paid.

(e) *Payrolls and basic records.* (1) You are required to maintain during the course of work and for a period of 3 years thereafter all payrolls and basic records for all laborers and mechanics working on this contract.

(2) You are required to submit one copy of all payrolls to this office. You are responsible for the submission of payrolls for your subcontractors. Each payroll will be submitted as an attachment to a Weekly Statement of Compliance form that will be furnished by this office. Each payroll will contain the name and address, the correct classification, rate of pay including fringe benefits payments, daily and weekly number of hours worked, deductions made and actual wages paid for each laborer and mechanic employed or working directly upon the site of work.

(3) These records will be made available for inspection by authorized representatives of the Contracting Officer and the Department of Labor. You are also required to permit these representatives to interview your employees during working hours on the job.

(f) *Equal employment opportunity.* In connection with the performance of work under this contract, discrimination against any employee or applicant for employment because of race, religion, color, or national origin is prohibited. The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Posters regarding the above will be supplied to you under separate letter. Such posters must be posted in conspicuous places at the job site, available to employees and applicants for employment.

[35 FR 4860, Mar. 20, 1970]

PART 1030—APPENDIXES TO HEADQUARTERS U.S. AIR FORCE ARMED SERVICES PROCUREMENT REGULATIONS SUPPLEMENT

§ 1030.5 Appendix E—Contract financing.

PART I—[RESERVED]

PART II—[RESERVED]

PART III—GUARANTEED LOANS

E-314 *Eligibility certifications.* The Director of Procurement Policy, HQ USAF, has delegated his authority to issue Certificates of Eligibility to the Commander, AFSC, with power or redelegation not below

the level of the Chief or Deputy Chief, Pricing and Financial Division (PPF), HQ USAF. Redelegation has been made.

E-315 *Procedure or Certificate of Eligibility.* (a) Certificates covering AF contracts may be requested by the Deputy Comptroller, HQ USAF, the Contract Financing Office (AF/ACC), Department of the Army or Navy. Request for certificates will be directed to HQ USAF (AF/LGPLB) for forwarding to AFSC (PPF) who will immediately collect and evaluate the necessary supporting data.

(b) All procurement activities will furnish PPF supporting data on a priority basis (normally within 5 work days).

(c) PPF will evaluate the data, including a financial analysis, and submit recommendations with supporting documents to HQ USAF (AF/LGPLB) for concurrence.

(d) AF/LGPLB will evaluate all supporting data and furnish appropriate comments to the Deputy Comptroller, HQ USAF.

PART IV—ADVANCED PAYMENTS

E-412 *Action by contracting officer—approval.* (a) The appropriate office within the Air Force is AFSC (PPF).

(b) If PPF considers that authority to make an advance payment should be requested, a letter of recommendation will be forwarded to HQ USAF/LGPLB over the signature of the Director or Deputy Director, PPF.

E-412.1 *Action by contracting officer—disapproval.* Contracting officers will forward the file to HQ USAF/LGPLB through PPF.

E-415 *Pooled advance payments.* (a) The authority and requirements for approval of advance payment pool agreements are the same as for a single contract.

(b) *Contract clause.*—Upon approval of the advance payment and receipt of authority to enter into a pool agreement, the following clause will be added to each contract which is to become part of the advance payment pool agreement:

ADVANCE PAYMENTS (JUNE 1958)

Advance payments will be made for the work called for hereunder in accordance with the findings, determinations and authorization for advance payments dated * * *. Payments made pursuant to this clause shall be governed by the terms and conditions of the Advance Payment Pool Agreement dated * * * as it may be amended from time to time between the United States of America and * * * which agreement is hereby incorporated by reference with the same force and effect as though fully set forth herein.

(c) If an advance payment pool agreement is entered into, disbursing responsibility on all contracts in the pool will be transferred to a single accounting and finance office to be designated by PPF.

(d) If a university is a party to an advance payment pool agreement under the terms of which all contracts of a designated class with the university are financed, new contracts with the university will not be entered into without prior clearance with PPF. If financing of such new contracts would require an increase in the amount of advance payment authorization, prior approval of HQ USAF must be obtained.

(10 U.S.C. Chapter 137 and 10 U.S.C. 8012)

[38 FR 15507, June 13, 1973]

PARTS 1031–1199—[RESERVED]

Subtitle B—Other Regulations Relating to National Defense

PRECEDING PAGE BLANK-NOT FILMED

CHAPTER XII—DEFENSE LOGISTICS AGENCY

NOTE: Nomenclature changes appear at 42 FR 9664, Feb. 17, 1977.

SUBCHAPTER A—DEFENSE LOGISTICS PROCUREMENT REGULATION

Part		*Page*
1200	[Reserved]	
1201	General provisions	51
1202	Procurement by formal advertising	81
1203	Procurement by negotiation	85
1204	Special types and methods of procurement	96
1205	Interdepartmental and coordinated procurement	99
1206	Foreign purchases	103
1207	Contract clauses and solicitation provisions	112
1208	Termination of contracts	113
1209	Patents, data, and copyrights	115
1210	Bonds, insurance, and indemnification	116
1212	Contractor industrial labor relations	116
1213	Government property	118
1214	Procurement quality assurance	119
1215	Contract cost principles and procedures	123
1216	Procurement forms	124
1217	Extraordinary contractual actions to facilitate the national defense	132
1219	Transportation	133
1220	Administrative matters	135
1221	Procurement management reporting system	137
1225	Production surveillance and reporting	138
1250	Supplemental procedures	140
Appendix E	DLA contract financing regulations	149

SUBCHAPTER B—MISCELLANEOUS

1280	Investigating and processing certain noncontractual claims and reporting related litigation	152
1285	Availability to the public of official information	155
1286	Personal privacy and rights of individuals regarding their personal records	173
1287	DLA consumer representation program	192
1288	Registration of privately owned motor vehicles	193

PRECEDING PAGE BLANK-NOT FILMED

Part		Page
1289	Standards of conduct	196
1290	Preparing and processing minor offenses and violation notices referred to U.S. District Courts	211
1291	[Reserved]	
1292	Security of DLA activities and resources	218
1293-1399	[Reserved]	

SUBCHAPTER A—DEFENSE LOGISTICS PROCUREMENT REGULATION

PART 1200—[RESERVED]

PART 1201—GENERAL PROVISIONS

Subpart A—Introduction

Sec.
1201.101 Purpose of subchapter.
1201.102 Applicability of subchapter.
1201.103 Arrangement of subchapter.
1201.103-2 Numbering.
1201.103-4 Citation.
1201.104 Content of subchapter.
1201.104-50 DLPR.
1201.104-51 Procurement letters.
1201.104-52 Multiple address letters.
1201.105 Amendment of subchapter.
1201.105-50 DLPR changes.
1201.107 Dissemination and effective date of the regulation (including appendices, revisions, supplements and manuals).
1201.108 Departmental procurement instructions and ASPR implementations.
1201.109 Deviations from this subchapter and Department of Defense publications governing procurement.
1201.109-1 Applicability.
1201.109-2 Deviations affecting one contract or transaction.
1201.109-50 Deviations to mandatory clauses.
1201.109-51 Submission of requests for deviations (Dev.).
1201.109-52 Control of deviations.
1201.110 Reports of purchases and contracts.
1201.110.50 Advance notification of proposed awards.
1201.150 Administration and interpretation.
1201.151 Procurement and production directors' conference.

Subpart B—Definition of Terms

1201.201 Definitions.
1201.201-14 Procuring activity.

Subpart C—General Policies

1201.307 Priorities, allocations, and allotments.
1201.307-50 Notice to bidders.
1201.310 Liquidated damages.
1201.312 Voluntary refunds.
1201.314 Disputes and appeals.
Sec.
1201.318 Contracts conditioned upon the availability of funds.
1201.324 Warranties.
1201.324-50 Warranty actions.
1201.325 Variation in quantity.
1201.325-50 Delivery of excess quantities of $50.00 or less.
1201.332 Minority business enterprises.
1201.332-5 Minority business enterprise subcontracting program.
1201.332-6 Responsibility for reviewing the minority business enterprise subcontracting programs.
1201.350 Changes in procurement processes, techniques or methods.
1201.350-1 General.
1201.350-2 Concept of notification.
1201.350-3 Examples of significant changes.
1201.350-4 Data to support request.
1201.351 Delivery status information on procurements for the International Logistics Program (ILP).
1201.352 Extended procurment delays.

Subpart D—Procurement Responsibility and Authority

1201.401 Responsibility of each procuring activity.
1201.401-50 Delegation of authority.
1201.401-51 Limited purchasing authority.
1201.402 Authority of contracting officers.
1201.402-50 General responsibilities of contracting officers.
1201.402-51 Procedure for closing contracts with inconsequential amounts undelivered.
1201.403 Requirements to be met before entering into contracts.
1201.403-50 Legal review.
1201.405 Selection, appointment, and termination of appointment of contracting officers.
1201.405-1 Selection.
1201.405-2 Appointment.
1201.405-3 Termination of appointment.
1201.450 Selection, appointment, and termination of appointment of contracting officers' representatives.
1201.451 [Reserved]
1201.452 Review and approval requirements.
1201.452-1 General.
1201.452-2 Actions requiring HQ DLA review and approval prior to award.
1201.452-3 Information to be furnished.
1201.452-4 Release of information.

Sec.
1201.452-5 Proposed shifts in procurements from a competitive to a noncompetitive basis.
1201.452-6 Post award review.
1201.452-7 Actions approved but not awarded.
1201.452-8 Canceliation requirements.
1201.452-9 Letter contracts.
1201.452-10 Requests for waiver HQ DLA preaward review and approval.
1201.452-11 Confirmation of quantity and technical requirements.
1201.452-12 Report of procuring actions requiring headquarters DLA preaward review and approval by the close of the fiscal year (RCS: DLA(A) 1720(P)).
1201.453 Review and approval requirements at the procuring activity.
1201.454 Review and approval requirements for a procurement office not designated as a "Procuring Activity".

Subpart F—Debarment, Ineligibility, and Suspension

1201.601 Establishment and maintenance of records and lists of firms or individuals debarred, ineligible, or suspended.
1201.601-1 General.
1201.601-3 Joint consolidated list.
1201.601-50 Attempted evasions.
1201.603 Grounds for listing and treatment to be accorded listed concerns.
1201.603-50 Total restrictions.
1201.604 Administrative debarment of firms or individuals (type A).
1201.604-3 Notice of debarment.
1201.605 Suspension of firm or individual.
1201.608 Reporting.
1201.650 Review of past contractual relationships.

Subpart G—Small Business Concerns

1201.702 General policy.
1201.704 Small business officials.
1201.704-50 Counseling activities.
1201.704-51 Participation in industrial assistance events, business opportunity/Federal procurement conferences, procurement clinics, fairs, etc.
1201.705 Cooperation with the Small Business Administration.
1201.705-4 Certificates of Competency.
1201.705-5 Contracting with the Small Business Administration.
1201.706 Set asides.
1201.706-1 General.
1201.706-3 Review, withdrawal, or modification of set-asides or set-aside proposals.
1201.707 Subcontracting with small business concerns.
1201.707-3 Required clauses.
1201.707-4 Responsibility for reviewing the subcontracting program.

Subpart H—Labor Surplus Area Concerns

Sec.
1201.805 Subcontracting with Labor Surplus Area Concerns.
1201.805-4 Responsibility for reviewing the subcontracting program.

Subpart I—Responsible Prospective Contractors

1201.903 Minimum standards for responsible prospective contractors.
1201.905 Procedures for Determining responsibility of prospective contractors.
1201.905-1 General.
1201.905-4 Preaward surveys.
1201.905-50 Capability surveys for workshops for the blind and other severely handicapped.

Subpart L—Specifications, Plans and Drawings

1201.1203 Availability of specifications, standards, plans and drawings.

Subpart U—Procurement Planning

1201.2100 Procurement planning.
1201.2100-2 Applicability.
1201.2102 Sample format and content of procurement plans.

Subpart V—Industrial Preparedness Production Planning

1201.2205 Existing authority affecting the industrial base.
1201.2206 Applicable procedures.
1201.2206-50 Industrial preparedness planning packages.

Subpart W—Environmental Protection

1201.2302 Administration and enforcement.
1201.2302-3 Compliance responsibilities.
1201.2302-5 Withholding award.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 18993, May 3, 1978, unless otherwise noted.

Subpart A—Introduction

§ 1201.101 Purpose of subchapter.

The Defense Logistics Procurement Regulation (DLPR) is issued by the Executive Director, Procurement, HQ DLA by authority of the Director, Defense Logistics Agency (DLA). Armed Services Procurement Regulation (ASPR) and other Department of De-

fense publications and, pursuant to Subchapter A, Chapter I of this title, establishes for DLA procedures relating to the procurement of supplies and services under the authority of Chapter 137, Title 10 of the United States Code, or other statutory authority.

§ 1201.102 Applicability of subchapter.

(a) This subchapter is applicable to the purchasing function at all DLA activities, but is not applicable to the performance of field contract administration assigned to Defense Contract Administration Services (DCAS).

(b) Whenever revisions to ASPR are published which make coverage in this subchapter obsolete or contradictory to that in ASPR, the provisions in ASPR shall apply.

(c) Whenever DLA Regulations, containing policies and procedures relating to procurement conflict with ASPR or this subchapter, the policies and procedures in ASPR and this subchapter shall govern.

§ 1201.103 Arrangement of subchapter.

§ 1201.103-2 Numbering.

The numbering system in DLPR follows the numbering system in ASPR. Where a section of the DLPR does not implement a particular section but pertains to the general subject matter covered in a particular part of the ASPR, the added section shall be numbered starting with the digits "50" (e.g., in Subpart A of Part I, this would be § 1201.150). Likewise where the DLPR has material implementing a main ASPR section, but not fitting under the ASPR point numbers and titles, such material is numbered to end in .50, .51, etc., such as §§ 1-110.50, 1-110.51, etc.

§ 1201.103-4 Citation.

The DLPR shall be referred to as the Defense Logistics Procurement Regulation and any paragraph may be cited as DLPR followed by the paragraph number. Thus, this paragraph would be cited as DLPR 1-103.4.

§ 1201.104 Content of subchapter.

§ 1201.104-50 DLPR.

This subchapter contains all Departmental policies, procedures and instructions relating to procurement of supplies and services within the Defense Logistics Agency, except those contained in ASPR and the DLAR or DLAM series of DLA regulations. DLPR does not duplicate or paraphrase ASPR and is issued only to cover delegations of authority, assign responsibilities, and other procedures consonant with § 1-108 of this title which are essential to DLA.

§ 1201.104-51 Procurement letters.

Numbered procurement letters (PROCLTRs) are issued by the DLA Directorate of Procurement, DLA-P, to provide information and procedural guidance to DLA purchasing personnel to re-emphasize existing policy, or to transmit new or changed policy promulgated by OSD or higher authority. PROCLTRs are not an authorized medium for changes to DLA contracting policy or procedures. PROCLTRs shall expire no later than one year from date of issue.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[44 FR 27096, May 9, 1979]

§ 1201.104-52 Multiple address letters.

Unnumbered multiple address letters will be issued for one-time requests for comments or reports, announcements of Procurement and Production Directors' Conferences and other meetings, etc. No implementation beyond the action requested is contemplated. They are self-canceling when they have served their purpose.

§ 1201.105 Amendment of subchapter.

Recommendations for revision of ASPR and DLPR shall be submitted, through channels, to the Executive Director, Procurement, Defense Logistics Agency, Cameron Station, Alexandria, Va. 22314, Attn: DLA-PPR.

§ 1201.105-50 DLPR changes.

Numbered DLPR changes are issued periodically by the Directorate of Pro-

curement DLA-P, for distribution to all recipients of this regulation for the purpose of revising or supplementing the DLPR.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22. June 8, 1978)

[44 FR 27096, May 9, 1979]

§ 1201.107 Dissemination and effective date of the regulation (including appendices, revisions, supplements and manuals).

(a) Heads of Procuring Activities shall insure that copies of the ASPR and DLPR, including revisions, are distributed to all interested activities and individuals.

(b) Compliance with the DLPR, including any revision to the DLPR, shall be permissive effective with the date of issuance thereof (as indicated by the page revision date) and shall be mandatory effective 60 days thereafter, unless otherwise provided in such revision.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[43 FR 18993, May 3, 1980, as amended at 44 FR 27096, May 9, 1979]

§ 1201.108 Departmental procurement instructions and ASPR implementations.

(a) Implementations of ASPR and DLPR may be issued by Heads of Procuring Activities provided they are consistent with § 1-108 of this title. In addition, the Executive Director, Procurement, HQ DLA has delegated this authority to the Commander, Defense Industrial Plant Equipment Center (DIPEC). Implementations shall not duplicate or paraphrase ASPR or DLPR, modify or revise the policy in ASPR or DLPR, or contain deviations to ASPR or DLPR unless authorized by the procedures of § 1-109 of this title and § 1201-109. The format, general plan, and numbering system of implementations shall be the same as ASPR/DLPR.

(b) Heads of Procuring Activities and DIPEC shall furnish the HQ DLA, Attn: DLA-PPR, one copy of each implementing instruction properly referenced to the ASPR or DLPR paragraph to which it pertains.

§ 1201.109 Deviations from this subchapter and Department of Defense publications governing procurement.

§ 1201.109-1 Applicability.

Actions which constitute deviations from ASPR or Department of Defense publications governing procurement as set forth in § 1-109.1 of this title shall also constitute deviations from the provisions of DLPR.

§ 1201.109-2 Deviations affecting one contract or transaction.

Deviations from ASPR, a Department of Defense Directive, or the DLPR which affect only one contract or transaction, will be made only after prior approval by the Executive Director, or Deputy Executive Director, Procurement, HQ DLA.

§ 1201.109-50 Deviations to mandatory clauses.

Prior to requesting an ASPR deviation, one-time or otherwise, the Commander or Deputy Commander shall make a determination on a case-by-case basis whether or not to personally negotiate with contractors who have refused to accept mandatory ASPR clauses in an attempt to obtain contractor acceptance. In those cases where it is determined that the Commander should not personally conduct negotiations, a detailed memorandum setting forth the rationale shall be forwarded with the referral to HQ DLA, Attn: DLA-PP.

§ 1201.109-51 Submission of requests for deviations (Dev).

(a) Requests for authority to deviate from the provisions of ASPR, Department of Defense Directives, or the DLPR will be submitted (in original and four copies) to HQ DLA, Attn: DLA-PPR. Deviation requests shall be in the format of: I. Problem, II. Recommendation, and III. Discussion.

(b) For those deviations which have originated in any DLA field activity, it will be the responsibility of the originator to initiate action for renewal or extension, when appropriate, at least 90 days prior to the expiration date. If no request is received in DLA-PPR, it will be assumed the need for the devi-

ation no longer exists and the deviation will automatically expire.

§ 1201.109-52 Control of deviations.

Separate registers shall be maintained by the Executive Director, Procurement, HQ DLA of the deviations granted from ASPR and DLPR. Each deviation shall be recorded in its appropriate register and shall be assigned a control number as follows: an abbreviation of the regulation involved and the word deviation; fiscal year; and the serial number assigned to the particular deviation; e.g., ASPR Dev. 76-1, DLPR Dev. 76-1. The control number shall be embodied in the document authorizing the deviation and shall be cited in all references to the deviation.

§ 1201.110 Reports of purchases and contracts.

§ 1201.110-50 Advance notification of proposed awards.

(a) Data on all proposed contract awards of $1 million or more shall be submitted to the HQ DLA contract point by telephone at least 48 hours (two full working days) prior to 1,100 hours of the date the Center proposes to make the contract award (excluding those contracts made with the Small Business Administration under authority of Section 8(a) of the Small Business Act). Mandatory orders to be placed with the Federal Prison Industries, the National Industries for the Blind and Agencies for the Severely Handicapped are not included in this reporting requirement. However, nonmandatory orders to be placed with the Industries for the Blind are included. This report will be known as "contract announcement" and will carry Reports Control Symbol DO-LA(AR)1279.

(b) Definitions. (1) Contract awards as used herein include any contractual instrument that obligates funds where the total amount of the contract is $1 million or is expected to reach or exceed $1 million. Requirements contracts that do not obligate funds at the time of award are not "contract awards" for the purpose of this paragraph. Delivery orders in the amount of $1 million or more issued against these requirements contracts are "contract awards." Where a requirements contract does obligate an amount of less than $1 million at the time of award and it is estimated that the cumulative amount of the contract will exceed $1 million such type of requirements contract is a "contract award."

(2) Contractual instrument includes but is not limited to notices of awards, definitive contracts, letter contracts, orders placed against requirements or indefinite delivery type contracts, supplemental agreements, change orders, provisioning orders, contract modifications, letters of intent, and funding action.

(c) The HQ DLA contact point is DLA-PC, Autovon No. 284-6461.

(d) Data submitted to the HQ DLA contact point shall be verified for accuracy by a responsible DLA field activity official prior to submission to HQ DLA. This data is used to provide information outside the Department of Defense, therefore, accuracy is of paramount importance.

(e) The following data shall be provided (in this sequence) to the HQ DLA contact point:

(1) Name and address of purchasing activity;

(2) Proposed release date;

(3) Contract number;

(4) Amount;

(5) Name and location of proposed contractor (include street address, zip code, and county, size of business, i.e., large or small), and labor surplus area designation;

(6) Item and quantity to be awarded;

(7) Name and location of facility to perform contract, indicating if a division or affiliate of contractor in paragraph (5) of this section, (include street address, zip code, county and labor surplus area designation);

(8) Type of contract, e.g., firm fixed price; fixed price with escalation;

(9) Amount previously obligated (if this announcement is a modification to an existing contract);

(10) Number of concerns solicited and number of concerns submitting bids/proposals;

(11) Using Service;

(12) Name of official in field activity familiar with award;

80-109 O—81——5

(13) Information as to any proposed local press release or any local Congresssional interest; and

(14) A statement of whether or not EEO clearance has been obtained.

(f) Awards and release of information on contract awards of $1 million or more shall not be made before the date and time agreed upon by the HQ DLA contact point and the field activity. Any proposed local press release should also be withheld. If for any reason, clearance is not received by HQ DLA, the Defense Supply Center will be notified promptly to withhold award until clearance has been obtained. If following agreement as to date and time of contract award announcement, the award will not be made, the HQ DLA contact point shall be notified by telephone immediately.

§ 1201.150 Administration and interpretation.

The administration and interpretation of DLPR is the responsibility of Executive Director, Procurement, DLA (DLA-P).

§ 1201.151 Procurement and Production Director's Conference.

A Procurement and Production Directors' Conference will be convened on a semi-annual basis or at the call of the Executive Director, Procurement, DLA, under the monitorship of the Programs & Analysis Office (DLA-PA). The conference provides a forum for discussion of current problems, discussion of management improvements, exchange of information on latest developments in the fields of procurement and production, and for other matters, which assist in the development of procurement and production policies and procedures. Attendance at these conferences will comprise as a minimum the Executive Director or Deputy Executive Director, Procurement, (DLA-P/PD), representatives from Headquarters, Procurement and Production Divisions and Offices, and Procurement and Production Directors and/ Deputy Directors from DLA Supply Centers.

Subpart B—Definition of Terms

§ 1201.201 Definitions.

§ 1201.201-14 Procuring activity.

The Executive Director, Procurement, HQ DLA, shall exercise the functions, not otherwise delegated, of Head of Procuring Activity for any DLA Supply Centers or Activities not under an HPA and not designated as "Procuring Activities" pursuant to § 1-201.14 of this title. This includes the: (a) Defense Industrial Plant Equipment Center; (b) Defense Logistics Services Center; (c) Defense Depot Memphis; (d) Defense Depot Ogden; (e) Defense Depot Tracy; and (f) Defense Logistics Agency Administrative Support Center.

Actions required by the Armed Services Procurement Regulation, this subchapter, or other directives involving the functions of the Head of the Procuring Activity not otherwise delegated shall be referred to the HQ DLA, Attn: DLA-PP.

Subpart C—General Policies

§ 1201.307 Priorities, allocations, and allotments.

§ 1201.307-50 Notice to bidders.

The following notice shall be included in master solicitations or bid packages distributed to industry for procurement action:

SECTION C, INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS/QUOTERS

PRIORITY RATING (DLA 1974 JUL)

Any contract awarded under this solicitation will be assigned a priority rating (DO or DX as applicable) and will include a certification for national defense use under regulations issued by the Department of Commerce in implementation of the Defense Production Act of 1950, as amended. Contractors are required to utilize said rating in obtaining the products, materials and supplies needed to fill their contracts. In the event the contractor is unable to obtain the necessary products, materials and supplies to complete his contract, he shall immediately advise the Defense Contract Administration Services Region (DCASR) or the appropriate Defense Supply Center (DSC) DMS Officer through the cognizant Admin-

istrative Contracting Office (ACO) or Procuring Contracting Officer (PCO). The DMS Officer or the DCASR Industrial Specialist will provide necessary assistance or will provide the necessary instructions to complete the Form BDSAF-138, Request for Special Priorities Assistance. The Form BDSAF-138 will be processed through appropriate channels to the Department of Commerce which upon receipt will take action to make the needed supplies available to the applicant.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; Dod Directive 5105.22, June 8, 1978)

[43 FR 18993, May 3, 1978, as amended at 44 FR 27096, May 9, 1979]

§ 1201.310 Liquidated damages.

Recommendations concerning the remission of liquidated damages shall be transmitted to HQ DLA, Attn: DLA-G.

§ 1201.312 Voluntary refunds.

(b) *Solicited refunds.* (1) If overpricing is suspected after contract award or issuance of a purchase order, the contractor may be asked, before any action under DAR 1-312(b), if the offered price is erroneous. If an error is confirmed, the purchase order or contract may be modified or the purchase order may be cancelled as appropriate.

(2) Documentation supporting a decision to solicit a voluntary refund under DAR 1-312(b) shall be forwarded to HQ DLA, ATTN: DLA-PPP.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[44 FR 27096, May 9, 1979]

§ 1201.314 Disputes and appeals.

(d) All appeals will be presented to the Armed Services Board of Contract Appeals by trial attorneys of the DLA Defense Supply Center involved. Direct communication with the Board is authorized. The charter and rules of the Armed Services Board of Contract Appeals are set forth in Appendix A, ASPR. All official correspondence with the Board will be addressed to the Recorder, Armed Services Board of Contract Appeals, 200 Stonewall Street, Alexandria, Va. 22332. At the time of filing with the Board or receipt by the trial attorney, a copy of each Notice of Appeals, Complaint, Answer, Rule 4 Memorandum (without enclosures), Brief, and Motion for Reconsideration, if any, shall be forwarded to the Counsel, DLA.

(e) In all cases except those to be disposed of under Rule 12, the trial attorney shall forward to the Counsel, DLA, copies of the Trial Memorandum, documents that have been filed under Rule 4 or are to be introduced in evidence at the hearing, and, if not included in the Trial Memorandum, a summary of the testimony of proposed witnesses. This information shall be forwarded ten days prior to date set for the hearing.

(f) If, after review of a Board decision on contracts of his procuring activity, Counsel for the activity is of the opinion that the decision is erroneous, a Motion for Reconsideration should be filed.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[43 FR 18993, May 3, 1978, as amended at 44 FR 27097, May 9, 1979]

§ 1201.318 Contracts conditioned upon the availability of funds.

It is recognized that there may be instances, other than those described in ASPR 1-318, where it will be necessary to initiate a procurement prior to the availability of funds. In such instances, the action will only be taken after the facts concerning the proposed solicitation are presented to DLA-P for review as to the necessity for such action and the obtaining of the required ASPR deviation permitting use of the provisions set forth in § 7-104.91 of this title.

§ 1201.324 Warranties.

§ 1201.324-50 Warranty actions.

When warranty actions have been initiated under procurement instruments containing warranty clauses in accordance with ASPR 1-324, it is essential all DSCs maintain a record of these warranty actions. This record is necessary to help determine the usefulness of the warranty clause versus the cost of administering the warranty actions. The record will be maintained in a central location on a fiscal year basis. No more than two prior fiscal years will be retained. The record

shall contain as a minimum the following information:

(a) Date and reason warranty was invoked;

(b) Contract number;

(c) Contractor;

(d) Dollar value of material covered by warranty;

(e) Disposition of material or other considerations obtained; and

(f) Date warranty action completed.

§ 1201.325 Variation in quantity.

§ 1201.325-50 Delivery of excess quantities of $50.00 or less

Unless there is a valid reason to the contrary, the clause set forth below shall be included in all contracts, purchase orders and Blanket Purchase Agreements.

DELIVERY OF EXCESS QUANTITIES OF $50.00 OR LESS (DSA 1972 Nov)

The contractor is responsible for the delivery of each item or sub-item quantity within allowable variations, if any, required by the contract or order. If the contractor delivers and the Government receives quantities of any item or sub-item in excess of the quantity called for by the contract or order (after considering any allowable variation in quantity) and the dollar value of such excess quantity amounts to $50.00 or less, the excess quantity will be treated as being delivered for the convenience of the contractor; and the Government may retain such excess quantities without compensating the contractor therefor; and the contractor waives all right, title, or interests therein.

[43 FR 18993, May 3, 1978, as amended at 44 FR 52199, Sept. 7, 1979]

§ 1201.332 Minority business enterprise.

§ 1201.332-5 Minority business enterprise subcontracting program.

When the Utilization of Minority Business Enterprises clause in § 1207.104-36(a) is used, and the contract is expected to exceed $500,000, the contracting officer shall make a determination of subcontracting potential on a case-by-case basis. When it is determined that substantial subcontracting possibilities do exist, the clause in § 7-104.36(b) of this title shall be included. If it is determined that substantial subcontracting possibilities do not exist, the procedures in 1-707 shall apply.

§ 1201.332-6 Responsibility for reviewing the minority business enterprise subcontracting programs.

When contracts containing the MBE subcontracting clause are retained by the buying activity for contract administration, the procedures in 1220.703-53 apply.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; Dod Directive 5105.22, June 8, 1978)

[44 FR 27097, May 9, 1979]

§ 1201.350 Changes in procurement processes, techniques or methods.

§ 1201.350-1 General.

Whenever a procuring activity contemplates a significant change in a procurement process, technique or method which may reasonably be expected to have a substantial impact on industry and/or the Government, the activity shall notify promptly HQ DLA, ATTN: DLA-PPR, of the contemplated change and the reasons and basis therefore.

§ 1201.350-2 Concept of notification.

Headquarters DLA requires notification of contemplated changes which are of significant nature prior to initiation of action to accomplish such changes. This prior notification is necessary in order that Headquarters may become conversant with the matter in the event there is any reaction from industry, the Congress, or the using Military Departments. In addition, Headquarters has access to, and knowledge of, information which may not be available at the field level and as such, is in a position to evaluate the significance of the proposed action to the Agency as a whole. Accordingly, it is essential that HQ DLA know what is contemplated before the initiation of a significant change is publicized. This requires that all notifications be submitted as far in advance of public disclosure as possible, in order that HQ DLA clearance may be obtained, and the intended purpose of this requirement be served.

§ 1201.350-3 Examples of significant changes.

Representative types and categories of contemplated changes which are of a significant nature and which necessitate prior notification to HQ DLA are (but not limited to) a change in:

(a) A longstanding inspection requirement or procedure;

(b) The method of providing and/or accounting for Government-furnished property;

(c) A type of contract which constitutes a significant departure from the procurement technique previously utilized;

(d) Solicitation techniques and the elements used in evaluation of offers;

(e) The region/area from which procurement of an item has been previously accomplished;

(f) The location of a buying/purchasing office; or

(g) Item specification which prompts a major change in manufacturing and/or processing techniques.

§ 1201.350-4 Data to support request.

In order that the impact of a contemplated change in procurement method may be determined, requests for approval of a proposed change in a procurement method should contain the following information:

(a) A description of the present and proposed procurement methods;

(b) A statement of the difficulties encountered in the use of the presented method and/or the improvements foreseen as the result of a change;

(c) A statement as to the degree of impact of the change expected on industry and/or the Government; and

(d) A statement as to the net benefits accruing to the Government as a result of the change.

§ 1201.351 Delivery status information on procurements for the International Logistics Program (ILP).

Contracts and purchase orders awarded in support of requisitions from the Navy International Logistics Control Office, Bayonne, New Jersey, for the ILP shall:

(a) Identify the requirement as a separate contract line item or sub-line item in accordance with § 20-304.2 of this title. If the purchase request does not contain this information, the contracting officer shall contact the originator to obtain the necessary data. The applicable requisition number shall be entered immediately under the line or sub-line item. (ILP requisitions are identified by the letter P or K preceding requisition number).

(b) Provide for the designated contract administration services component to distribute to the Navy International Logistics Control Office, (Bayonne, New Jersey) a copy of any report or document which indicates an anticipated or actual delay in delivery of line or sub-line items for the ILP. Copies of such reports distributed to Navy International Logistics Control Office shall include the requisition number applicable to the line or sub-line item involved and shall be in addition to any other distribution required by the contract or directives applicable to the contract administration services component.

§ 1201.352 Extended procurement delays.

The purchasing office shall immediately notify Supply Operations when extended delays are anticipated in contract award and, when possible, also advise of the anticipated length of the delay in the proposed delivery schedule.

Subpart D—Procurement Responsibility and Authority

§ 1201.401 Responsibility of each procuring activity.

§ 1201.401-50 Delegation of authority.

Authority conferred upon the Heads of Procuring Activities under any paragraph of DLPR may be delegated with power of redelegation to other officers or civilian officials of DLA, except when specifically limited by law or the provisions of the pertinent DLPR paragraph.

§ 1201.401-51 Limited purchasing authority.

The Commander, Defense Logistics Agency Administrative Support Center is granted limited purchasing authority for the following:

(a) Small Purchase authority, i.e., accomplishment of small purchases ($10,000 or less) as provided for in Part 3, Subpart F of this title and of this subchapter.

(b) The use of a Blanket Purchase Agreement (BPA) without monetary restriction except that each call under a BPA may not exceed $5,000. (§ 3-605 of this title).

(c) Unlimited ordering authority for:

(1) Common use classes of supplies and services under Federal Supply Schedule (FSS) contracts.

(2) Supplies from General Services Administration (GSA) Stores Depot (Part 5, Subpart A of this title).

(3) Repairs and Refinishing Services on GSA and FSS contracts (§ 5-205 of this title).

(4) Prison-made and blind-made supplies (§ 5-400 and § 5-500 of this title).

(5) Printing and related supplies under GPO contracts (§ 5-601 of this title).

§ 1201.402 Authority of contracting officers.

Contracting officers may enter into, amend, modify, and take other action with respect to contracts, provided:

(a) Approval of award has been obtained, if required, and the contract embodies the award as approved;

(b) The contract is written on a standard or an approved form of contract;

(c) The contract is authorized by law and complies with the provisions of ASPR and DLPR with respect to the use of contract clauses and does not contain any clause or involve matters in conflict with the established policy of higher authority;

(d) Compliance has been made with all other requirements of law, the ASPR, the DLPR, and the applicable procuring activity instructions; and

(e) The contract is adequately funded.

§ 1201.402-50 General responsibilities of contracting officers.

(a) Contracting officers are responsible for:

(1) The safeguarding of the interests of the United States in contractual relationships;

(2) Their acts as contracting officers under law and regulations;

(3) Maintaining constant cognizance with respect to contract compliance on the part of the contractor;

(4) Obtaining the necessary legal, technical, and administrative review of the contracts they make; and

(5) Knowing the scope and limitation of their authority.

(b) Contracting officers shall personally sign all contracts and modifications entered into in their name. The Contracting Officer cannot designate anyone to sign for him.

(c) Contracting officers shall be bound in all their actions to exercise reasonable care, skill, and judgment. They must assure themselves that the contract is authorized by law, that funds are available, and of their authority to subject the Government or its property to any risk. Contracting officers shall neither act as nor perform the duties of a contracting officer with respect to any contractual instrument obligating only nonappropriated funds. However, contracting officers may act in an advisory capacity with respect to the aforementioned instruments.

§ 1201.402-51 Procedure for closing contracts with inconsequential amounts undelivered.

The Procuring Contracting Officer (PCO) is authorized on a case-by-case basis to consider a contract completed when an inconsequential amount not falling within the variation in quantity clause remains undelivered or, in the case of brand name subsistence or less than carload lots of perishable subsistence items, the undelivered amount is no longer requested by the using activity, provided all of the following conditions exist:

(1) Payment is provided for on a unit price basis, and the contractor advises that no further deliveries will be made;

(2) Payment is made for the units actually received;

(3) The undelivered portion is inconsequential, or in the case of brand name subsistence or LCL perishable subsistence items, the undelivered amount is no longer required by the

using activity, and the cost of executing a supplemental agreement (including, but not limited to taking termination action) is excessive in relation to the benefits to the Government from such action; and

(4) The PCO includes in the file a memorandum stating that no rights of the Government are being waived by this procedure and a termination for default is not unwarranted. The PCO shall execute and distribute a Standard Form 30 (or other unilateral instrument) as an Administrative Change to the contract to deobligate funds. The Change shall indicate that the above criterial have been met and the contract is considered complete, and shall reference the contractor's communication which advised that no further deliveries will be made.

§ 1201.403 Requirements to be met before entering into contracts.

§ 1201.403-50 Legal review.

(a) Legal advice and assistance of assigned legal counsel shall be obtained in the preparation of clauses other than standard clauses which are to be contained in solicitations, and on any questionable legal areas in the preparation and/or execution of contractual documents.

(b) Procuring activities within the Defense Logistics Agency shall issue instructions on the legal review of solicitations and contractual documents issued by their activities.

§ 1201.405 Selection, appointment, and termination of appointment of contracting officers.

The Authority in § 1-405 of this title has been delegated by the Executive Director, Procurement, DLA, (DLA-P) to the Commander of each of the following activities:

(1) Defense Depot Memphis.

(2) Defense Depot Ogden.

(3) Defense Depot Tracy.

(4) Defense Industrial Plant Equipment Center.

(5) Defense Logistics Services Center.

(6) Defense Logistics Agency Administrative Support Center.

§ 1201.405-1 Selection

High qualification standards must be maintained for the appointment of contracting officers. Authority to execute and administer contracts of $100,000 or greater should be given only to civilian personnel of Grade GS-12 or above, and to military personnel with at least three years specialized experience in procurement and three years experience in related fields. Exceptions to these minimum qualifications may be granted on a case-by-case basis by the Head of a Procuring Activity and the Commanders of the activities enumerated in § 1201.405 where exceptional circumstances necessitate appointment of an individual.

§ 1201.405-2 Appointment.

(a) Contracting Officer Appointment Documentation Sheet, DLA Form 581, shall be used to facilitate the documentation of recommendations for appointment. This form shall be completed by the official recommending an individual for appointment. Properly prepared, the form will assist the appointing authority, normally the HPA, in determining whether or not the nominee is qualified for appointment. Also, it will provide HQ DLA a current profile of contracting officers.

(b) One copy of each appointment Documentation Sheet shall be sent to HQ DLA ATTN: DLA-PPR.

§ 1201.405-3 Termination of appointment.

(b) *Revocation.* One copy of each revocation of an appointment shall be sent to HQ DLA, ATTN: DLA-PPR.

§ 1201.450 Selection, appointment, and termination of appointment of contracting officers' representatives.

(a) *Designation.* The selection, appointment, and termination of appointment of Contracting Officers' Representatives (COR) shall be made by the contracting officer. Such appointments shall take into consideration the ability, training, and experience of COR designees and shall assure that designees are appropriately qualified to act as an authorized representative of the contracting officer. The COR designations shall be in

writing and shall define the scope and limitations of the authorized representative's authority. Appointment shall be made by letter substantially in the form set forth in (d) of this section. Unless the appointment of a COR contains other provisions for automatic termination, the appointment shall be effective, unless sooner revoked, until the COR is reassigned, or his employment is terminated. Revocation of a COR apppointment may be effected at any time by the appointing authority, or higher authority, or any successor to either. Revocation shall be made by letter reading substantially as shown in (e) of this section.

(b) *Authority.* CORs will be responsible to and under supervision of the contracting officer for those actions delegated by the Contracting Officer and unless specifically prohibited by the terms of the contractual instument involved may, at the discretion of the contracting officer, be empowered to take any and all actions which could be lawfully taken by the contracting officer consistent with the scope and limitations of the appointment. Compliance with the Standards of Conduct prescribed in DOD Directive 5500.7 and DLAR 5500.1 shall be maintained.

(c) *Documentation.* Supplementing the normal supervision of the COR by the contracting officer, the contracting officer shall maintain an "activity" file on each COR. The purpose of this file is to record and maintain the results of periodic reviews of the COR's procurement activities conducted annually by the contracting officer. The contents of the activity file will include but are not limited to:

(1) A copy of the COR's letter of appointment;

(2) Examples of in-depth reviews of the COR's performance with appropriate identification of the work performed including DO's issued; and

(3) Documentation by the contracting officer of the date, substance, and extent of the reviews conducted.

(d) *Sample Form of Suggested Letter for Appointing COR's.*

Subject: Appointment as Contracting Officer's Representative.

To: (Address to individual, indicating rank or grade, branch, division, activity and location.)

1. Under the authority vested in me by the ———, 1 January 1975 subject: Delegation of Authority, you are hereby designated Contracting Officer's Representative with authority conferred by the Contracting Officer.

2. This order shall be in full force and effect until revoked by me or my successor in the same manner as it is hereby granted, or upon your being transferred from the (include branch, division, activity and location).

/s/ Contracting Officer.

(e) *Sample Form of Suggested Letter for Terminating Appointment as Contracting Officer's Representative.*

Subject: Termination of Appointment as Contracting Officer's Representative.

To: (Address to individual, indicating rank or grade, branch, division, activity and location.)

Your appointment as Contracting Officer's Representative contained in letter appointment dated ——, is hereby terminated effective ——.

/s/ Contracting Officer.

§ 1201.451 [Reserved]

§ 1201.452 Review and approval requirements.

§ 1201.452-1 General.

Every proposed contractual document and supporting file shall be reviewed by the contracting officer prior to signature of the document and prior to forwarding the file for review by higher authority. The contracting officer is responsible for the completeness and accuracy of the file as well as for the soundness of the contractual action. Each file must contain the applicable information, or cross reference thereto, contemplated by ASPR Supplement No. 2 "Contract File Maintenance, Closeout and Disposition" in sufficient detail to permit reconstruction of all significant actions by a subsequent reviewer without referrals to the individuals who consummated the procurement.

§ 1201.452-2 Actions requiring HQ DLA review and approval prior to award.

(a) The actions (the term actions as used herein includes both contracts and contract modifications effecting new procurement) listed below require the review and approval of the Executive Director or Deputy Executive Director, Procurement, HQ DLA, or other DLA official so delegated prior to award. Actions are to be submitted to HQ DLA, ATTN: DLA-PC. For review purposes, the dollar amount of an action shall be the sum of the estimated or actual amount of obligation and the amount of any option included in the action.

(1) All actions other than firm fixed-price or fixed-price with escalation;

(2) All actions providing for special performance incentives;

(3) All actions involving—

(i) Architectural-engineering services;

(ii) Management engineering services;

(iii) Management surveys and studies;

(iv) Personal or professional services, not covered by applicable civilian personnel instructions;

(v) Services for maintenance of or for manufacture in Government-owned, contractor-operated facilities. (Not applicable to the Defense Fuel Supply Center.);

(vi) Services and materials for the repair, maintenance, rehabilitation, alteration or modification of Government installations and utilities of $100,000 or more;

(vii) Proposed lease of Government property for non defense use;

(viii) Acquisition of automatic data processing equipment and software in accordance with DLAR 4710 and;

(ix) Acquisition of facilities.

(4) All actions resulting from an invitation for bids (including Balance of Payments and Small Business Restricted Advertising types) when award is proposed to a sole responsive, responsible bidder, and the total dollar amount of the sole bid items being awarded is $100,000 or more, except subsistence items which, by industry practice, are normally subject to 72 hours or less acceptance time, e.g., coffee, flour, sugar;

(5) All negotiated actions amounting to $100,000 or more, including orders issued under Basic Ordering Agreements, when award is proposed to a sole offeror;

(6) All actions which involve construction of petroleum facilities;

(7) All negotiated actions (excluding actions resulting from Balance of Payments and Small Business Restricted Advertising and actions covering the set-aside portion of a procurement made by formal advertising) in an amount equal to or in excess of:

Defense Construction Supply Center	$750,000
Defense Electronics Supply Center—FSC 5960	500,000
All other supply classes	100,000
Defense Fuel Supply Center:	
Supplies	5,000,000
Services	100,000
Defense General Supply Center	750,000
Defense Industrial Supply Center	75,000
Defense Personnel Support Center:	
Clothing and Textiles	500,000
Medical	500,000
Subsistence	1,000,000
Defense Depot Memphis	50,000
Defense Depot Ogden	50,000
Defense Depot Tracy	50,000
Defense Industrial Plant Equip. Center	50,000
Defense Logistics Services Center	50,000
DLA Administrative Support Center	10,000

(8) Each exercise of an option, regardless of whether the basic contract was advertised or negotiated, and each order under a basic ordering agreement, when the action is in an amount equal to or in excess of that stated in § 1201.452(a)(7) for the activity concerned;

(9) Each order under an indefinite delivery type contract in which the amount of the order is equal to or in excess of that stated in § 1201.452(a)(7) for the activity concerned, except where the basic contract was approved by HQ DLA.

(10) All actions incorporating the Life Cycle Costing concept.

(b) Orders placed against requirements contracts, other Federal agencies, or the National Industries for the Blind or Agencies for the Severely Handicapped are excluded from these review requirements. Contracts negotiated with the Small Business Administration pursuant to Section 8(a) of the Small Business Act are also excluded.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[43 FR 18993, May 3, 1978, as amended at 44 FR 27097, May 9, 1979]

§ 1201.452-3 Information to be furnished.

The complete contract file of those actions subject to HQ DLA review and approval shall be transmitted for review upon completion of negotiations but prior to award. DLA Form 677, "Request for Contract Review/Approval," signed by the contracting officer and by the Commander, his deputy, or the principal officer responsible for procurement shall be used to request review and approval. The file, including a copy of the current specification covering the basic item(s) or service(s), shall be arranged in accordance with ASPR supplement No. 2 and individual documents numbered and assembled in accordance with DLA Form 678, "File Content List," which shall be attached to DLA Form 677. All documents shall be securely fastened in the file which shall be assembled so as to permit viewing of each document without disassembling the file. A HQ DLA retention file shall be prepared in accordance with the instructions set forth in 1216.851-2, block No. 17. The purchasing office will be notified immediately by telephone when significant information is missing from the file or the available information is inadequate to permit review. Further review action will be withheld pending receipt of the required information. When a solicitation results in two or more proposed awards, one or more of which requires approval, the quantities, prices and names of proposed awardees shall be submitted with requests for approval and all awards will be withheld pending advice of required approval. Telephonic notification of approval, qualified approval, or disapproval will be furnished immediately with written approval evidenced on the original of DLA Form 677, "Request for Contract Review/Approval," which shall be made part of the contract file.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[43 FR 18993, May 3, 1978, as amended at 44 FR 27097, May 9, 1979]

§ 1201.452-4 Release of information.

Prospective suppliers are not to be advised that awards have been forwarded to HQ DLA for approval.

§ 1201.452-5 Proposed shifts in procurements from a competitive to a noncompetitive basis.

Procurements of $1 million and over where it is proposed to shift from a competitive to a noncompetitive status shall be approved in advance by the Head of the Procuring Activity.

§ 1201.452-6 Post award review.

Selected contracts will be subject to post award review. This review may be accomplished by a request for the contract file or during a visit to the applicable purchasing activity by HQ DLA contract review personnel. The results of these reviews and the results of the reviews accomplished prior to award will be utilized to determine future review levels for the activity involved.

§ 1201.452-7 Actions approved but not awarded.

If for any reason action subject to the requirements of § 1201.452-2 are reviewed and approved and subsequently not awarded, HQ DLA, ATTN: DLA-PC, shall be so advised. A complete explanation of the failure to make the award shall be provided.

§ 1201.452-8 Cancellation requirements.

(a) In order to insure that supply discipline and financial stability are not attained at the expense of sound procurement methods and the responsibility of this Agency to its suppliers, the following review system is in effect:

(1) Each partial or total cancellation of an invitation for bids after opening shall be effected only with the approval of the Head of the Procuring Activity.

(2) Reprocurement of an item within 90 days after cancellation under paragraph (a)(1) of this section, where the cancellation was occasioned by a revision of requirements or by funding limitations, shall have prior approval of the Head of the Procuring Activity.

(b) Except as specified in paragraph (c) of this section, this procedure shall

apply to cancellations for any reason other than failure to obtain coverage or unreasonableness of offered prices.

(c) This procedure shall not apply to procurements of nonstocked items or to procurements originated by a MIPR.

§ 1201.452-9 Letter contracts.

(a) Approval of the Executive Director or Deputy Executive Director, Procurement, HQ DLA, or other HQ DLA offical so delegated is required prior to award of letter contracts when the resulting definitive contracts will be subject to HQ DLA preaward review and approval under any of the criteria set forth in § 1201.452-2(a). Requests for such authority are to be made by the Center Director, Procurement and Production and may be transmitted by electronic means (ATTN: DLA-PC) and shall include, as a minimum:

(1) The facts supporting the requirement for a letter contract (§ 3-108 (b) and (c) of this title):

(i) Why the interests of national defense demand that a contractor be given a binding commitment so that work can be commenced immediately;

(ii) Why negotiation of a definitive contract in sufficient time to meet the procurement need is not possible; and

(iii) The written determination that no other type of contract is suitable.

(2) A determination of the contractor's responsibility in accordance with § 1-904 of this title;

(3) The proposed unit price and total price ceilings for the definitive contract;

(4) The limit of the Government's liability under letter contract;

(5) Any requirement for progress payments, provisional payments, and options for increased quantity;

(6) The proposed definitization schedule which shall include the dates for:

(i) Receipt of the contractor's proposal;

(ii) Commencement of negotiations;

(iii) Completion of negotiations;

(iv) Target date for definitization.

(7) The following additional milestone dates are to be submitted:

(i) Receipt of filed pricing report;

(ii) Receipt of the center price analysis;

(iii) Submission of the definitive contract and supporting file for HQ DLA preaward review and approval.

(b) HQ DLA authorization is required prior to modification of all letter contracts which required HQ DLA authorization when the proposed modification affects the:

(1) Unit price or total price ceilings of the definitive contract;

(2) Limit of the Government's liability under the letter contract;

(3) Definitization date;

(4) Progress or provisional payments as initially proposed;

(c) A copy of the signed letter contract or modification shall be forwarded to HQDLA, ATTN: DLA-PC, within one week after its execution;

(d) Any anticipated or actual slippage in the definitization schedule or the additional milestones must be reported in writing to DLA-PC. The reasons for the slippage and the revised schedule or milestone dates shall also be provided.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[43 FR 18993, May 3, 1978, as amended at 44 FR 27097, May 9, 1979]

§ 1201.452-10 Requests for waiver of HQ DLA preaward review and approval.

(a) In the event extraordinary circumstances are present and immediate award of a procurement action is required, Directors or Deputy Directors of Procurement and Production may request the waiver of Headquarters' preaward review and approval requirements (see § 1201.452-2). Request for waivers from other than "procuring activities" (see § 1201.201-14) shall be made by the Chief of the Purchasing Office. Requests are to be transmitted to the attention of the Chief, Contract Review Office, HQ DLA (DLA-PC) and, when immediate action is required, request may be telephoned.

(b) The granting of a waiver by the Executive Director or Deputy Executive Director of Procurement, HQ DLA (DLA-PC), does not constitute approval of the award or any deviations from applicable laws and regulations. All actions for which preaward review and approval is waived, shall be forwarder to HQ DLA, ATTN: DLA-

PC, for post award review within fourteen (14) days subsequent to award or such other mutually acceptable date.

(c) As a minimum, the following information shall be provided to support waiver requests:

(1) The extraordinary circumstances that require the immediate award of the procurement action (this should include a general chronology of events from receipt of the requirement to submission of the request);

(2) Description of the item (and quantity) being procured;

(3) The solicitation and contract number;

(4) The contractor's name;

(5) The total dollar value of the proposed award;

(6) The extent of competition (if award is proposed to other than the low bidder/offeror, the rationale for not accepting the low bid/offer);

(7) A statement that the contractor is responsible, preaward survey has been performed or waived by appropriate authority; and that, if required, EEO clearance has been obtained; and

(8) A statement as to whether a preaward review has been performed by the center.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[43 FR 18993, May 3, 1978, as amended at 44 FR 27097, May 9, 1979]

§ 1201.452-11 Confirmation of quantity and technical requirements.

Immediately prior to the award of any contract which includes war reserve requirements, the contracting officer shall insure that the cognizant Chiefs of appropriate Divisions within Supply and Technical Operations Directorates (Chiefs of appropriate Branches within Supply and Technical Operations Divisions at DPSC) have confirmed that the quantities therein are still required and that the technical requirements specified are still current and not likely to be changed in the near future. Immediately prior to award shall be construed as that point in time when all required approvals have been obtained and the contract is ready for release to the contractors. With respect to eligible awards consummated as a result of MIPRs, confirmation of quantity and technical requirements shall be effected verbally with the MIPR Liaison/Coordination or item manager levels of the requiring departments. Appropriate documentation shall then be included in the contract file. Procuring activities are encouraged to establish similar procedures for significant awards below $100,000 as may be appropriate for their types of procurements.

§ 1201.452-12 Report of procurement actions requiring headquarters DLA preaward review and approval by the close of the fiscal year (RCS: DLA(A)1720(P)).

(a) Each Defense Supply Center and each activity named in § 1201.201-14 shall submit a list of procurement actions which will require Headquarters DLA pre-award review and approval pursuant to § 1201.452-2 by October 1. The initial report shall be submitted by letter on August 1 and will include only those procurement actions to be forwarded subsequent to August 15. The report will be updated by letters on August 15 and September 1. Telephone updatings are required on each Monday subsequent to September 1 and prior to October 1. Negative reports are required.

(b) The report shall include the following for each procurement:

(1) Contract number, RFP/IFB number or other identification;

(2) Contractor's name;

(3) Dollar value, including the value of any option;

(4) Whether advertised or negotiated;

(5) If negotiated, whether cost or pricing data was obtained; and

(6) Week to be submitted for HQ DLA pre-award review and approval.

(c) The letter reports shall be signed by either the Director/Deputy Director of Procurement and Production of the purchasing activity. With respect to those activities named in § 1201.201-14, the letter reports may be signed by the Chief of the Procurement Office. Telephonic updatings may be made by the Chief of the Contract Review Office of the DSC procuring activities and the Chief of the Procurement Office at the other activities.

§ 1201.453 Review and approval requirements at the procuring activity.

(a) Each DLA procuring activity shall establish and maintain requirements and procedures for review and approval of proposed contractual actions to assure conformance with law, regulations and established policy, and the exercise of good business judgment. The scope and depth of the review will be determined by Heads of Procuring Activities based on workload and available manpower, but as a minimum will encompass a representative number of actions, including sole bids/offers and complex or high dollar value procurements. In addition, randomly selected procurement actions including noncompetitive small purchases will be reviewed after award. A summary record of such post award reviews and the results thereof shall be maintained by the activity.

(b) The Contract Review Office, organized in conformance with DLAM 5810.1, shall perform the review function. The review shall be performed as a full time duty where workload requires one or more people for the review. The person selected as the Chief of the Contract Review Office, in addition to possessing the qualifications set forth for a contracting officer in ASPR and § 1201.405, shall be a strong personality with demonstrated technical proficiency and capability of exercising sound business judgment. Personnel from other areas such as counsel, small business, technical operations, production, etc., may serve in an advisory capacity, as appropriate. Personnel may be rotated at intervals to ameliorate workload problems and to afford the individuals an opportunity to utilize the experience so gained.

§ 1201.454 Review and approval requirements for a procurement office not designated as a "Procuring Activity" (see § 1201.201-14).

The dollar threshold under § 1201.452-2(a)(3)(vi) and (5).

Subpart F—Debarment, Ineligibility, and Suspension

§ 1201.601 Establishment and maintenance of records and lists of firms or individuals debarred, ineligible, or suspended.

§ 1201.601-1 General.

The Counsel, DLA shall maintain the DLA list which will contain only the names of firms and individuals located in the United States, its territories and possessions.

§ 1201.601-3 Joint consolidated list.

The Counsel, DLA shall furnish to the Department of the Army a listing of all additions, deletions, or modifications to the Joint Consolidated List resulting from DLA action.

§ 1201.601-50 Attempted evasions.

In some instances, firms or individuals have attempted to evade the prohibitions contained in ASPR and § 1201.604 and § 1201.605 by change of address or by formation of a new company. In such cases where it can be reasonably established that the suspended or debarred firm or individual has the controlling or active interest in a new company, or that the address is the same as that of the suspended or debarred firm or individuals, a report shall be submitted through channels to the Counsel, DLA.

§ 1201.603 Grounds for listing and treatment to be accorded listed concerns.

§ 1201.603-50 Total restrictions.

If an offer is tendered by a debarred or suspended contractor it shall be received and recorded. When an offer is rejected, the reason shall be stated in the certificate to the General Accounting Office as follows:

The bid of ———— is rejected pursuant to ASPR 1-603.

§ 1201.604 Administrative debarment of firms or individuals (type A).

§ 1201.604-3 Notice of debarment.

Upon the debarment or removal from debarment of a contractor prior

to termination of the specified period, the Counsel, DLA shall furnish advice of such action to the contractor, and to the General Services Administration in accordance with ASPR 1-604.3(b).

§ 1201.605 Suspension of firm or individual.

(a) *Payments.* Where suspension is recommended or a contractor is suspended, no payments shall be made without the prior approval of the Counsel, DLA. Upon receipt of a notice of suspension, disbursing officers shall retain all administratively approved vouchers in favor of the contractor pending instructions from the contracting officer. Offices holding or in receipt of proper invoices covering amounts due to suspended contractors shall prepare and administratively approve the necessary vouchers and shall forward the certified vouchers to their assigned disbursing officers, inviting attention to the fact of suspension. This procedure shall be followed whenever any additional or new amounts become due during the period of suspension. When in the opinion of the Head of the Procuring Activity concerned, the circumstances surrounding either the procurement or the suspicion of fraud or criminal conduct are of such a nature as to permit or require complete or partial release of withheld funds due the suspended contractor, a recommendation for such release including a full statement supporting such recommendation shall be made to the Counsel, DLA.

(b) *Terminations.* Negotiations toward settlement of terminated contracts shall cease with the suspension of a contractor. Negotiations must likewise cease with respect to terminated subcontracts either awarded or held by a suspended contractor. All authorizations granted to such a contractor under section VIII, ASPR or Part 1208 of this subchapter shall be revoked immediately.

(c) *Awards.* Bids submitted by suspended contractors shall not be rejected by contracting officers solely because of the suspension but will be received, recorded, and retained in accordance with established procedures. When a suspended contractor is the low bidder or offeror (or, in the case of surplus and salvage sales, the high bidder), and the procuring activity considers it in the interest of the Government to accept the bid or offer, information relating to: (1) The low (or high) bid or offer and the next lowest (or highest) bid or offer; (2) expirations of options and whether such options may be extended; and (3) the desirability or necessity of acceptance of the suspended contractor's bid or offer shall be reported together with recommended action in the same manner as set forth in ASPR 1-608 for a determination as to the placement of any awards with the suspended contractor.

(d) *Inquires.* Inquiries by procuring activities concerning the status of reported cases shall be transmitted in triplicate to the Counsel, DLA.

§ 1201.608 Reporting.

Heads of Procuring Activities shall submit the reports described in ASPR 1-608, which shall be designated "For Official Use Only" unless the details included warrant a security classification.

§ 1201.650 Review of past contractual relationships.

When the name of a concern has been added to the consolidated listing in ASPR 1-601, or a report is submitted requesting suspension or debarment, a review shall also be made of contractual relationships with the company and its affiliates for the previous 2 years, or longer if considered necessary to determine whether the Government may have any basis for recovery of damages, or payments from the contractor.

Subpart G—Small Business Concerns

§ 1201.702 General policy.

(a) The Small Business program shall be conducted as an integral element in the DLA mission to achieve effective and efficient military supply.

(b) A continuing effort shall be made to stimulate the maximum qualified competition for DLA contracts, with special emphasis directed toward promoting that of small business

firms. Contracting personnel should prepare all solicitations so as to preclude insertion of provisions that may limit competition from small business firms.

(c) Procurement officials and Small Business Specialists shall take all possible and reasonable actions to inform small business firms of subcontracting opportunities being offered by prime contractors.

§ 1201.704 Small business officials.

§ 1201.704-50 Counseling activities.

(a) This subpart covers the general objectives of counseling and provides guidance to the Small Business Specialist in the conduct of his counseling activities. It also covers the materials that may be used in counseling practice.

(b) Each Small Business Specialist shall develop a personalized approach to, and pattern for, his counseling activities, to include the following concepts:

(1) The basic attitude toward counseling must be that of "service" to the businessman. Each DLA Small Business Specialist is a counselor for all DLA centers. Under no circumstances is an inquiry to be handled casually in an endeavor to dispose of the problem with the least amount of effort, nor should an inquirer be told to get in touch with another DSC. When a Small Business Specialist determines that an inquirer's problem can best be handled in another DSC he should make the necessary contact, introduction, and appointment. To the maximum extent possible, the same approach should be taken when the inquirer's problem must be handled by another element of the Department of Defense or by another Government agency. In short, industry inquires shall, whenever possible, be handled on a "one-stop-service" basis.

(2) The major objective of counseling is to attract the maximum number of qualified competitors for DLA contracts.

(3) A supporting objective of counseling is to provide as complete as possible service to all inquiries. Whether or not a businessman is found to be a potential bidder for DLA contracts, efforts shall be made to identify for him other Government agencies which might be interested in what he has to offer.

(c) In counseling, the primary role of the Small Business Specialist is to assist a businessman in his attempt to do business with DLA and, secondarily, with other elements of the United States Government. The Small Business Specialist, however, must not attempt to interpret invitations for bid, requests for proposals, specifications, or related documents. If the need for such interpretation becomes evident, the Small Business Specialist shall arrange an interview for the businessman with the appropriate contracting officer or his designee.

(d) The Small Business Specialist shall maintain adequate stocks of all Government publications designed to assist the operator of a small business in his approach to selling to DLA and to other elements of the United States Government. The Specialists must have available for reference the cataloging handbooks, Federal Supply Classifications, regulations, and directories necessary to provide adequate information to inquiring businessmen.

(e) The HQ DLA Small Business Advisor shall serve as a focal point for arranging for the initial distribution and replenishment stockage of those publications made available by Government agencies; and shall assist, if requested, in arranging for replenishment of these documents.

(f) Centers are urged to develop pamphlets and brochures describing the opportunities for businessmen which they provide. When these documents are published, provisions shall be made to supply the HQ DLA Small Business Specialists in the other supply centers and the HQ DLA Small Business and Economic Utilization Advisor with an initial stock of 50 copies. The initial distribution shall be accompanied by instructions for replenishment. The provision of copies for the HQ DLA Special Assistant for Public Affairs should be coordinated with the local Public Affairs Office.

§ 1201.704-51 Participation in industrial assistance events, business opportunity/Federal procurement conferences, procurement clinics, fairs, etc.

(a) The office of the HQ DLA Small Business and Economic Utilization Advisor will act as the overall coordinator for DLA participation in industrial assistance events (IAEs) and other business opportunity conferences. All events will be coordinated with the Office of the Special Assistance for Public Affairs, HQ DLA.

(b) Requests for DLA participation in events being sponsored by Federal or local Governments, or Chambers of Commerce involving more than the local DLA office will be coordinated with the DLA Advisor's office. For local events involving the local activity only, reports as to the type and kind of Agency participation will be provided to the Advisor's office or as soon as practicable after the event is held.

(c) For Business Opportunity/Federal Procurement conferences sponsored by Congressional offices, with DLA participation requested by the Office of the Director, Defense, Research and Engineering (ODDR & E), OSD, the office of the HQ DLA Small Business and Economic Utilization Advisor will coordinate the Agency's participation requesting assistance and participation by appropriate DLA field activities. Participation in these events will be conducted as directed by the DLA Advisor's office.

(d) To the maximum extent practicable, each DSC shall, as requested, participate in IAEs, and shall budget, on a yearly basis, funds necessary to cover travel costs for these events. On the basis of past experience, this would involve approximately seven trips per year. These include procurement clinics, small business/federal procurement conferences, expositions, and similar activities designed to increase the competition of qualified small business and other firms for DLA and other Government activity contracts.

(e) Participation in these events shall consist primarily of attendance by small business specialists and procurement personnel for the purpose of counseling and advising businessmen on how they may do business with DLA. Exhibits of DLA items, talks by DLA officials, and the showing of relevant DLA films may be included when appropriate. Whenever the DLA Advisor is the DOD Coordinator of the event, the DSC Specialist will be requested to conduct the seminar on "How To Prepare Bids."

(f) The type of participation by each DSC shall be as directed by the DLA Small Business and Economic Utilization Advisor and should reflect the extent to which the businessmen attending the event may be potential sources of supply for DLA. Efforts should be made to announce procurements and items of interest to these businessmen in time to permit appropriate counseling at the event.

(g) Individual supply centers may also develop and sponsor industrial assistance events oriented exclusively to the individual procurement programs. Planning for such events should be effected in close coordination with the office of the HQ DLA Small Business and Economic Utilization Advisor and the Center and the HQ DLA Special Assistant for Public Affairs.

§ 1201.705 Cooperation with the Small Business Administration.

§ 1201.705-4 Certificates of Competency.

(a) When a small business is determined nonresponsible because of lack of capacity or credit, but it is determined under the authority of ASPR 1-705.4(c)(iv) that the expediency of the requirement precludes referral to the Small Business Administration (SBA) for Certificate of Competency (COC) action, award to the next lowest responsible bidder must be made within the 15 working day period established in ASPR 1-705.4(c) for SBA COC action. If such award cannot be made in this period, SBA should be given an opportunity to consider the issuance of the Certificate of Competency. All efforts should be made through proper procurement planning to provide sufficient time for COC action by SBA, should such action become necessary. This includes: (1) The issuance of procurement requests at a time early enough to allow sufficient time for orderly procurement, (2) the earliest possible request for pre-award

survey, (3) the handling of COC referrals by telephone where appropriate and (4) expeditious follow-up of COC referrals.

(b) When the urgency situation contemplated by ASPR 1.705.4(c)(iv) clearly exists, the requiring activity shall fully document the urgency involved, indicating exact dates, quantities, usage data, etc. these determinations shall be coordinated with the Small Business Specialist and approved in accordance with ASPR 1-705.4 before the low small business bid is bypassed and award made to a higher bidder.

(c) ASPR 1-705.4(c)(vi) requires that when a contracting officer makes a determination that a small business concern is not responsible for reasons other than deficiencies in capacity or credit, his decision must be supported by substantial evidence documented in the contract file. When such a determination is made, the documentation shall be reviewed to assure that the evidence presented substantiates the decision as to the concern's lack of integrity, business ethics or persistent failure to apply the necessary tenacity and perseverance to do an acceptable job. For DSCs, this review shall be made by the HPA, or his designee. For other purchasing activities, the review shall be made by the Activity Commander or his designee. In addition, for each case where a determination is made under ASPR 1-705.4(c)(vi), a copy of all pertinent information, including supporting documents, shall be forwarded to HQ DLA, ATTN: DLA-PS, for informational purposes.

(d) Contracts involving a contractor to whom a COC was issued by SBA, or to whom loans were made with SBA participation, shall not be terminated for default without prior approval by the HPA.

(e) ASPR 1-705.4(f)(iii) provides that in cases where the Contracting Officer requires the issuance of a COC by SBA as a prerequisite to contract award, approval of such action will be obtained at a level above the Contracting Officer. For those cases where this situation exists, Contracting Officers will obtain approval from the Director, Procurement and Production prior to informing the SBA Field Office that a certificate must be issued.

§ 1201.705-5 Contracting with the Small Business Administration.

(a) *Authority.* (1) Single Point of Contact Between SBA and DSC. The Small Business/Labor Surplus Area Specialist (hereafter referred to as Specialist) of the purchasing office is designated as the initial and primary point of contact for all inquiries associated with this program. To the extent requested by a prospective section 8(a) subcontractor, or by an SBA representative on its behalf, the Specialist will take appropriate action to set up meetings or discussions which may be required with technical, supply, and procurement personnel.

(2) The Specialist is hereby authorized to perform the duties of the DLA Advisor as set forth in ASPR 1-705.5. This includes authority to receive requests for a commitment to support SBA approved plans, authority to issue commitments to the SBA in support of firms in the 8(a) Business Development Program and authority to grant approval to proceed with the negotiation of proposed section 8(a) contracts. Direct communication between the Specialist and all SBA offices is authorized and encouraged.

(b) *Policy.* (1) [Reserved]

(2) *Business development expense (BDE.)* By agreement with SBA, the SBA will generally provide the DOD an order for BDE in advance of the placing of a prime contract with SBA. The amount to be covered by the order is determined in advance of contract award by a comparison of the total price negotiated with SBA and the subcontractor (in accordance with existing procedures in ASPR 1-705.5) with the current fair market price developed in accordance with ASPR 1-705.5 (b)(2) and (c)(1)(L) as agreed with SBA. The prime contract price placed by DOD with that Agency will include those expenses as a part of the cost of the items ordered and will not be separately identified in the contract. DOD funds, which will include the anticipated reimbursement from SBA, will be cited on the contract. Upon award of the contract, SBA will

80-109 O—81——6

be billed against their reimbursement order under procedures set by the Comptroller, HQ DLA.

(3) *Contract assistance.* Requests for technical and/or management assistance which are in excess of DSC or DCAS capability and resources shall be referred to DLA-PS or DLA-AS as appropriate. Through agreement between HQ DLA and SBA, technical and management assistance teams can, under certain circumstances, be made available to augment assistance provided by the PCO and/or ACO.

(4) *Identification of items and requirements for section 8(a) contracting.*

(i) In addition to responding to SBA requests for potential requirements to support an approved business plan of a disadvantaged firm in accordance with ASPR 1-705.5(c) (1) and (2), and paragraph (c) of this section, it is the policy of DLA to identify other requirements which are considered by the procuring activity as suitable for placement with SBA under the section 8(a) contract program.

(ii) Contracting Officers will consider the section 8(a) contract program as a possible method of satisfying all new requirements being processed for procurement action. Special attention will be given to those commodities and services which are anticipated to be recurring requirements and for which there is a limited number of prospective small business sources. Production and technical operations personnel should participate in this review when appropriate.

(iii) Whenever a current requirement is identified as a possible candidate for accomplishment under the section 8(a) contract program, the following actions will be taken:

(A) Where the "desired" or "required" delivery criteria permits section 8(a) consideration, the requirement shall be referred in writing to the Director, Office of Business Development, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416, for national-buy items and the appropriate SBA regional office for local-buy items. The SBA Procurement Center Representative (PCR) assigned to the purchasing office shall be informed in every case by copy of the written offer. A reasonable due date for a reply from SBA shall be established, and will be stated in the offering letter. If no response is received from the SBA by the due date, the requirement may be withdrawn or the time extended at the option of the purchasing office.

(B) Where delivery criteria requires immediate procurement action, the appropriate SBA office, as outlined in § 1201.705-5, shall be notified in writing that future requirements may be made available for section 8(a) contracting. Such notification should include an estimate of future requirements and of the probable date when the next procurement action will be initiated. In addition, the Materiel Manager will be requested to flag the item for processing as outlined in (iv) of this section.

(C) A copy of notifications submitted to SBA in accordance with § 1201.705-5(b)(4)(i) of this section shall be furnished to DLA-PS.

(iv) The Materiel Manager will maintain a method for flagging those items identified by SBA as being currently procured under this program and will insure that the Specialist is notified of any planned procurements of those items so flagged at the earliest possible date; i.e., after the determination of a firm requirement, and, if possible, prior to the preparation of a purchase request.

(c) *Procedures.* (1) *Supplies, services, and research and development.*

(i) The SBA has been requested to submit requests for requirements to support approved business plans directly to the Specialist of the DLA activity responsible for the procurement and management of the commodities required with an information copy to DLA-PS.

(ii) Every effort will be made to support the SBA request with the specific commodities solicited or with appropriate substitute items. Such reviews will be coordinated with the Supply, Technical, Production, and Procurement staffs, as appropriate, for concurrence and procurement planning.

(iii) (A) Within 30 days of the receipt of the request, SBA will be notified of the extent of support that can be provided, indicating the date require-

ments will be available and reserved for section 8(a) contracting, and milestone dates for solicitation, completion of negotiations and contract award. This notification represents a firm DLA commitment to the extent outlined in ASPR 1-705.5(c)(1)(C). Information copies of this notification will be provided to DLA-PS. In the event the purchasing office is unable to support the SBA request with the item requested and no substitute items can be offered, complete data in support of the purchasing office position is to be forwarded by the Specialist to DLA-PS for further action with SBA.

(B) Concurrent with the commitment notification to the SBA, the purchasing office will develop a procurement plan to assure prompt solicitation, negotiation and contract execution.

(*1*) ASPR 1-2100 advance procurement planning and § 1201.2102, will be used as guidelines for developing procurement plans. Planning shall include projected requirements for follow-on contracts for the length of the nominated subcontractor's approved business plan, so as to preclude, if possible, a break in production.

(*2*) Realistic milestones shall be established to assure timely procurement actions. When it becomes apparent that established milestones will not be met, problems causing potential slippage shall be identified and examined. Problems not resolved locally shall be expeditiously elevated to DLA-PS by the Specialist.

(*3*) Should the DLA procuring contracting officer need to retain approval authority on subcontract requests in special instances (e.g., health and safety items involving the QPL, etc.), a clause similar to the provisions below may be incorporated into the contract awarded to SBA.

Subcontracting for Contracts Awarded Pursuant to section 8(a), Small Business Act (DLA 1973 Oct). The subcontractor shall not further subcontract the manufacture/performance of any of the supplies or services required under this contract without prior written approval of the cognizant DLA procuring contracting officer.

The prohibition against further subcontracting is intended to apply only to that part of the work required by the contract, and represented to be performed by the SBA subcontractor. The subcontractor should not be precluded from purchasing raw materials, or other items, which, in accordance with industry practice, are normally purchased/subcontracted. This clause may be revised/modified as necessary to comply with the intent of this paragraph, and should be limited to special programs.

(*4*) Companies nominated to receive contracts awarded under section 8(a) of the Small Business Act have the same problems as established contractors, and in some instances may have even greater problems. Accordingly, DLA contracting officers must take particular care to include an appropriate economic price adjustment provision in section 8(a) contracts when the circumstances so warrant. Borderline cases should be resolved in favor of including an adjustment provision. In addition, pricing arrangements included in section 8(a) contracts (i.e. price adjustment provisions) shall be at least equal to those which would normally be included in contracts for like or similar items placed with regular commercial sources.

(*5*) ASPR section 1, part 19, stipulates that the requirement for first article testing and approval may be included in contracts as appropriate. Extensive use of this requirement will assist section 8(a) contractors in providing supplies conforming to specification requirements.

(*6*) When circumstances arise indicating a need to withdraw requirements previously committed for section 8(a) contracting, the purchasing office will seek SBA agreement for such withdrawal. If the SBA does not agree with such withdrawal, complete data supporting such proposed withdrawal shall be provided to the DLA Advisor's office for review and decision concerning the proposed withdrawal.

(*7*) In each instance where a requirement previously committed for Section 8(a) contracting is withdrawn and subsequently purchased by regular acquisition methods, purchasing offices shall, within 30 days after award, provide a written report to DLA-PS on each item stating (1) the DLA estimat-

ed current fair market price, (2) the SBA final offered price excluding business development expense, and (3) the final contract price paid. Reports Control Symbol DLA (AR)2201 (P) applies. This reporting requirement expires 1 June 1980 unless sooner rescinded or extended.

(vii) Review and approval of section 8(a) contracts have been delegated to DLA field procuring activities. Such review and approval actions shall be accomplished in accordance with § 1201.453.

(viii) The purchasing office will assure that follow-on section 8(a) contract support will be provided for that period of time reflected in the SBA approved business plan. To avoid the possibility of costly breaks in production, a supplemental procurement plan shall be established for each section 8(a) contract awarded to assure that additional follow-on requirements are made available as needed. A new SBA letter requesting the reservation of these follow-on requirements shall be requested by the Specialist and obtained from SBA at least 60 days prior to the day a follow-on contract is required to avoid a break in production. Milestones for accomplishment of the follow-on award will be established and followed. Where there is an indication that slippage might occur which will endanger meeting established milestones, DLA-PS, and the cognizant SBA regional office, will be immediately notified for resolution of the problem.

(ix) *Contract administration.* (A) ASPR section 1, part 18, stipulates that post-award orientation conferences with contractors be initiated to assure a clear understanding of the scope of the contract, the technical reqirements, and the rights and obligations of the parties. In the case of section 8(a) contractors, the contracting officer, or technical represenative of the purchasing office, should in all cases initiate a request for such a conference to assure that all matters requiring clarification or resolution are considered and contractual requirements are explained. Specific attention will be given to the requirements of statutes, executive orders, regulations and determinations establishing labor provisions and standards of the contract.

(B) Early notification to the SBA of deficiencies in contract performance by a section 8(a) firm is particularly important in the administration of 8(a) contracts.

(C) Whenever the subcontractor encounters problems which could jeopardize performance, DLA-PS and the cognizant SBA regional office shall be notified. The contracting officer or his authorized representative shall provide all reasonable assistance to the subcontractor to correct deficiencies which may arise.

(D) DLA-PS and the SBA regional office shall be notified at least ten days prior to the initiation of any adverse action against any SBA subcontractor.

(x) A copy of each section 8(a) contract, excluding general provisions, shall be mailed to DLA-PS within 10 days after date of award.

(xi) Appropriate clearance should be requested as early as possible on 8(a) contracts subject to the Equal Opportunity Clause to preclude delays in awards.

(2) *Construction.* The authorities, procedures and guidelines established in § 1201.705-5(c)(1) are equally applicable to DLA section 8(a) contract program covering construction procurements.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[43 FR 18993, May 3, 1978, as amended at 44 FR 27097, May 9, 1979]

§ 1201.706 Set-asides.

§ 1201.706-1 General.

(b) ASPR 1-704.3(b)(iii) provides that Small Business Specialists shall, prior to issuance of solicitations or contract modifications in excess of $2,500, determine that small business concerns will receive adequate consideration including initiation of set-asides. This portion of ASPR also provides that set-aside determinations may be made jointly with PCOs or may be in the form of recommendations to them. Within DLA, PCOs shall assume primary responsibility for initiation of set-aside actions. The

Small Business Specialists' responsibilities with respect to examining procurements for potential set-asides are to review actions proposed by PCOs taking into consideration the varied judgment factors involved, and to assist in resolving problems and overcoming impediments noted in connection with the establishment of set-asides. The review of all procurements over $10,000 and all class set-asides shall be accomplished by use of DLA Form 1360, Record of Set-Aside Action (see § 1216.854). As indicated on the form, its use is optional for procurements valued from $2,500 to $10,000. If the DLA Form 1360 is not used for this category of procurement, a local form shall be used.

§ 1201.706-3 Review, withdrawal, or modification of set-asides or set-aside proposals.

(e) Regarding the small business set-aside appeal procedures provided to the SBA Procurement Center Representative, ASPR 1-706.3(e) provides that appeals shall be made to the Chief of the Purchasing Office. Within DLA, in the event the decision of the Chief of the Purchasing Office would approve the action of the contracting officer, the appeal shall be elevated to the Center or Depot Commander for final decision. If the Commander's decision also approves the action of the contracting officer, the SBA representative shall be advised and may proceed with further appeal actions as prescribed in ASPR 1.706.3(e).

§ 1201.707 Subcontracting with small business concerns.

§ 1201.707-3 Required clauses.

(a) When the provisions of ASPR 1-707.3(b) are applicable, the contracting officer shall make a determination of subcontracting potential on a case-by-case basis. Those cases where it is determined that the clause in ASPR 7-104.14(b) will not be included because of substantial subcontracting possibilities do not exist, should be coordinated with and concurrence obtained from the activity Small Business and Economic Utilization Specialist and, where available, the Small Business Administration (SBA) Procurement Center Representative (PCR), before the procurement action is released.

(b) If it is determined that all procurements for a particular product or service will not include the clause in ASPR 7-104.14(b), the determination and supporting data shall be coordinated with and concurrence obtained from the activity Small Business and Economic Utilization Specialist and the SBA PCR. Prior to the application of the determination to an actual procurement, a copy of such blanket determination, with supporting data, shall be furnished to HQ DLA, ATTN: DLA-PS, for coordination with SBA.

§ 1201.707-4 Responsibility for reviewing the subcontracting program.

When contracts containing the Small Business Subcontracting clause are retained by the buying activity for contract administration, the procedures in § 1220.703-53 apply.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[44 FR 27097, May 9, 1979]

Subpart H—Labor Surplus Area Concerns

§ 1201.805 Subcontracting with labor surplus area concerns.

§ 1201.805-4 Responsibility for reviewing the subcontracting program.

When contracts containing the Labor Surplus Area Subcontracting clause are retained by the buying activity for contract administration, the procedures in § 1220.703-53 apply.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[44 FR 27097, May 9, 1979]

Subpart I—Responsible Prospective Contractors

§ 1201.903 Minimum standards for responsible prospective contractors.

1201.903-1 (iii) *DoD policy is that DoD components shall assure contracts are not awarded to suppliers with a history of providing products*

or services of an unsatisfactory quality. This necessitates the maintenance of contractor quality history and development of criteria for its use. Occasional deficiencies in contractor performance may be unavoidable, but if the defects are of a critical or repetitive nature and the contractor is not amenable, such information may be used as a basis for not awarding future contracts. Contractor records will not be limited to product quality deficiencies, but will include also discrepancies due to inadequate packaging, improper or missing documentation, overages, shortages, misdirected or damaged shipments, and similar discrepancies. Individual and summary records of actions taken will be maintained for review by management. If there are overriding reasons for awarding a contract to a supplier who has an unsatisfactory quality history, the contract file will be documented accordingly, and DLA Form 970, Special Inspection Requirements, shall be submitted to the Government inspection activity (see § 1216.850-3).

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[44 FR 27097, May 9, 1979]

§ 1201.905 Procedures for determining responsibility of prospective contractors.

§ 1201.905-1 General.

When the contracting officer makes a determination regarding the prospective contractor's responsibility that is contrary to that recommended in the preaward survey report, the reason for not following the preaward survey report recommendation shall be included in the contract file. In each instance wherein the preaward survey report recommendation is not followed, the case must be reviewed and concurred in at a level no lower than the Director of Procurement and Production. Procuring contracting officers shall advise the DCAS office performing the preaward survey as to the reason for not following the DCAS preaward survey recommendation.

§ 1201.905-4 Preaward surveys.

(a) Preaward surveys shall be accomplished in accordance with ASPR 1-905.4, ASPR appendix F 200.1524, ASPR appendix K, and DLAM 4100.2, section VIII.

(b) A preaward survey shall be requested only when an award is contemplated to a firm from which a bid or proposal has been received. Concurrent requests for preaward surveys on the same procurement will not be made except in emergency situations and/or when multiple awards are contemplated.

(c) Preaward surveys on sole source suppliers shall be limited to partial surveys. Factors requested for investigation shall be those that actually affect the contract, such as production backlog, financial, and quality.

(d) A preaward survey shall be made unless there is current quality, production and financial information available to waive the requirement. Even if the prospective contractor is currently producing or has successfully performed under a recent contract (within 1 year) and is being considered for an award of a similar undertaking, i.e., similar item and similar size contract, a partial survey may be required to determine current financial capability and capacity. However, if the same contractor is being considered for a much larger contract or a contract involving a fundamentally different undertaking, a complete or partial survey, as indicated by the circumstances, shall be requested. If the prospective contractor is newly entering into the manufacture of the goods sought by the Government or has no recent history of performance of a similar undertaking, a complete survey shall be requested.

(e) When limited information is required such as capacity and financial data, under the circumstances outlined in paragraphs (c) and (d) of this section, information can often be obtained through telephonic contact with the preaward monitor at the cognizant CAO, precluding the administrative effort associated with a partial preaward survey request.

(f) When a decision is made not to request a preaward survey, an explanatory memorandum will be included in the contract file establishing the contracting officer's decision to waive the preaward survey on proposed awards of $100,000 and over.

(g) Quality Assurance Division personnel shall assist in the determination to request or waive preaward surveys, evaluate QA portions of preaward survey reports, and participate in preaward surveys when the contract will be for a complex item, the potential contractor has a poor quality history or when requested by DLA.

§ 1201.905–50 Capability surveys for workshops for the blind and other severely handicapped.

(a) The purchasing office, upon request from the Committee for Purchase from the Blind and Other Severely Handicapped, shall request a capability survey to determine the capability of the Workshop(s) to produce specific items being considered for addition to the Procurement List.

(b) The purchasing office, when requesting a capability survey, shall make the request on DD Form 1524, Pre-Award Survey of Offeror—General. The purchasing office should emphasize factors concerned primarily with production capabilities (e.g., Factors 1, 2, 3, 5, 7, and 13 listed in Section III, DD Form 1524). The financial capability and accounting system factors will be excluded. When a capability survey is being requested, Section III, Remarks, DD Form 1524, shall clearly indicate the request is for a "Capability Survey" only.

(c) The purchasing office shall forward requests for capability surveys to the appropriate office, in accordance with ASPR K-201(c). The purchasing office shall furnish a copy of the completed survey to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped.

(d) Capability surveys will be executed by the cognizant contract administration office in accordance with DLAM 8300.1, Section 3-1100.

Subpart L—Specifications, Plans and Drawings

§ 1201.1203 Availability of specifications, standards, plans and drawings.

The following modifications shall be made to the "Availability of Specifications and Standards" provision referenced in ASPR 1-1203.2(a):

(a) Renumber paragraph (b) to (c).

(b) Insert new paragraph (b):

(b) The minimum processing time required by the U.S. Naval Publications and Forms Center for mailing requested documents is seven (7) days after receipt of written requests and two (2) working days after receipt of telephone requests.

Subpart U—Procurement Planning

§ 1201.2100 Procurement planning.

§ 1201.2100–2 Applicability.

Procurement Plans will be required for all procurements other than those effected under ASPR section III, part 6. Procurement Planning will (a) be initiated at the time the Purchase Request is received by the Buyer (b) be prepared substantially in accordance with the sample format shown in § 1201.2102 and (c) be approved at a level higher than the Buyer, the approval level to be established by each DSC.

§ 1201.2102 Sample format and content of procurement plans.

PROCUREMENT PLAN

PR MIPR Number: _____ *Date Received:* _____ *Buyer:* _____

Item Description: _____

Quantity: _____ *Est. Unit Price:* _____ *Est. Total Price:* _____

Delivery Schedule: _____

Supply Criticality (Priority): _____

Purchase History

Date	*Quantity*	*Unit Price*	*Method of Procurement* *Adv.*	*Neg.*	*Competitive Bids/Offers* *Number*	*$ Range*

Considerations

100% Partial None *100% Partial None*

Set Aside: Small Business _____ *Labor Surplus:* _____

Quantity Option: _____ *% Price Escalation:* _____ *% First Article Test:* _____

DD Form 633 DD Form 633-7 Not Required *Yes No*

Cost Pricing Data: _____ *Open Contracts:*

Warranty: *Yes* _____ *No* ___ *GFP Involved:*

Proposed Method of Procurement

a. *Negotiate:* *Written* _____ *Oral* ___ 10 USC 2304(a) ___ *Advertise:* ___ *PIN:* ___

b. *Schedule:* *Date*

Issue Solicitation
Open/Close Solicitation
Evaluate/Review
Award

Remarks:

Signature Buyer: _____ *Date:* _____

Signature Approving Official: _____ *Date:* _____

Subpart V—Industrial Preparedness Production Planning

§ 1201.2205 Existing authority affecting the industrial base.

(a) (1) (i) As part of the Industrial Preparedness Planning (IPP) Program, ASPR 3-216 authorizes the negotiation of contracts for selected supplies with certain planned producers. Negotiation is limited to those producers who have in effect, or those offerors who will agree to execute a DD Form 1519 (Production Planning Schedule). Though not legally binding on the parties, this document signifies the Government's intention when authorized to convert such planned mobilization production schedules to contracts in order to minimize material shortages during national emergencies.

(ii) Pursuant to 10 U.S.C. 2304(a)(1), as implemented by ASPR 3-201, the Secretary of Defense may authorize IPP contract negotiation. In such event, the Chief, DLA-PR, shall notify the Defense Supply Centers to issue Standard Letter contracts (§ 1207.850) in accordance with their emergency procurement plans to all producers having a current DD Form 1519 in effect. The Letter Contract will require the recipient to commence production immediately. Thereafter, the parties shall negotiate a definite contract in accordance with the Letter Contract's definitization schedule.

§ 1201.2206 Applicable procedures.

§ 1201.2206–50 Industrial preparedness planning packages.

(a) *General.* (1) The principal objective of IPP is not the completion of planning, but rather its final implementation. The implementation of plans for emergency procurement will depend on the degree of mobilization.

(2) DSCs shall develop and maintain the IPP packages for use during mobilization. IPP elements at the DSCs should maintain close coordination with procurement elements to ensure that contracting officers and other procurement personnel are familiar with the objectives of the program, and are aware of the existence of mobilization procurement plans.

(b) *Composition of the Package.* The IPP packages shall be established and maintained for all planned items. The package should include the Industrial Preparedness Plans (DLA Forms 1344 and 1345) and Standard Letter Contract.

(c) *Industrial Preparedness Plan.* (1) Industrial Preparedness Plans shall be established and maintained for planned items. The plan shall consist of information for the operation of DLA field activities, progress and status information for HQ DLA, ATTN: DLA-PR; and the necessary information required for an alternate to perform under emergency conditions.

(2) Continuous review shall be made to ensure inclusion of current data regarding requirements, planned producers, and production schedules. DSCs shall update or revise the plan at least yearly, or more frequently as changes warrant. Recipients of this plan shall be provided revised editions as appropriate.

(3) The IPP shall contain mobilization requirements and production data and shall reflect the specific planned procedures, their phased production schedules and other information relating to these schedules. Where plans are developed for several or many similar items, consideration should be given to grouping the data for such items into one plan. This will consist of consolidating the requirements for all the items and the production for all the items scheduled with each planned producer. Normally, only unclassified data will be included in this plan. In the event a DSC desires to include classified data, HQ DLA, ATTN: DLA-PR, shall be advised of the necessity of such data prior to its inclusion.

(4) DLA Form 1345, Industrial Preparedness Plan, and DLA Form 1344, Planned Producers and Schedules, have been developed for use by all DSC's.

(d) *Standard Letter Contract (IPP).* (1) The basic IPP implementing document shall be the Letter Contract (7-850). DSC's shall prepare the Letter Contracts as data becomes available and decisions made as to selected

sources of supply and production schedules.

(2) DD Forms 1519 are informal production agreements not legally binding on either the Government or planned producers. These documents indicate the Government's intention to convert planned mobilization production schedules to contracts by negotiating on a selective basis as may be required to minimize material shortage during a limited war. Therefore, an additional procedural step is necessary to authorize the contractor to initiate his planned production.

(3) The authority for negotiating procurement in the event of a national emergency is 10 U.S.C. 2304(a)(1) cited in ASPR 3-201. Upon receipt of advice from the Secretary of Defense that expanded use of negotiated procurement under a national emergency is authorized, the Chief, DLA-PR, will notify DSC's to implement their emergency plans. The document to do this is the Letter Contract.

(4) Adequate cross-reference should be included to identify producers who are scheduled to produce more than one item. In such cases, only one Letter Contract should be furnished to the producer, listing all the items scheduled for production.

(5) Attachments such as specification, should be readily available to be included with the contract mailed to the producer. A letter, explaining the implementation procedure, shall be forwarded to each planned producer upon completion of planning to ensure that manufacturers are aware of this procedure.

(e) *Implementation of Plans.* (1) Plans shall be implemented only to the degree necessary to support a specific emergency. Full implementation of plans for mobilization procurement and release of Letter Contracts for planned items are contemplated under *full* mobilization.

(2) Under partial mobilization where the use of full Approved Force Level is not required, the DOD policy will be to acquire military support with minimum impact on commercial production. The need for imposing economic controls on the civilian segment of the nation will depend on the ability to obtain the required military suppliers without disturbing the civilian economy.

(f) *Alternate Files Maintenance.* (1) Copies of each IPP package shall be furnished to HQ DLA, ATTN: DLA-PRS; to the Alternate Files, Emergency Relocation Site; to the DLA Central File Repository; and to the Procurement Files at the Alternate National Military Command Center (ANMCC). Appropriate mailing addresses can be found in the DLA Field Activity War and Emergency Support Plan (FAWESP) by July 15 of each year. Since the prime objective of IPP is implementation, DSC's should ensure that these files are kept current. HQ DLA (DLA-PR) will annually inspect these files to ensure that they are being properly maintained for use in an emergency.

(2) DSC's should also furnish a copy of each items specification/drawing to the Alternate File, Emergency Relocation Site (ERS). Address for this file is contained in the War Emergency Support Plan (WESP).

Subpart W—Environmental Protection

§ 1201.2302 Administration and enforcement.

§ 1201.2302-3 Compliance responsibilities.

The procuring contracting officer shall report violations of the clean air or water standards which come to his attention in the performance of his regular duties to HQ, DLA, ATTN: DLA-PPR.

§ 1201.2302-5 Withholding award.

(a) If, pursuant to the certification in ASPR 7-2003.71, the successful offeror informs the contracting officer that the facility he proposes to use is being considered for inclusion in the EPA list of Violating Facilities, the contracting officer shall provide the following information telephonically to DLA-PPR (AUTOVON 284-6431). Written confirmation will be requested if needed:

(1) Solicitation number;

(2) Product or service being procured;

(3) Quantity and dollar amount of proposed contract;

(4) Name and address of proposed awardee;

(5) Address and owner of facility being considered for listing by EPA;

(6) Date of communication from EPA; and

(7) Basis for proposed inclusion in the EPA list of Violating Facilities.

(b) In the event that EPA requests a fifteen day delay in award, and such delay would be prejudicial to the Government's interest, as stated in ASPR 1-2302.5, the contracting officer shall execute a Determination and Findings (D&F) to that effect. Upon approval of the D&F by the Chief of the Purchasing Office, DLA-PPR shall be notified, and will inform EPA of the decision to proceed with award.

PART 1202—PROCUREMENT BY FORMAL ADVERTISING

Subpart A—Use of Formal Advertising

Sec.

1202.104 Types of contracts.

Subpart B—Solicitation of Bids

1202.201 Preparation of invitation for bids.
1202.201-50 Right to apply FOB origin offer.
1202.203 Methods of soliciting bids.
1202.203-50 Other distribution.
1202.205 Bidders mailing lists.
1202.205-2 Removal of names from bidders mailing lists.
1202.205-4 Excessively long bidders mailing lists.
1202.205-6 Pre-invitation notices.

Subpart C—Submission of Bids

1202.303 Late bids, modifications of bids or withdrawals of bids.
1202.303-5 Hand-carried bids.

Subpart D—Opening of Bids and Award of Contract

1202.404 Rejection of bids.
1202.404-1 Cancellation of solicitation.
1202.406 Mistakes in bids.
1202.406-3 Other mistakes.
1202.406-4 Disclosure of mistakes after award.
1202.406-50 Actions referred to higher authority.
1202.407 Award.
1202.407-1 General.
1202.407-3 Discounts.
1202.407-6 Equal low bids.
1202.407-8 Protests against award.
1202.407-50 Other factors to be considered in determining price reasonableness.
1202.408 Information to Bidders.
1202.408-1 Unclassified awards.
1202.450 Requests for decision by the comptroller general.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19008, May 3, 1978, unless otherwise noted.

Subpart A—Use of Formal Advertising

§ 1202.104 Types of contracts.

For economic price adjustment policy applicable to formally advertised procurements (see § 1203.404-3).

Subpart B—Solicitation of Bids

§ 1202.201 Preparation of invitation for bids.

§ 1202.201-50 Right to apply FOB origin offer.

SECTION D, EVALUATION FACTOR FOR AWARD

(i) A provision substantially as below may be included in invitations for bids when appropriate. The intent of the provision is to permit the Government to award FOB origin offers that otherwise could not be covered in a formally advertised procurement. Example—items 1 and 2 are for the same product, but different item numbers are used because of the different destinations. FOB origin offers are permitted. Bidders A and B bid FOB origin on item 1. No bids are received on item 2. Item 1 is awarded to Bidder A. Under present conditions, item 2 would have to be resolicited. With the below provision, and provided the bidder had not specified otherwise, the Bidder B offer could be applied against item 2. Assuming Bidder B's price was reasonable, item 2 could be awarded to Bidder B and the need for a resolicitation negated.

Right to Apply FOB Origin Offer. Unless otherwise specified by the Bidder, the Government may apply an FOB origin offer against any FOB origin item or subitem for the same product or supplies.

§ 1202.203 Methods of soliciting bids.

§ 1202.203-50 Other distribution.

One information copy of each invitation for bids involving the production testing of items will be forwarded at time of issue to HQ DLA, ATTN: DLA-PR, and DLA-SER in accordance with DLAR 4125.1.

§ 1202.205 Bidders mailing lists.

§ 1202.205-2 Removal of names from bidders mailing lists.

Bidders mailing lists shall be reviewed and inactive suppliers removed.

§ 1202.205-4 Excessively long bidders mailing lists.

(b) *Rotation of Lists.* Mailing lists may be rotated or pre-invitation notices issued where there are a substantial number of solicitations and bidders lists which are used repetitively.

§ 1202.205-6 Pre-invitation notices.

Pre-Invitation notices may be used (a) to determine competitive interest, or (b) to avoid the reproduction and mailing of unnecessary quantities of solicitations.

Subpart C—Submission of Bids

§ 1202.303 Late bids, modifications of bids or withdrawal of bids.

§ 1202.303-5 Hand-carried bids.

Suppliers shall be notified that it is a responsibility of the bidder to place his bid in the bid depository if a bid is hand-carried. Each DLA activity shall establish procedures to ensure that Government personnel do not handle, stamp, or mark the bid envelopes prior to placement of the bids in the depository by the supplier.

Subpart D—Opening of Bids and Award of Contract

§ 1202.404 Rejection of bids.

§ 1202.404-1 Cancellation of solicitation.

Determination to cancel invitations for bids made pursuant to ASPR 2-404.1 shall be in writing and shall describe the items solicited, quantities, number of bids received, prices, a discussion of the basis for cancelling and explanation of why it is a compelling reason.

§ 1202.406 Mistakes in bids.

§ 1202.406-3 Other mistakes.

(b) Authority to make the determinations set forth in ASPR 2-406.3(a)(1) is delegated to Counsel at DLA procuring activities and purchasing offices without power of redelegation. Requests for the determinations required by ASPR 2-406.3(a) (2), (3), and (4) will be forwarded through Heads of Procuring Activities to the Counsel, DLA.

§ 1202.406-4 Disclosure of mistakes after award.

(f)(iii) A copy of the determination and finding will be attached to all copies of the contract modification and a copy of the modification will be forwarded to the Counsel, DLA, when executed.

§ 1202.406-50 Actions referred to higher authority.

Mistakes in bids requiring action by higher authority or mistakes in bids in which the HPA desires that the determinations be made by higher authority shall be forwarded to the Counsel, DLA.

§ 1202.407 Award.

§ 1202.407-1 General.

It is particularly important that copies of the award document furnished for contract administration and finance purposes include detailed information as to acceptable additions or changes made by a bidder in the bid. The award document shall include the following data to the extent applicable:

(a) A list of the items or lots accepted with the quantity, unit price, and total price of each item;

(b) An indication of the extent to which award is made on the basis of f.o.b. destination or f.o.b. origin;

(c) Any discount offered by the successful bidder, whether or not such discount was considered in the evaluation of bids;

(d) When the invitation for bids authorizes bids on the basis of brand name or equal the brand, model, part number, and any other identifying characteristics of the item to be furnished by the successful supplier;

(e) The place of manufacture of the supplies or the performance of services awarded and the name of the supplier, when different from that of the contractor;

(f) The place of inspection and acceptance and the name of the activity authorized to effect inspection and acceptance on behalf of the Government;

(g) When the invitation for bids includes the requirement for minimum size of shipments or guaranteed maximum shipping weights (and dimensions, if applicable), and award is made f.o.b. origin, a clause as follows:

NOTE TO ADMINISTRATIVE CONTRACTING OFFICER

This award has been made on the basis of Guaranteed Maximum Shipping Weights or dimensions, and/or Minimum Size of Shipments as specified. Take action in accordance with DLAM 8105.1, Sec. 19-210, if it becomes evident that the guaranteed maximum shipping weights or dimensions will be exceeded, or if the contractor tenders delivery of less than the minimum size shipments specified, in order that action may be taken to adjust the contract price.

(h) The time of delivery;

(i) The place of delivery;

(j) The place for the submission of invoices and payment;

(k) A statement that the award confirms a notice of award;

(l) A statement that the progress payment clause is a part of the contract; and

(m) A provision for advance payments.

§ 1202.407-3 Discounts.

(a) The clause in ASPR 7-2003.35 shall be included in all invitations for bids, using the minimum periods of 20 calendar days where delivery and acceptance are at point of origin and 30 days where delivery and acceptance are at destination, except for subsistence items for which DPSC retains the payment function which, by industry practice, the discount period is 10 calendar days.

§ 1202.407-6 Equal low bids. (See also ASPR 1-111).

Whenever identical or equal bids are received pursuant to formal advertising and, in the opinion of the contracting officers, are indicative of collusive bidding, follow-the-leader pricing, related low bids, division of business, uniform estimating systems, or other practices designed to eliminate competition or to restrain trade, a report of the facts and pertinent information available which might tend to establish possible violation of the antitrust laws shall be forwarded to the Counsel, DLA.

§ 1202.407-8 Protests against award.

(a) *Protests Before Award.* (1) When it is known that a protest against the making of award has been made to a higher Headquarters or to the Comptroller General, no award shall be made until the matter is resolved unless the determination required by ASPR 2-407.8(b)(3) has been made by the contracting officer and approved by the Executive Director, Procurement, DLA, after coordination with the Counsel, DLA. The Counsel, DLA, shall be responsible for obtaining the views of the Comptroller General in such cases in accordance with ASPR 2-407.8(b)(2).

(i) Requests for approval of the contracting officer's determination must include the following information:

(A) If the contracting officer's report has not been submitted to HQ DLA, a summary of the protest and the facts bearing on it;

(B) The name of the proposed awardee;

(C) The proposed award price and quantity;

(D) A statement as to fair and reasonable price;

(E) A statement as to whether the proposed award is to the low offeror;

(F) If the proposal awardee is not low, the reason award will be made to other than the low offeror; and

(G) A statement that award will be made immediately upon receipt of the requisite approval.

(ii) The determination itself must contain a full justification for proceeding with award. For example, a re-

quest based on urgency (ASPR 2-407.8(b)(3)(i)) shall include:

(A) The current supply status of the item;

(B) The procurement leadtime;

(C) If the procurement is for stock, the estimated monthly demand;

(D) An explanation of why the time cannot be temporarily foregone by requiring activities; and

(E) A discussion of the feasibility of temporarily filling the requirement by means of local purchase.

(iii) As another example, a request based on an expiring offer (ASPR 2-407.8(b)(3)(iii)) shall include:

(A) The price of the expiring offer;

(B) The price(s) of the next offeror(s) in line for award;

(C) The date of the most recent request to the offeror to extend his offer; and

(D) The offeror's response to the most recent request to extend.

The above examples are not the only situations in which award could be made, but are provided to show the degree of thoroughness required in documenting the justification for proceeding with award.

(2) Reports on protests submitted for final resolution to a level of authority above the Head of a Procuring Activity shall be forwarded in triplicate to the Counsel, DLA. Reports on such protests shall include the following information:

(i) A signed statement from the person making the protest setting forth the facts on which the protest is based and any additional supporting evidence;

(ii) A signed statement when relevant, from other persons or bidders affected by or involved in the protest, setting forth the protest, setting forth the facts with respect to their position in the matter and any additional supporting evidence;

(iii) A copy of the bid submitted by the protesting bidder, and a copy of the bid of the bidder who is being considered for award, or whose bid is being protested;

(iv) A copy of the invitation for bids including, where practicable, pertinent specifications relevant to the protest;

(v) A copy of the abstract of bids;

(vi) Any other documents which are relevant to the protest; and

(vii) A statement signed by the contracting officer setting forth his findings, actions and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the protest. If the award was made pending resolution of the protest, the contracting officer's statement will include the determination prescribed in ASPR 2-407.8(b)(3).

(b) *Protests After Award.* Where a protest is received after the award of the contract the following action will be taken:

(1) Where it reasonably appears that the award may be held invalid, and a delay in receiving the supplies or services is not prejudicial to the Government's interest, the contracting officer should seek a mutual agreement with the successful bidder to "stop work" on a no-cost basis.

(2) If the contractor refuses to enter into such a mutual agreement, the Head of the Procuring Activity may direct the contracting officer to issue a "stop work" order unless the Head of the Procuring Activity determines that receipt of the supplies or services is so urgent that such an order would be prejudicial to the interest of the Government.

(3) Where guidance from higher authority on the withholding of contractor performance is necessary the matter will be submitted to the Counsel, DLA.

(4) Where it is known by the purchasing activity that a protest after award has been lodged directly with the Comptroller General, the documents required by (b) above will be forwarded to the Counsel, DLA.

§ 1202.407-50 Other factors to be considered in determining price reasonableness.

If in the opinion of the contracting officer the formal advertising procedure in itself does not ensure competition sufficient for arriving at a fair and reasonable price, he will also consider valid criteria, such as, but not limited to:

(a) Prices paid by his or other Government purchasing activities on past procurements;

(b) Price trend information from the daily press, trade, or Government publications;

(c) Current market prices for comparable quantities;

(d) Extent of comparable pricing;

(e) Cost analysis of similar procurements; and

(f) Contractors' published commercial price lists.

In those instances, where this additional analysis is made, the contract file will be documented to reflect the actions taken to determine the reasonableness of bid prices.

§ 1202.408 Information to bidders.

§ 1202.408-1 Unclassified awards.

Notification to unsuccessful bidders should be given promptly after an award has been made. It should not be delayed pending preparation and distribution of contractual documents. Generally, a form postal card is adequate for notification to unsuccessful bidders. However, in cases where a bidder is apparently low based on a comparison of bid prices only, the notification should take the form of a letter including in addition to the minimum requirements set forth in ASPR 2-408, the specific reasons for rejection of the lower bid. This is especially important where rejection results from a transportation evaluation, a negative preaward survey, or for any reason not readily apparent to the bidder. The following is an example of such a letter. This letter may be modified to fit the specific circumstances of the procurement.

Gentlemen:

Receipt is acknowledged of your bid in response to our Invitation for Bid No. ——

This is to inform you that award was made to:

Contractor City State Item No. Price

Your interest in bidding on the requirements of this Center is appreciated; *however, we were unable to make the* required determination that your company is "responsible" within the meaning of that term as defined in paragraph 1-902 of the Armed Services Procurement Regulation. The information upon which our decision was based was contained in a preaward survey which was issued by —— (insert name of appropriate activity). Further details with respect to their findings will be furnished by that activity if you so request.

Your name will be retained on the bidders list to receive future solicitations.

A letter such as the above, if complete and issued promptly, should minimize further correspondence and result in improved contractor relations.

§ 1202.450 Requests for decision by the Comptroller General.

Where a decision by the Comptroller General is desired on procurement or disposal matters such as mistakes in bids, remission of liquidated damages, reformation of contracts or other contract issues, the request will be forwarded to the Counsel, DLA. Each case submitted for a Comptroller General decision will be accompanied by an administrative report which shall include a summary of the matter at issue, the recommendation of the procuring activity, and all documents and information deemed pertinent to the issue.

PART 1203—PROCUREMENT BY NEGOTIATION

Subpart A—Use of Negotiation

Sec.

1203.103 Records and reports of negotiated contracts.

Subpart B—Circumstances Permitting Negotiation

1203.202 Public exigency.
1203.202-2 Application.
1203.209 Perishable or nonperishable subsistence supplies.
1203.209-50 Procurement of fresh fruits and vegetables by best value selection.
1203.215 Negotiation after advertising.
1203.215-2 Limitation.

Subpart C—Determinations and Findings

Sec.
1203.302 Determinations and findings by the Secretary of a Department.
1203.303 Determinations and findings below the secretarial level.
1203.303-50 Determinations and findings for procurement negotiated under 10 U.S.C. 2304(a)(10).
1203.306 Procedure with respect to determinations and findings.
1203.306-50 Class determinations and findings (CDFs).

Subpart D—Types of Contracts

1203.404 Fixed price contracts.
1203.404-3 Fixed price contracts with economic price adjustments.

Subpart E—Solicitations of Proposals and Quotations

1203.501 Preparation of request for proposals or request for quotations.
1203.509 Protests against award.
1203.550 Distribution of copies.

Subpart F—Small Purchase and Other Simplified Procedures

1203.604 Competition and price reasonableness.
1203.604-1 Purchases not in excess of $500.
1203.604-50 Pricing techniques in the absence of adequate pricing competition.
1203.604-51 Minimum billing and service charges.
1203.604-52 Small purchase price review program.
1203.605 Blanket purchase agreement (BPA).
1203.605-2 Limitation on use.
1203.605-50 Establishment of blanket purchase agreements with Federal Supply Schedule (FSS) contractors.
1203.605-51 Quantity break provision for inclusion in small purchases.
1203.606-50 Fast payment procedure.

Subpart H—Price Negotiation Policies and Techniques

1203.801 Basic Policy.
1203.801-2 Responsibility of Contracting Officers.
1203.805 Written and oral discussions.
1203.805-1 General.
1203.807-2 Requirements for price or cost analysis.
1203.807-3 Cost or pricing data.
1203.807-5 Refusal to provide cost or pricing data.
Sec.
1203.807-7 Adequate price competition, catalog or market prices and prices set by law or regulation.
1203.807-50 Cost or pricing data for indefinite quantity and requirements type contracts.
1203.811 Record of price negotiation.

Subpart L—Cost Accounting Standards

1203.1201 General.
1203.1203 Prime contractor disclosure statement(s).
1203.1204 Contract clauses.
1203.1210 Cost Accounting Standards Board report.
1203.1211 Waiver of Cost Accounting Standards, Rules and Regulations.

Subpart M—Facilities Capital Employed

1203.1300-3 Estimating business unit facilities capital and cost of money.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19011, May 3, 1978, unless otherwise noted.

Subpart A—Use of Negotiation

§ 1203.103 Records and reports of negotiated contracts.

An information copy of each negotiation document involving the production testing of items shall be forwarded at time of issue to HQ DLA, Attn: DLA-PR.

Subpart B—Circumstances Permitting Negotiation

§ 1203.202 Public exigency.

§ 1203.202-2 Application.

A procurement of material to effect necessary and emergency repairs to a broken water main would be appropriate under ASPR 3-202 and this section, *Provided*, That the emergency conditions require immediate replacement of defective materials. This authority could also properly be cited for the emergency procurement of packing material required to effect an emergency air or rail shipment. The fact bearing on the emergency situation must clearly be shown in the determination and findings in sufficient

detail to explain clearly the necessity for purchasing without formal advertising. The contracting officer's justification must be supported by the existence of specific emergency circumstances which in themselves relate to the particular purchase being effected. The facts bearing on the situation must clearly support the compelling and unusual urgency and indicate the extent to which the Government would be injured, financially or otherwise.

§ 1203.209 Perishable or nonperishable subsistence supplies.

§ 1203.209-50 Procurement of fresh fruits and vegetables by best value selection.

(a) Fresh fruits and vegetables cannot be described in the usual manner and their specifications are normally inadequate to provide a basis for advertising for bids. It is in the best interest of the Government to procure fresh fruits and vegetables in growing and storage areas and terminal markets after visual inspection by experienced and knowledgeable personnel at the time and place such items are offered.

(b) In the application of (a) of this section, procurements shall be made on a competitive basis to the maximum extent practicable and the best value, price, quality, and other factors considered, shall be procured.

§ 1203.215 Negotiation after advertising.

§ 1203.215-2 Limitation.

ASPR 3-215.2 requires two Secretarial determinations and findings (a) for the general or preliminary authority to negotiate after advertising, and (b) with regard to the particular contract being negotiated and the fact that the negotiated price is lower than the lowest rejected bid price of a responsible bidder. (See ASPR J-502(e).) When the contracting officer considers that bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition, he shall, prior to initiating negotiations submit a proposed determination and findings, approximating in format shown in ASPR J-502(e), for Secretarial signature in accordance with the procedures in ASPR/DSPR 3-306. Partial awards made at bid prices considered reasonable should be indicated in the request for authority to negotiate. If the contracting officer considers that bid prices on all or part of the requirements were not independently reached in open competition, he shall, in addition to requesting Secretarial authority to negotiate under 10 U.S.C. 2304(a)(15), submit the report thereon required by ASPR 1-111.

Subpart C—Determinations and Findings

§ 1203.302 Determinations and findings by the Secretary of a Department.

All requests for Secretarial authority to negotiate, and their attached determination and findings, shall be submitted to HQ DLA, Attn: DLA-PP in triplicate.

§ 1203.303 Determinations and findings below the secretarial level.

(b) The authority to make class determinations with respect to authority to enter into contracts by negotiation pursuant to ASPR 3-210 is delegated to the Executive Director, Procurement, Headquarters Defense Logistics Agency, and the Heads of Procuring Activities (or Deputies in their absence). Redelegation of this authority is not authorized.

§ 1203.303-50 Determinations and findings for procurement negotiated under 10 U.S.C. 2304(a)(10).

Each determination and finding prepared by contracting officers to justify the use of 10 U.S.C. 2304(a)(10) for noncompetitive procurement due to lack of or inadequacy of technical data shall be supported by a written statement obtained from the requiring agency showing:

(a) The actions being taken (1) to avoid subsequent noncompetitive procurements of the items or services and (2) to obtain the data prescribed in ASPR 3-108(d); or

(b) A complete explanation of the reasons why efforts to obtain competitive procurements would be unavail-

80-109 O—81——7

ing, and, therefore actions that would permit competition are not being taken.

§ 1203.306 Procedure with respect to determinations and findings.

(a) Requests for authority to negotiate individual contracts, or a class of contracts under the authorities of 10 U.S.C. 2304(a)(11) through 10 U.S.C. 2304(a)(16), as implemented by ASPR 3-211 through ASPR 3-216 and Appendix J, require the approval of the Assistant Secretary of Defense (MRA&L). Such requests shall (1) contain in the letter of transmittal of the submitting procuring activity, a complete statement of facts and other data necessary to support the applicability of the cited negotiation authority, and (2) include, on a separate plain paper, a determination and findings prepared for the appropriate signature.

(b) Requests for the granting of Secretarial authority to negotiate under 10 U.S.C. 2304(a)(13) or 10 U.S.C. 23-4(a)(16) will be signed by the Head of the Procuring Activity or his Deputy.

§ 1203.306-50 Class determinations and findings (CDFs).

(a) CDFs may be utilized when appropriate for negotiating a number of contracts for the same or related items where the use of individual determinations and findings would result in a repetition of the same set of facts or circumstances. CDFs should be submitted for Secretarial signature only when:

(1) Several procurements are to be effected within a reasonable period of time (normally one year or less) and are for items which are so related as to constitute a logical and distinctive category;

(2) The required suppliers or services are such that they can be secured only by negotiation, such as—

(i) Items of standardized supplies meeting the criteria set forth in ASPR 3-213; or

(ii) Research and development programs which have not reached the production state and for which, consequently, adequate drawings, specifications, or other technical data are not available for formal advertising; or

(3) The nature of the required supplies is such that it is not only technical or specialized but the presence of military urgency or limited numbers of qualified supplies (as related to previous investments by the Government of the supplies, extend periods required for preparation for manufacture, or continued availability of the suppliers in the event of a national emergency) preclude the use of formal advertising during the proposed effective period of the CDF.

(b) Class determinations and findings may not be extended beyond their effective periods as approved by the Secretary. When the authority of such CDF is required for an additional period, a new request therefor, together with a new CDF shall be submitted in accordance with this Regulation. Such new requests shall set forth a summary of the procurement actions completed under the earlier CDF as well as those actions contemplated under the new request.

(c) Heads of Procuring Activities should periodically review the necessity for continued use of a CDF during its effective period to assure that circumstances supporting the granted negotiation authority continue to be present.

Subpart D—Types of Contracts

§ 1203.404 Fixed-price contracts.

§ 1203.404-3 Fixed-price contracts with economic price adjustments.

(a) When none of the ASPR economic price adjustment clauses are applicable, a special economic price adjustment clause may be developed in accordance with ASPR 2-104 or 3-404.3(c). Hereafter, however, such new clauses and revisions thereto (including revisions to clauses already in use) shall be submitted to HQ DLA (DLA-PPR) for pre-solicitation review and approval. This requirement does not apply to the one-time revision of a clause during the contract negotiation process.

(b) The Chief of the Purchasing Office shall approve any ceiling exceeding 10 percent in any local EPA clause. Such approval may cover more

than one contract over a definitely stated period of time not to exceed one year. This authority (as applied to ASPR EPA clauses as well) shall not be delegated.

Subpart E—Solicitations of Proposals and Quotations

§ 1203.501 Preparation of request for proposals or request for quotations.

(b) Contract Forms and Uniform Contract Format.

(2) The SAMMS Automated Small Purchase System (SASPS) Phase II provides for the mechanical printing of solicitations (RFQs) by SAMMS for procurements with an estimated value of $10,000 or less. The system is designed to issue RFQs using DLA Form 1231, Request for Quotation.

SECTION C, INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS/QUOTERS

(iv) The following Products Offered provision is for use in the negotiated procurement of replacement parts and assemblies which are identified only by the manufacturer's name, part number, and a brief description. The purpose is to negate paragraph 2(d) of SF 33A which reads:

"Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation." When the provision is applicable, the following will be inserted after the item description:

Offer based on:

Manufacturer's name ———— Part No. ——.

The provision will not be included in solicitations covering parts or assemblies which are being negotiated under such authorities as ASPR 3-202, 3-210.2(i) (xii) or (xv) 3-212 when it is necessary to restrict the procurement to a particular manufacturer or the certain approved sources (see ASPR 1-313(c). The provision, when used, shall be verbatim, except that the acronym CLIN may be substituted for the word "item".

PRODUCTS OFFERED (1970)

(a) Products offered must either be identical or functionally, physically, mechanically, and electrically interchangeable with the products cited in each procurement identification description of this solicitation.

(b) For evaluation purposes offerors must indicate, by marking the appropriate block(s), which of the following situations is applicable to each item which they are offering and furnish whatever supporting information is required below. "Failure to furnish complete data and information required to support situations (2), (3) and (4) below may preclude consideration of your proposal."

☐ (1) For items ——— will furnish the cited manufacturer's product bearing the number specified.

NOTE: If more than one manufacturer's number is specified in the schedule, the offeror must insert beneath the applicable item(s) of the schedule the manufacturer's name and number which he is offering.

☐ (2) For items ——— will furnish a product manufactured in accordance with the cited manufacturer's drawing or specification, and certified identical to, but bearing a different number.

NOTE: This block must be completed only by offerors manufacturing the item described in the schedule for the company or firm whose name and number is specified. Offerors must insert beneath the applicable item of the schedule the substituted manufacturer's name and part number. In addition, the offferor must furnish a copy of the drawing or specification for the part number as originally cited in the schedule, or other information to establish that the offeror will furnish the same item as described in the schedule, but having a different number.

☐ (3) For items ——— will furnish a product determined under prior military contracts, either as a prime or subcontractor to be functionally, physically, mechanically and electrically interchangeable with the product cited in this solicitation though not manufactured in accordance with the cited manufacturer's drawing or specification.

NOTE: Offerors relying on this paragraph (3) must insert beneath the applicable item of this solicitation the substituted manufacturer's name and part number, and in addition, furnish sufficient data to suitably substantiate the item as acceptable. As a minimum, the following data must be furnished (1) copy of Contract or Purchase Order under which furnished, and (2) copy of a drawing to which made.

☐ (4) For items ——— will furnish a product which is equal in all material respects to the product referenced in the item description. The following Note is applicable:

Note (a) ☐ Note (b) ☐.

NOTE: (a) The Government does not have detailed data for the item referenced in the

procurement identification description. Therefore, offerors relying on this paragraph (4) must furnish with their offers drawings and other data which will clearly describe the characteristics and features of their product. In addition, offerors must furnish drawings or other data covering design, materials, performance, etc., of the product cited in the schedule sufficient to enable the Government to determine the offeror's product is equal to the product named in the schedule.

NOTE: (b) Offerors relying on this paragraph (4) must furnish with their offers drawings and other data which will clearly describe the characteristics and features of their product.[1]

NOTICE: Offers relying on this paragraph (4) must insert beneath the applicable item of this solicitation the substituted manufacturer's name and number.

SECTION D, EVALUATION FACTORS FOR AWARD

(iii) Discount provisions (see § 1202-407.3);

§ 1203.509 Protests against award.

In any protest to the General Accounting Office of a negotiated procurement where a written Determination and Findings (D&F) is required to support negotiation, a copy of the D&F will be included with the protest report.

§ 1203.550 Distribution of copies.

In addition to the distribution of requests for proposals and requests for quotations in ASPR 1-1002, one information copy of each such solicitation document for the production testing of items will be forwarded, at time of issue, to HQ DLA, Attn; DLA-PR.

[1] If offerors desire to restrict the Government's use of data submitted with their proposals for evaluation purposes, the data must bear the legend prescribed by ASPR 3-507.1(a). In the event an award is made to an offeror submitting such data, the Government will have unlimited rights to use such data, unless the data submitted bears the legend set forth in ASPR 3-507.1(a).

Subpart F—Small Purchase and Other Simplified Purchase Procedures

§ 1203.604 Competition and price reasonableness.

§ 1203.604-1 Purchases not in excess of $500.

Action to verify and document the reasonableness of the price of purchases not in excess of $500 need be taken only when the buyer or contracting officer suspects, or has information to indicate that the price may not be reasonable, e.g., comparison to previous price paid, personal knowledge of the item involved or appearance of the item on the SAMMS Automated Small Purchase System (ASPS) Report F-108. When action is taken to verify reasonableness of price, DD Form 1784, "Small Purchase Pricing Memorandum" shall be used.

§ 1203.604-50 Pricing techniques in the absence of adequate price competition.

(a) The techniques of comparing the items to a similar competitive or catalog item offers the best assurance of fair and reasonable pricing in small purchases. In the majority of cases over $500 involving noncompetitive and non-catalogued items, this method should be employed to determine price reasonableness. It is not necessary to locate an identical item or to compare every feature of the two items. Quantity, packaging and other factors must be considered in arriving at an independent estimate of a reasonable price for the individual procurement. Abstracts of bids maintained by the purchasing office may be useful in this regard. Commercial catalogs and price lists should also be used.

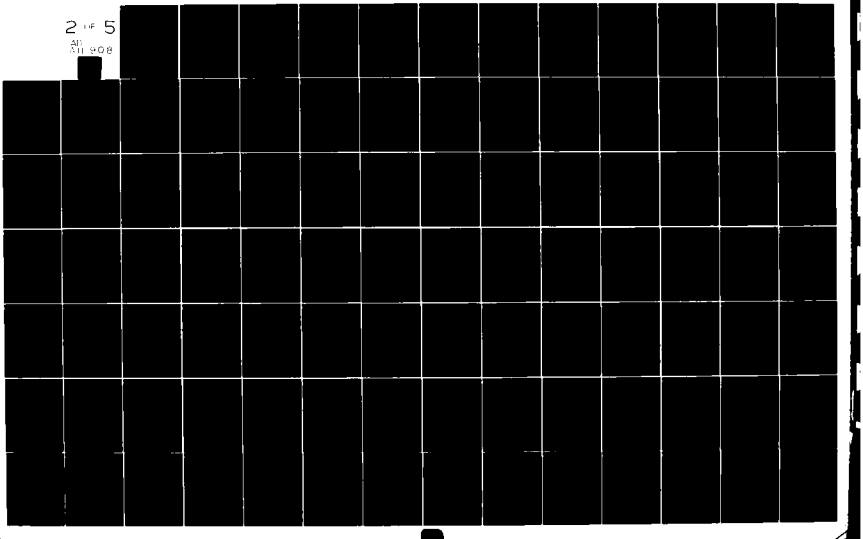
(b) Visual examination of warehouse samples, drawings and/or DD 146 descriptions can be of considerable value in determining that a price is fair and reasonable. Often the actual manufacturer is revealed by this examination. Sources solicited will include any manufacturer(s) revealed by visual examination.

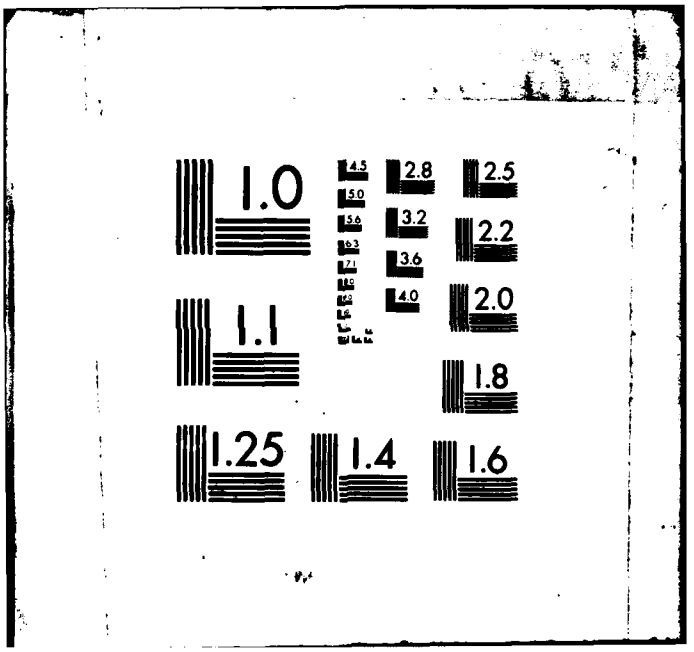
(c) When other methods available to procurement personnel through use of the Decision Logic Chart (See ASPM No. 2) are unproductive, technical as-

AD-A111 908 NATIONAL ARCHIVES AND RECORDS SERVICE WASHINGTON DC O--ETC F/G 5/4
CODE OF FEDERAL REGULATIONS 32. PARTS 1000 TO END.(U)
JUL 81

UNCLASSIFIED NL

2 OF 5
AD A111 908




1.0
1.1
1.25
1.4
1.6
1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0
4.5
5.0
5.6
6.3
7.1

sistance by the Directorate of Technical Operations should be obtained for use as a factor in the buyer's pricing determination.

§ 1203.604–51 Minimum billing and service charges.

(a) Procurement personnel should avoid placing orders with vendors who have a "minimum billing" or "service charge" policy wherever possible. In sole source situations, the following alternatives should be explored before placing an order:

(1) Make a concerted effort to consolidate orders with other buys from the same vendor; or

(2) With customers' permission, increase the quantity of the buy.

(b) If the foregoing efforts are to no avail, DLA buying activities when writing orders with vendors having such policies, will identify the unit price and amount for each item ordered and the minimum billing or service charge.

(c) When a responsible, responsive offeror is low on an individual procurement, even though he includes a DD 250 charge in his price, he clearly should receive award. However, no indefinite delivery type contracts (IDTCs), blanket purchase agreements (BPAs), or basic ordering agreements (BOAs) shall be executed containing a provision for reimbursement of contractors for preparation of the DD 250.

§ 1203.604–52 Small purchase price review program.

(a) Defense Supply Centers shall perform a monthly post-award price analysis of randomly selected small purchases from the total universe of the previous month's central small purchases (excluding purchases by secondary and tertiary field activities). The purpose of this program is to determine the incidence of unreasonably priced actions in the sample, and from that information, to determine what if any, corrective action may be required. Unreasonably priced actions are those for which, in the judgment of the analyst, a fair and reasonable price cannot be determined pursuant ot the pricing techniques of DAR/DLPR 3-604 and ASPM No. 2. If field assistance is necessary to verify the reasonableness of unsubstantiated minimum charges, set-up charges, etc., assistance should be requested from the cognizant ACO. The review shall be performed by the DSC Cost and Price Analysis Element or the Contract Review Office at the discretion of the Center. The sample size shall be 13 line items from separate awards. (When multiple line item awards are included in the sample, the line item to be reviewed shall be selected on a random basis.) When an unreasonable price is indicated, appropriate action to resolve the overpricing shall be taken, including, where appropriate, action pursuant to DLPR 1-312. Other appropriate action, such as initiating action for competitive procurement of previously sole source items and initiating action to revise specifications will be accomplished. A summary record of post-award price analysis results shall be maintained by the Center. A quarterly report of analysis results, in the format cited below, shall be submitted to this Headquarters, ATTN: DLA-PPP, within 45 days following the end of the quarter. RCS DLA(Q) 2207(P), assigned to this reporting requirement, expires 15 July 1980.

(b) The quarterly report of analysis results established in (a) above shall be submitted substantially under the following format:

Post-Award Price Review Program

Defense _____ Supply Center

Report for the (1st, 2nd, 3rd, 4th) Quarter 19__

	SASPS I	SASPS II	MANUAL
Total Small Purchase Line Items Awarded During Report Quarter (excluding local purchases and purchases by DSC field activities)			
No. of Line Items Against Which Analysis Has Been Completed During Report Period A Competitive B. Non-Competitive			
No. of Unreasonably Priced Line Items A Competitive B. Non-Competitive			
Corrective Action A Price Reduction (No. of line items and total dollar value of reductions) B. Cancellation (No. of line items and total dollar value of cancellations) C. Other (No. of line items) (e.g., Action initiated for competitive acquisitions, commercial alternate found, action initiated to revise specifications, etc.)			

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[44 FR 27097, May 9, 1979]

§ 1203.605 Blanket purchase agreement (BPA).

§ 1203.605-2 Limitation on use.

The maximum aggregate amount, if any, of all requests to be issued against one BPA shall be prescribed by the HPA.

§ 1203.605-50 Establishment of blanket purchase agreements with Federal Supply Schedule (FSS) contractors.

(a) While BPAs may be established with FSS contractors for both non-FSS items and FSS items, a distinction between such items should be made.

(b) A BPA with a FSS contractor for non-FSS items which can be interpreted to cover FSS items because of a generic item description should contain a statement to the effect that the BPA excludes all items on FSSs.

(c) If it is desired to establish a BPA with a FSS contractor for items on a FSS, the agreement shall be consistent with the provisions of the applicable FSS, i.e., period of agreement, terms, and conditions. The agreement should be limited to a simplification of purchasing techniques such as placing of orders orally and obtaining monthly consolidated billings.

§ 1203.605-51 Quantity break provision for inclusion in small purchases.

(a) As used herein "quantity break" is a reduction in unit price for a specified larger quantity.

(b) To obtain the lowest possible prices in small purchases, it is necessary that the Government take advantage of quantity breaks wherever practicable.

(c) For the purpose of establishing that a quantity break does or does not exist, a provision substantially as follows should be included in small purchase solicitations, except (i) where

the contracting officer decides that it is impractical and would serve no useful purpose, or (ii) where the procurement will be effected by automation:

QUANTITY BREAK

The quoted price is effective for quantities from —— to ——. Price for next higher quantity break would be ——.

(d) Should it appear that it is in the best interest of the Government to procure a larger quantity, so as to take advantage of a lower unit price, the item manager should immediately be provided the details and an amendment to the purchase directive requested. If the item manager indicates that the quantity cannot be increased, then the contracting officer should document the contract file accordingly and proceed with purchase of the originally specified quantity.

§ 1203.606-50 Fast payment procedure.

All DLA purchasing activities awarding procurement authorizing "FAST PAY" shall specify inspection and acceptance at distination. If either inspection or acceptance at origin is required or authorized the use of "FAST PAY" is NOT authorized.

Subpart H—Price Negotiation Policies and Techniques

§ 1203.801 Basic policy.

§ 1203.801-2 Responsibility of Contracting Officers.

(c) Prior to referral to HQ DLA, the Commander, or in his absence, the Acting Commander, shall make a determination on a case-by-case basis whether or not to personally negotiate with the contractor involved and attempt to delete those elements of the contractor's offer that render his price or profit unreasonable. In those cases where it is determined that the Commander should not personally conduct negotiations, a detailed memorandum setting forth the rationale shall be forwarded with the referral to HQ DLA, Attn: DLA-PP. While it is recognized that the magnitude of the effort must be commensurate with the value of the procurement it is imperative the best effort be made at each successive level of authority prior to forwarding cases to this Headquarters because this Headquarters intends to actively enter into the negotiation at that point in time. In appropriate cases where Headquarters efforts fail the problem will be escalated to the Office of the Assistant Secretary of Defense.

(d) Occasionally, there may be instances where the price is not as close to the negotiation objective as the Contracting Officer would like to be but may not be judged unreasonable. In such cases the file should contain a positive statement that the price is considered fair and reasonable under the circumstances. The circumstances should then be fully enumerated so as to provide any reviewer with a full understanding of what transpired and why the price is indeed fair and reasonable. On any price reasonableness determination, however, the Contracting Officer shall determine the price either to be reasonable or unreasonable.

§ 1203.805 Written and oral discussions.

§ 1203.805-1 General.

(a) A prenegotiation briefing shall be conducted for all negotiated procurements over $10,000 so that each will have had a prenegotiation objective review. The briefing level and content for negotiated procurements between $10,000 and [illegible] shall be set by the Director, Procurement and Production. For all negotiated procurements except subsistence estimated to amount to $100,000 or more, the briefing shall be for the Director/Deputy Director, Procurement and Production. The threshold for subsistence procurements requiring a review by the Director/Deputy Director, Procurement and Production will be established at a level designated by the HPA. Procurements, other than those for perishable subsistence, consummated at a Defense Subsistence Region (DSR) may be reviewed by the Chief of the Purchasing Division at the DSR. As a minimum, the briefing for negotiated procurements estimated to amount to $100,000 or more shall cover:

(1) The procurement situation.

(2) Previous price history.

(3) Analytical methods utilized in establishing the price objective.

(4) For procurements requiring the submission of cost or pricing data, the major differences between the proposed negotiation objective and the contractor's proposed price, DCAS input and audit recommendation and the proposed negotiation objective with supporting rationale.

(5) For all other procurements, the major differences between the contractor's proposed price and the proposed negotiation objective, together with rationale supporting the negotiation objective.

(6) Negotiation plan, whether phone or face to face.

(7) Anticipated negotiation problems and proposed solutions.

(b) The Director/Deputy Director, Contracting and Production shall be notified of any significant change in negotiation objectives. A copy of the notification memorandum shall be incorporated into the contract file.

(c) A memorandum summarizing the principal elements of the briefing, attendees and results shall be prepared for incorporation into the contract file.

(d) The following are exempt from the requirement for prenegotiation briefings:

(1) Perishable subsistence procurements.

(2) Subsistence Commodity Market items which are geared to marketing exigencies, such as coffee, flour, and salad oil.

(3) When a petroleum procurement consists entirely of unrelated line items (those which are consolidated solely for administrative purposes) the briefing may be conducted at a level lower than the Director/Deputy, Procurement and Production, when no single line item is $100,000 or more, even though the total procurement is $100,000 or more.

[43 FR 19011, May 3, 1978, as amended at 44 FR 52199, Sept. 7, 1979]

§ 1203.807-2 Requirements for price or cost analysis.

(a) *General.* The cost/price analysis element will prepare an evaluation of the contractor's proposal in every procurement requiring the use of cost or pricing data or a field pricing support report.

(b) *Cost/price analysis.* (1) The cost/price element shall prepare a cost/price analysis for formally advertised procurements of $100,000 or more when a sole responsive bid is received and for negotiated procurements of $100,000 or more.

(2) The requirement for cost/price analysis by the cost/price analysis element may be waived by the Contracting Officer for a negotiated procurement resulting in adequate price competition when the initial offer is to be accepted under the circumstances set forth in ASPR 3-805.1(a). Except when cost or pricing data is required, the Contracting Officer may also waive the requirement for cost/price analysis by the cost/price analysis element when a sole bid or sole offer is received if recent awards for the item or service have been made on a price competitive basis and such award prices and current market trends clearly indicate that the offered price is reasonable.

(3) If the Contracting Officer elects to waive the requirement for cost/price analysis by the cost/price analysis element under the circumstances specified above, the contract file will be documented with the facts supporting the Contracting Officer's determination.

(4) In addition to the requirements for an analysis by the cost/price analysis element, the Contracting Officer may request assistance from the cost/price analysis element in any other procurement as deemed necessary. On any procurement on which an analysis is not performed by the cost/price analysis element, a price analysis will be performed in accordance with ASPR 3-807.

(5) The cost/price analysis element shall perform a cost/price analysis against acquisitions selected for such analysis under the DLA Quality Audit Program (DLAM 4155.2). When an unreasonable price is indicated, the cost/price analysis element shall take appropriate action to resolve the overpricing, including, where appropriate, action pursuant to § 1201.312. The Quality Audit Monitor shall be advised of the results of the cost/price

ana.ysis and any action taken as a result thereof.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)
[43 FR 19011, May 3, 1978, as amended at 44 FR 27098, May 9, 1979]

§ 1203.807-3 Cost or pricing data.

(a) (1) If an option is priced at the time of award it is subject to the requirements of PL 87-653 at that time and the price of the option must be considered in determining whether the proposed contract is expected to exceed $100,000 in amount.

(j)(5) Distribution of each exemption authorized shall be effected by HQ DLA. Six copies of each exemption shall be provided HQ DLA, ATTN: DLA-PPP.

§ 1203.807-5 Refusal to provide cost or pricing data.

Prior to referral to HQ DLA, the Commander or in his absence, the Acting Commander shall make a determination whether or not to personally negotiate with the contractor involved and attempt to obtain the necessary cost or pricing data. If the contractor refuses to furnish cost of pricing data, attempts will be made to obtain this refusal in writing. In those cases where it is determined that the Commander should not personally conduct negotiations, a detailed memorandum setting forth the rationale shall be forwarded with the referral to HQ DLA, ATTN: DLA-PC.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)
[44 FR 27098, May 9, 1979]

§ 1203.807-7 Adequate price competition, catalog or market prices and prices set by law or regulation.

(b)(5) One copy of each exemption shall be provided to HQ DLA, ATTN: DLA-PPP.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)
[44 FR 27098, May 9, 1979]

§ 1203.807-50 Cost or pricing data for indefinite quantity and requirements type contracts.

ASPR 3-409.2(a) and 3-409.3(a) state that estimated total quantities to be ordered under requirements and indefinite quantity contracts respectively should be as realistic as possible. Accordingly, when cost or pricing data must be obtained under these types of contracts, the quantity of the item or service for which such data is to be obtained is the total quantity as specified in the solicitation. To avoid delay in the receipt of the required cost or pricing data the solicitation should specify the quantitative requirements for which such data shall be submitted.

§ 1203.811 Record of price negotiation.

(a) The Price Negotiation Memorandum (PNM) must be written so as to permit reconstruction of all of the major considerations of the particular procurement. While excessive detail should be avoided, it is this PNM, standing alone, which must convince any and all reviewers of the procurement that the price is fair and reasonable and arrived at properly. Although the content will vary depending on the magnitude of the contract, the contract type, the cost or pricing data obtained, the extent of negotiations, etc., the format should be standard. The PNM should have the following subdivisions: Subject: "Introductory Summary, Particulars, Procurement Situation, Negotiation Summary, and Miscellaneous." The detailed content of each of these subdivisions is spelled out in ASPM No. 1 (1975 Edition), pages 7B16 through 7B24.

Subpart L—Cost Accounting Standards

§ 1203.1201 General.

(a) Interest Rate Applicable to the Adjustment Provisions of CASB Regulations and Applicable Cost Accounting Standards. (See 1203.1300-3(c).)

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)
[44 FR 27098, May 9, 1979]

§ 1203.1203 Prime contractor disclosure statement(s).

(e) *Determination of Secretary that it is Impractical to Secure Disclosure Statement(s).* Prior to referral to HQ

DLA, of a proposed waiver of the requirement for a Disclosure Statement(s), the Commander, or in his absence, the Deputy or Acting Commander, shall personally negotiate with the proposed contractor and attempt to obtain the required statement(s). In those cases where it is determined that the Commander should not personally conduct negotiations, a detailed memorandum setting forth the rationale shall be forwarded with the referral to HQ DLA, ATTN: DLA-PC.

§ 1203.1204 Contract clauses.

(a)(i) The analysis of the information furnished by the offeror in support of his claim for exemption from the requirements of the Cost Accounting Standards Clause must demonstrate that the criteria of DAR 3.807(b)(2) have been met. The results of such an analysis shall be separately documented in the contract file. In addition, when a determination is made that a catalog or market price exemption applies, the contract file documentation pertaining to the pricing aspects of the procurement (i.e., the price analysis, the prenegotiation briefing memorandum and the PNM) shall indicate that pricing is based on adequate price competition. (See 1221.126, Item 18.)

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[44 FR 27098, May 9, 1979]

§ 1203.1210 Cost Accounting Standards Board report.

(a) Recommendations requested in DAR 3.1210(b)(2)(f) should be provided to HQ DLA, ATTN: DLA-PP, within 40 days following the end of each calendar year. Negative reports are not required. RCS DD-DR & E(A) 1222 applies.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[44 FR 27099, May 9, 1979]

§ 1203.1211 Waiver of Cost Accounting Standards, Rules and Regulations.

(a) Prior to referral of a waiver request to HQ DLA, the Commander, or in his absence, the Acting Commander, shall personally negotiate with the contractor involved and attempt to obtain acceptance of the Cost Accounting Standards, Rules and Regulations. The request for waiver should be forwarded by covering letter of the Commander or his Deputy with a statement concerning the above negotiation and recommendations to HQ DLA (ATTN: DLA-PP).

(b) The Cost Accounting Standards Regulation 4 CFR 331.30, subparagraph (c)(1) and (c)(2) (ASPR Appendix O) contains a listing of specific information to be furnished when requesting waivers. Waiver requests should reference these requirements and list, in order, the specific responses to each. The waiver request must cite the date by which a Board decision is needed and the reasons therefor.

(c) The request for waiver should be on plain paper. Five complete sets of the request and its supporting documentation should be furnished.

Subpart M—Facilities Capital Employed

§ 1203.1300-3 Estimating business unit facilities capital and cost of money.

(c) *Interest Rate.* The interest rate established by the Secretary of the Treasury is published in the FEDERAL REGISTER every six months, normally the third week of December and June. The current rate may also be obtained from the Office of Comptroller, Accounting and Finance Division at each DLA Supply Center or activity.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[44 FR 27099, May 9, 1979]

PART 1204—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart C—Contracts with Requirements for Provisioned Items

Sec.

1204.302 Procurement requirements.
1204.302-50 Waiver of provisioning technical requirements.
1204.302-51 Contracting officer's representative-provisioning.
1204.302-52 Errata sheets.

Subpart H—Paid Advertisements

Sec.
1204.802 Authority and delegation to place advertisements.
1204.802-2 Requests for authority to place advertisements.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19015, May 3, 1978, unless otherwise noted.

Subpart C—Contracts With Requirements for Provisional Items

§ 1204.302 Procurement requirements.

§ 1204.302-50 Waiver of provisioning technical requirements.

The following clauses are for use in the acquisition of provisioning technical documentation. The clauses shall be used when Military Standards 1552 and 1561 are cited in solicitations.

(a) Waiver/Reduction of Provisioning Technical Documentation and Supplementary Provisioning Technical Documentation Requirements (DLA 1975 July).

Award for Provisioning Technical Documentation (PTD) Requirements and Supplementary Provisioning Technical Documentation (SPTD) Requirements will be made only to the offeror who receives an award for the applicable end item(s) of equipment.

The Government reserves the right to eliminate or reduce PTD/SPTD requirements for line items in the solicitation if such documentation has been previously furnished by the offeror and accepted by the Government and the Contracting Officer determines that such PTD/SPTD or changes thereto are acceptable for the immediate requirement.

In addition to pricing PTD/SPTD requirements, offerors are requested to provide information as to PTD/SPTD previously submitted to the Department of Defense believed to be appropriate, with or without changes, for this solicitation:

STATEMENT OF PRIOR SUBMISSION

PRIOR GOVERNMENT ACCEPTANCE OF PROVISIONING TECHNICAL DOCUMENTATION/SUPPLEMENTARY PROVISIONING TECHNICAL DOCUMENTATION

Date Previously Submitted, Contract No., Contract Item No.

Equipment Nomenclature, Name/Address of Accepting Activity, Provisioning Specification.

Changes to previously submitted PTD/SPTD (Type III Provisioning in accordance with *DLA Addendum to Provisioning Requirements Statement*) are those items added, deleted, changed or modified in the end item which must be recorded in the previous provisioning lists to update the list to the configuration of the end item procured as covered by paragraph 5.3.11 of Military Standard 1561.

The offeror hereby certifies that previously submitted (PTD/SPTD) ( ) does ( ) does not require changes. (Check One)

If the PTD/SPTD previously furnished requires changes, indicate a list of the changes required with a price for furnishing the changes: (See example, Note 1 at end of clause.)

PTD element	Number of line item changes	Price [1]
Total		

[1] Per type III provisioning PTD element.

If the Government determines that Type III Provisioning will fulfill its needs, eligible offers will be evaluated as to price based on Type III Provisioning and, if low, award will be made for Type III Provisioning. PTD/SPTD changes shall be furnished by the Contractor within 30 days after award, or when first article testing is required within 30 days after first article approval.

PTD/SPTD is as specified in the DD Form 1423 (Contract Data Requirements List) and DD Forms 1949-1, Provisioning Technical Documentation Data Selection Sheet and 1949-2, Provisioning Requirements Statement will be required unless award is made specifically for Type III Provisioning.

NOTE 1: For example, if previous submission of PTD was Type I in accordance with DLA Addendums to the Provisioning Requirements Statement and several changes are needed to update the various PTD elements for the present equipment configuration, these would be recorded as follows:

PTD element	Number of line item changes	Price [1]
Provisioning parts lists.	10	$xx.xx
Long lead time item list.	2	xx.xx
Repairable items list.	1	xx.xx
Screening	50 part numbers to be screened	xx.xx

PTD element	Number of line item changes	Price [1]
Supplementary provisioning technical documentation.	13 dwgs, sketches, description, etc.....	$xx.xx
Total...	13.....	xx.xx

[1] For type III provisioning per PTD element.

(b) DO5—Data Pricing, Evaluation and Award.

(1) If the offeror does not indicate a charge for data, the Government will consider and the offeror agrees that the data charge is included in the price of the end item.

(2) The Government reserves the right to waive one or more data CLINs in evaluating each offer and in awarding the contract, as the best interests of the Government may require. Each offer will be evaluated on the basis of only those data CLINs required of that offeror.

(3) Separate awards will not be made for data CLINs.

§ 1204.302-51 Contracting officer's representative-provisioning.

The Chief Provisioning Coordination Office, Directorate of Technical Operations, DSC and additional personnel within this office shall be designated as Contracting Officer's Representative for Provisioning for the purpose of providing technical assistance to offerors/contractors with regard to requirements for equipment support and provisioning for DSC procured end items/components. Delegation of responsibility shall include authority for actions to be taken by the Provisioning Coordination Office as set forth in DLAR 4100.8, "Surveillance of the Contractual Aspects of the Provisioning Cycle in the Defense Supply Centers." For example, the COR for Provisioning is responsible for reviewing PR/MIPR provisioning requirements to insure compliance with provisioning policy and procedures and proper presentation of provisioning requirements in solicitations and contracts, conducting Pre-Provisioning Guidance and Source Coding Conferences when required by the contract, negotiating reductions in provisioning technical documentation requirements including recommendations for equitable adjustments in the contract price or delivery terms based on technical provisioning considerations, surveillance necessary to assure receipt of provisioning technical documentation, and notifying the contractor of required corrections (rejection) or acceptance of provisioning technical documentation. The delegation will not include any authority to modify or change the terms of the contract or to make any agreement which will result in an increase in the contract amount or extend the time for delivery of the end items.

§ 1204.302-52 Errata sheets.

The authorized changes to MIL-STD 1552 and MIL—STD-1561 are listed below.

(a) MIL—STD-1552.

Paragraph 2.1. Delete the reference to the M1 series of Supply Cataloging manuals and replace with reference to DOD 4100.38-M, DOD Provisioning and Other Preprocurement Screening Manual and DOD 4100.39-M, Defense Integrated Data System (DIDS) Procedures Manual.

Paragraph 5.1.5.1.4. In the last five examples of the PLISN on page 7, the change letters (M, D, T, Q, L) should be moved one space to the right to the sixth position of the field.

Paragraph 5.1.5.4.1. Change reference to DOD 4100.38-M (paragraph 1.220.74).

Paragraph 5.1.5.6. Delete reference to M1-4 for Code 3.

Paragraph 5.1.5.6. Do not enter Codes E, F and G. If the item is altered or selected it may be so noted in the remarks block.

Paragraph 5.1.5.7. For Code 1 change to, "Number is formatted in accordance with DOD 4100.38-M, paragraphs 4.100.4 and 4.400 (i.e., DIDS in the clear)."

Paragraph 5.1.5.8. Change Maximum space allocation to read "19" positions.

Paragraph 5.1.5.11. Change the reference to "M1-7" to "Appendix 3-E-2.52 of DOD 4100.39-M."

Paragraph 5.1.5.19. Change "M1-7 Cataloging Handbook" to "Appendix 3-E-2.10 of DOD 4100.39-M DIDS Procedures Manual."

Paragraph 5.1.5.28. Change "Cataloging Manual M1-7" to "Appendix 3-E-2.22 of DOD 4100.39-M."

Paragraph 5.2.4. Delete "as described in the Cataloging Manual M1-6 shall be used" and replace with "will be formatted in accordance with Chapter 2, Section 4, Subsection 10, DOD 4100.39-M or Chapter IV, DOD 4100.38-M."

Page 25, Card ID "E" cc 52-57. Change Data Block Title to read "Replaced or Superseding PLISN."

Paragraph 5.3.4.5.1. Change the word "Superseded" in the paragraph title to read "Replaced". Change the word "superseded" in sub-paragraph (a) to read "replaced". Change the word "Replacing" in sub-paragraph (b) to read "Replaced". Change the word "superseded" in sub-paragraph (c) to read "replaced."

Paragraph 5.3.4.5.2. Change the word "Replacing" in the paragraph title to read "Superseding". Change the words "Replacing/Superseded" in sub-paragraph (b) to read "Replaced/Superseding PLISN." Change the word "replacing" in sub-paragraph (c) to read "superseding."

(b) MIL—STD-156.

Paragraph 5.2.1.1. Change the word "meeting" to "conference."

Paragraph 5.3.3.1. Change the word "screens" to "screws."

Subpart H—Paid Advertisements

§ 1204.802 Authority and delegation to place advertisements.

§ 1204.802-2 Requests for authority to place advertisement.

(b) Requests for authority to place advertisements in newspapers publicizing procurement information shall be submitted, in quadruplicate, through channels, to HQ DLA, ATTN: DLA-PP, for appropriate action.

PART 1205—INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

Subpart A—Procurement under General Supply Schedule Contracts

Sec.
1205.101 Federal Supply Schedule contracts.
1205.101-50 Use of Federal Supply Schedules.

Subpart D—Procurement From Federal Prison Industries, Inc.

1205.406 Procurement procedure.
1205.406-50 Pricing policies for awards to Federal Prison Industries, Inc.

Subpart F—Procurement of Printing and Related Supplies

1205.601 Printing and related supplies.

Subpart G—Procurement Under the Economy Act

Sec.
1205.750 Procurement of items from Commodity Stabilization Service (CSS), Department of Agriculture.

Subpart K—Coordinated Procurement

1205.1106 Purchase authorization.
1205.1106-2 Use of advance MIPR's.

Subpart L—Commodity Assignments

1205.1201 Assignment authority.
1205.1201-2 Exclusions—DLA and GSA assignments.
1205.1201-50 Items in the DLA civil agency catalog.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19016, May 3, 1978, unless otherwise noted.

Subpart A—Procurement Under General Supply Schedule Contracts

§ 1205.101 Federal Supply Schedule Contracts.

§ 1205.101-50 Use of Federal Supply Schedules.

Items procured by DOD activities from Federal Supply Schedules containing the following contractural provision under the provisions of ASPR Section V, Part I, should, where applicable, cite the priority rating on each delivery order placed under the Federal Supply Schedules.

Priorities, Allocations and Controlled Material:

"If any order is placed against this contract is rated and certified for National Defense, the contractor is required to follow the provisions of DPS Regulation 1 (formerly BDSA Regulation 2) and/or DMS Regulation 1 in obtaining materials needed to fulfill the requirement of this contract."

Subpart D—Procurement from Federal Prison Industries, Inc.

§ 1205.406 Procurement procedure.

§ 1205.406-50 Pricing policies for awards to Federal Prison Industries, Inc. (FPI)

(a) (1) Prices in awards to FPI for the partial or entire quantity of a procurement shall not exceed current market prices.

(2) On procurements involving multiple awards to both commercial contractors and to FPI of a mandatory item, the current market price will be a price considered by the contracting officer to reflect current market levels but in no event a unit price higher than the highest award price made on the unrestricted portion adjusted for the applicable cost factors designated herein, unless it is determined that the price was the result of a distressed bid, bidder's mistake, or inflated because of Department of Defense requirements. In awards involving multiple destination, each destination, for purposes of determining the price to be paid FPI, shall be considered a separate award. The term "unrestricted" as used in this Part refers to the portion of the procurement not procured from Federal Prison Industries whether or not a small business or labor surplus area set-aside has been made thereon.

(3) When a procurement action involves allotment to FPI of the entire quantity of the required item and current market quotations are not available, prior procurement prices (adjusted to reflect changes in market prices of components since the last procurement and differences in any other cost factors, e.g., labor, operating supplies, employee fringe benefits) shall be used as the basis for determining the current market price.

(4) A quotation from FPI at or less than the determined current market price shall be accepted.

(5) Awards to FPI shall be on an f.o.b. origin basis unless otherwise specified.

(6) Prices for FPI contracts shall be rounded off to the nearest mill.

(b) The cost of transportation of Government-furnished property to both FPI and to commercial contractors shall be excluded. Differences in Government transportation costs of end items to the same destination point under FPI award and under awards to commercial contractors shall be included. Also, variation in the cost of Government-furnished property, based on stated percentages of usage of Government-furnished property allowances shall be included.

(c) Firm delivery orders shall be given to FPI promptly upon determination of the quantity to be awarded FPI. The following procedures are to be utilized in determining prices to be included on these delivery orders:

(1) When a concurrent commercial procurement is being made, the price quoted by FPI shall be cited on the delivery and the statement set forth below shall be included on the order. In the event the current market price determined by the contracting officer under the "unrestricted" procurement is lower than the quoted FPI price, adjustment shall be made to the lower price; provided, however, that in the time elapsed between the delivery order to FPI and the opening date on the "unrestricted" portion, there has been no significant change in market conditions. Should there have been a significant change in market conditions, the current market price for FPI order will be determined under the provisions of (a)(3) of this section.

(2) When the circumstances described in (a)(3) of this section exist, immediate action shall be taken to determine the current market price. Should that price be lower than the quoted price, prompt contact shall be made by the most expeditious means with the FPI and the circumstances and factors used in the determination explained. Should an agreement not be reached as to the current market price within five consecutive days from the date of contact, the order shall be promptly issued on the basis of the current market price determined by the contracting officer, and the statement provided below shall be included on the delivery order.

(3) After issuance of a delivery order containing the statement set forth below, every effort will be made by the purchasing office to reach an agreement as to the current market price

applicable to the order. Agreements reached shall be confirmed by a revision to the delivery order stating the price applicable to the order and deleting the below statement.

(4) Efforts to obtain agreement, to include exchange of data on which the current market price was based, may continue up to the time of inspection and acceptance of the first delivery for payment. If agreement should not be reached by that time, the case shall be submitted to HQ DLA, ATTN: DLA-P, as unresolvable and shall contain a detailed explanation of the factors determining the current market price which was not acceptable to the FPI.

The statement to be included on the delivery order to FPI pending determination of current market price is as follows:

The price in this contract is subject to later adjustment between the Commissioner of the Federal Prison Industries, Inc., and the Executive Director, Procurement, HQ DLA, and the arbitration provisions of Section 4124 of Title 18, United States Code, shall not be invoked except in the case of a disagreement on the part of the Commissioner of the Federal Prison Industries, Inc., and the Executive Director, Procurement, HQ DLA. (1962 JUL.)

Subpart F—Procurement of Printing and Related Supplies

§ 1205.601 Printing and related supplies.

Policy and procedures for the procurement or production of printing are contained in DLAR 5330.1—Procurement or Production of Printing.

Subpart G—Procurement Under the Economy Act

§ 1205.750 Procurement of items from Commodity Stabilization Service (CSS), Department of Agriculture.

(a) The CSS shall be contacted concerning the supply of at least carlot requirements of items listed in the Commodity Credit Corporation (CCC) monthly inventories in order to obtain an f.o.b. destination offer from CCC.

Office, Deputy Administrator, Price Support, Commodity Stabilization Service, Room 350W—Administration Building, Department of Agriculture, Washington, D.C. 20025.

(b) Requests for offers shall state:

(1) Commodity and quantity desired;

(2) Applicable specification;

(3) Packaging and packing requirements;

(4) Required delivery dates;

(5) Grade and crop year; and

(6) Destination.

In all communications with CSS/CCC relative to proposed procurements, advice shall be furnished that the procurement information is not to be disclosed to unauthorized sources.

(c) If the Department of Agriculture advises that no quotation will be submitted or that they are unable to meet specifications requirements, the procurement will be placed with commercial sources in the usual manner.

(d) If a quotation is received from the Department of Agriculture, and the commodity meets the specifications and requirements, a comparative price analysis shall be made to determine whether the price quoted exceeds current market prices from commercial sources. The comparative analysis shall take into consideration applicable adjustments for crop or pack year, packing, shipping, and handling charges.

(e) If the analysis indicates that the price quoted exceeds current market price, CCC shall be advised with a view to obtaining a price not in excess of current market price.

(f) If the CCC price is equal to or lower than the current market price, the order shall be placed with CCC.

(g) If it is determined that procurement will be made commercially because of price or specification consideration, the CCC shall be so advised.

(h) If it is determined that offers from commercial sources will result in a higher cost than acceptance of the CCC offer, negotiations shall be reopened with CCC.

(i) Inspection of items procured from CSS shall be made in conformance with established inspection procedures.

(j) The following shall apply to all procurements of bagged commodities from CSS:

An official weighmaster's certificate based on origin weights shall accompany each shipment and a copy shall be attached to

the CCC invoice. CCC invoice shall be for the number of pounds shown on the official weighmaster's certificate. Quantity receipted for by receiving officer at destination shall be the same quantity less damage in transit, except where a different quantity is actually received. In either event receiving officer will prepare SF 361 or SF 363, as applicable, and attach to receiving report submitted to paying office. Over or short shipment adjustment to be requested in instances where number of bags unloaded differs from number shown on documents accompanying shipment in which case receiving officer shall accompany report with bag tally, or with an official weighmaster's certificate in instances where origin and destination bag counts are identical but quantity receipted for is different from quantity shipped. Paying office upon receipt will forward Over, Shortage and Damaged Report (OS&D), accompanied with bag tally or weighmaster's certificate, if applicable to CCC office and request invoice adjustment.

Subpart K—Coordinated Procurement

§ 1205.1106 Purchase authorization.

§ 1205.1106-2 Use of advance MIPRs.

(f) Under the provisions of ASPR 5-1106.2 the following actions may be taken by a DSC upon receipt of an Advance MIPR (or similar type purchase request) provided the purchase request contains a statement reading essentially as follows: "A firm requirement exists for the item(s) contained in this MIPR; purchase of the items will be supported by the commitment of funds which are expected to be made available (within the next ——— days)/(prior to the end of this fiscal year)." Any other written advice from the Requiring Activity that the requirement is firm and that there is a reasonable expectation that funds will be made available for obligation purposes against the specific advance MIPR, may be accepted in lieu of a statement embodied in the MIPR. This advice will be used as the basis to proceed with the purchase action up to and including receipt of responses to an IFB or RFP.

(1) IFB's or RFP's issued on the basis of unfunded Advance MIPRs shall clearly state that no awards will be made until such time as funds become available for obligation purposes. (See ASPR/DLPR 1-318.) The solicitation will also state that the offers shall not be opened until such time as funds have been made available for obligation purposes.

(2) In instances such as those authorized herein, the requiring activity will be notified of the scheduled opening date of the IFB (or closing date of the RFP) and that if funds are not made available by those dates that the solicitation may be cancelled. The scheduled opening or closing date may be extended at the discretion of the procuring activity.

(3) If a requiring activity indicates that funds will not be forthcoming, the solicitation will be cancelled. All offerors will be notifed immediately of such cancellation and their unopened offers will be returned to them.

Subpart L—Commodity Assignments

§ 1205.1201 Assignment authority.

§ 1205.1201-2 Exclusions—DLA and GSA assignments.

(c) *Exclusions to Defense Logistics Agency or General Services Administration Assignments by Agreement.* All proposed agreements in accordance with paragraph VII A5 of DOD Instruction 4115.1, DOD Coordinated Procurement program—Purchase Assignments to permit a Military Service to procure Military Service managed items for which the estimated obligation of a one-time authorization will exceed $100,000.00 or when the annual obligations are expected to exceed $100,000.00 for a continuing authorization shall be submitted for review and approval by HQ DLA ATTN: DLA-PP, prior to consummation of the agreement. Continuing authorizations will not be granted for periods exceeding twelve months notwithstanding the amount of estimated annual obligations. Requests will be submitted in triplicate (letter form) in sufficient detail to support the proposed agreement and will be signed at a level no lower than the Executive Director, Procurement, or his Deputy.

§ 1205.1201-50 Items in the DLA civil agency catalog.

After stock of a nonstandard item is exhausted and where DOD standardi-

zation action provides for a replacement item, the civilian agencies will be encouraged to use the replacement item by the applicable DLA Center. When the replacement item is not acceptable to a civil agency as evidenced by the requisition advice code, or when there is no replacement item, procurement of the DOD nonstandard item is authorized to meet the civil agency requirement.

PART 1206—FOREIGN PURCHASES

Subpart A—Buy American Act—Supply and Service Contracts

Sec.
1206.103 Exceptions.
1206.103-2 Nonavailability in the United States.
1206.103-5 Canadian supplies.
1206.103-50 Shipping instructions to Canadian vendors.
1206.104 Procedures.
1206.104-50 Procedure for submission to Executive Director, Procurement, DLA.
1206.104-51 Contract clause.

Subpart C—Appropriation Act Restrictions

1206.303 Exceptions.
1206.304 Procedures.
1206.304-1 Procurement of food, clothing, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric, or items containing mohair or cotton or specialty metals.

Subpart D—Purchases from Rhodesia and Certain Communist Areas

1206.403 Exceptions.

Subpart F—Duty and Customs

1206.603 Emergency purchases of war materials abroad.
1206.603-4 Customs entries and duty-free certificates.
1206.603-5 Immediate Release Permits.
1206.604 Supplies for vessels or aircraft operated by the United States.

Subpart G—Military Assistance Program Procurements

1206.703-50 Use of domestic sources for MAP procurements.
1206.703-51 Exceptions.

Subpart H—Balance of Payments Program

Sec.
1206.805 Supply and service contracts.
1206.805-2 Procurement limitations.

Subpart I—International Agreements and Coordination

1206.902 International agreements.
1206.902-50 Procurement services for the FRG.

Subpart M—Procurements for Foreign Military Sales

1206.1303 Preparation of DoD offer and acceptance (DD Form 1513).
1206.1303-1 Procedures.
1206.1303-50 FMS shipping instructions.
1206.1310 Implementation of offset arrangements included in foreign military sales agreements.
1206.1310-2 General.
1206.1310-3 Procedures.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19018, May 3, 1978, unless otherwise noted.

Subpart A—Buy American Act—Supply and Service Contracts

§ 1206.103 Exceptions.

§ 1206.103-2 Nonavailability in the United States.

(a) The required determination shall be prepared in substantially the following form:

DETERMINATION

Date ——.

Pursuant to the authority contained in Section 2, Title III of the Act of March 1933, commonly called the Buy American Act (41 U.S. Code 10 a-d), and authority delegated to me by paragraph 6-103.2 of the Armed Services Procurement Regulation. I hereby find:

a. (*Description of the item or items to be procured, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination*).

b. (*Brief statement of the necessity for the procurement*).

c. (*Statement of facts establishing the nonavailability of a similar item or items of domestic origin*).

Based upon the above showing of fact, it is determined that the above described item(s) is(are) not mined, produced, or man-

80-109 O—81——8

ufactured, or the articles, materials, or supplies from which it(they) is(are) manufactured, are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Accordingly, the requirement of the Buy American Act that procurement be made from domestic sources and that it be of domestic origin is not applicable to the above described procurement, since said procurement is within the nonavailability exception stated in the Act. Authority is granted to procure the above item(s) of foreign origin (*Country of origin*) at an estimated cost of $—— including duty and transportation costs to destination.

—————— Signature

(b) A copy of the validation of the procurement requirement in accordance with DLAM 4140.3 shall be made a part of the contract file.

(c) Where approval of the determination of nonavailability is required at a level above the HPA, a copy of the validation of the procurement requirement shall be included with the request for approval.

(d) When the restrictions of the Buy American Act are determined to be inapplicable to the end products, the contractor shall be notified of that determination by such means as an appropriate notation in the body of the contract.

(e) For purposes of determining the approval level necessary in ASPR 6-103.2(b), option totals shall not be added to basic award amounts. Prior to exercising the option, however, a new determination of nonavailability (for the option total only) shall be made.

§ 1206.103-5 Canadian supplies.

The Director DLA, has determined that the following supplies are of a military character or are involved in programs of mutual interest to the United States and Canada. Notwithstanding the listing of a Federal Supply Class below, all provisions and restrictions of the Annual DoD Appropriation Act (ASPR 6-300) are applicable.

FSC group	Descriptions	FSC classes
22	Railway equipment	2230.
24	Tractors	2410, 2420.
25	Vehicular equipment components	2510, 2520, 2530, 2540, 2590.
26	Engines, turbines, and components	2805, 2815, 2895.
29	Engine accessories	2910, 2920, 2930, 2940, 2990.
30	Mechanical power transmission equipment	3010, 3020, 3030, 3040.
31	Bearings	3110, 3120, 3130.
34	Metalworking machinery	All classes.
35	Service and trade equipment	3520.
36	Special industry machinery	All classes.
38	Construction, mining, excavating, highway maintenance equipment	3805, 3810, 3815, 3820, 3825, 3830, 3835, 3895.
39	Materials handling equipment	All classes.
40	Rope, cable, chain, and fittings	4010, 4020, 4030.
41	Refrigeration and air conditioning and air circulatory equipment	4110, 4120, 4130, 4140.
42	Firefighting, rescue, and safety equipment	4210, 4220, 4240.
43	Pumps and compressors	4310, 4320, 4330.
45	Plumbing, heating, and sanitation equipment	4510, 4520, 4530, 4540.
46	Water purification and sewage treatment equipment	4610, 4620, 4630.
47	Pipe, tubing, hose, and fittings	4710, 4720, 4730.
48	Valves	4810, 4820.
49	Maintenance and repair shop equipment	4930.
52	Measuring tools	5280.
53	Hardware and abrasives	All classes except 5345 and 5350.
54	Prefabricated structures and scaffolding	5410, 5420, 5430, 5440, 5445, 5450.

FSC group	Descriptions	FSC classes
55	Lumber, millwork, plywood, and veneer	5510, 5520, 5530.
56	Construction and building materials	All classes except 5630, 5640, and 5650.
58	Communication, detection, and coherent radiation equipment	All classes.
59	Electrical and electronic equipment	Do.
61	Electric wire and power distribution equipment	6105, 6110, 6115, 6125, 6130, 6120, 6145, 6140, 6150.
62	Lighting fixtures and lamps	6210, 6220, 6230, 6240, 6250, 6260.
63	Alarm and signal systems	6350.
65	Medical, dental, and veterinary equipment and supplies	6505, 6515, 6520.
66	Instruments and laboratory equipment	6630, 6640, 6635, 6655, 6670, 6645, 6660, 6675, 6680, 6685, 6695.
67	Photographic equipment	All classes.
68	Chemicals and chemical products	6810, 6820, 6830, 6840, 6850.
70	General purpose automatic data processing equipment, software, supplies, and support equipment.	All classes.
72	Household and commercial furnishings and appliances	7240 (cans, water, military only).
75	Stationary and record forms	7530.
76	Books, maps, and other publications	7610.
81	Containers, packaging, and packing supplies	8105, 8110, 8120, 8115, 8125.
83	Textiles, leather, furs, apparel and shoe findings, tents and flags	8340 (to the extent restrictions of DOD Appropriation Act are not applicable).
84	Clothing and individual equipment and insignia	8405 (beret, man's, wool only); 8415 (steel helmets only); 8465 as indicated: (1) snowshoes, trail, metal; (2) canteen, water, plastic; (3) cup, water canteen, steel; (4) frame, field pack, without straps; and (5) shelf, cargo support; 8470.
93	Nonmetallic fabricated materials	9320, 9330, 9340, 9350, 9390, 9310 (MAP paper only).
95	Metal bars, sheets, and shapes	All classes.
96	Ores, minerals, and their primary products	9620.

Parts for the above listed supplies are considered to be included in the list, even though not separately listed, when they are produced under a contract that also calls for listed supplies.

§ 1206.103-50 Shipping instructions to Canadian vendors.

Shipping instructions provided Canadian vendors furnishing DOD supplies shall designate a CONUS destination or Canadian port marked for a CONUS destination. No Canadian vendor is to be requested to make shipments of DOD supplies addressed to an overseas destination. On urgent requirements for shipment to overseas destinations, the shipping instructions shall be forwarded to the Defense Contract Administration Office, 6th Floor, Canadian Building, 219 Laurier Avenue, West, Ottawa, Ontario, Canada (K1A055), who will make necessary arrangements.

§ 1206.104 Procedures.

§ 1206.104-50 Procedure for submission to Executive Director, Procurement, DLA.

Proposed Awards not within the approval authority of the Head of the Procuring Activity shall be submitted to HQ DLA, ATTN: DLA-PP, for approval with a recommendation supported by relevant facts, including the amount of applicable duty as verified by the U.S. Customs Service, and the information required to be furnished by § 1201-452.3. The requirement shall be carefully screened against Department of Defense excess and surplus materials before submission. The results of this screening shall be reported in the statement of facts. Appropriate provision shall be made for extending the date of acceptance of bids, offers, or proposals to permit sufficient time for orderly transmission and consideration.

§ 1206.104-51 Contract clause.

The following clause may be used in formally advertised or negotiated procurements when it is anticipated that offers on items of foreign origin will be received.

EVALUATION OF OFFERS ON ITEMS OF FOREIGN ORIGIN (DLA 1970 DEC)

a. Offerors offering other than domestic source end products, as defined in ASPR 7-104.3 Buy American Act, must include in the price offered all applicable import duty and, for evaluation purposes, furnish the following for each item:

Item No. ————
Amount of Duty per Unit ————

b. If this solicitation is formally advertised (an IFB), failure of an offeror to furnish the data required above will result in the rejection of his offer when such failure results in the Government's inability to evaluate the offer.

c. The Government reserves the right to award on a duty-free basis by reducing the unit price offered by the amount of the duty. If award on a duty free basis is made, the clause set forth in ASPR 7-104.31(a) Duty-Free Entry for Certain Specified Items, is incorporated herein by reference and made a part thereof.

Subpart C—Appropriation Act Restrictions

§ 1206.303 Exceptions.

(x) As provided for in Section 6-303(x) of the Armed Services Procurement Regulation, the Heads of DLA Procuring Activities are delegated, without the power of redelegation, authority to make determinations, where appropriate that the restrictions of Section 6-302 do not apply to purchases of specialty metals when a satisfactory quality and sufficient quantity melted in the United States or its possessions cannot be procured as and when needed at United States market prices.

§ 1206.304 Procedures.

§ 1206.304-1 Procurement of food, clothing, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric, or items containing mohair or cotton or specialty metals.

Where prices for domestic supplies are considered unreasonable within the purview of ASPR 6-304.1 the contracting officer shall forward a request for determination, through channels, to HQ DLA, ATTN: DLA-PP. Each such request, in addition to complete information on all factors pertinent to

the requested action, shall contain a proposed determination. The format of the determination in § 1206.103-2(a) may be used as a guide.

Subpart D—Purchases From Rhodesia and Certain Communist Areas

§ 1206.403 Exceptions.

(a) Determinations may be made by contracting officers under ASPR 6-403(a) for purchases not exceeding $2,500; and such determination shall be reduced to writing and made a part of the appropriate contract file.

(b) Requests for the approval required by ASPR 6-402(a) for purchases exceeding $2,500, shall be forwarded to HQ DLA, ATTN: DLA-PP, and shall contain full justification, with all pertinent details, for effecting the proposed procurement from a source within a communist-controlled area.

Subpart F—Duty and Customs

§ 1206.603 Emergency purchases of war materials abroad.

§ 1206.603-4 Customs entries and duty-free certificates.

The HPA is hereby delegated, with the power to redelegate, the authority to execute duty-free entry certificate in the form set forth in ASPR 6-603.4 for emergency purchases of war materials, as defined in ASPR 6-603.1.

§ 1206.603-5 Immediate Release Permits.

The HPA is hereby delegated, with the power to redelegate, the authority to issue "Immediate Release Permits" as prescribed in ASPR 6-603.5.

§ 1206.604 Supplies for Vessels or Aircraft Operated by the United States.

(b) Authority is delegated to the Commander, Defense Fuel Supply Center, with the power of redelegation to execute duty-free entry certificates in the form set forth in ASPR 6-604(b) for the classification of supplies in ASPR 6-604(a).

Subpart G—Military Assistance Program Procurements

§ 1206.703-50 Use of domestic sources for MAP procurements.

MAP requirements will be procured in accordance with ASPR Section VI, Part 7 and DOD Directive 2125.1, Military Assistance Program Offshore Procurement (MAP.OSP), dated 18 June 1970. DOD Directive 2125.1 sets forth policies and procedures for procurement of Defense articles and Defense services from suppliers delivering from sources located outside the U.S., its possessions and Puerto Rico for the Military Assistance Program. The DOD Directive requires that MAP procurements be restricted to domestic sources unless, for purchases of $10,000 or less, such action is clearly undesirable, or for MAP purchase in excess of $10,000, the cost of domestic source end products, or services of domestic concerns located in the United States, is estimated to be more than 50% in excess of the cost from foreign sources. Prior to the solicitation of MAP requirements, procuring contracting officers shall consider the ciretria of Section IV, paragraph B.4, of DOD Directive 2125.1. In all cases where the preliminary judgment is that the procurements should not be restricted to domestic end sources, the proposed procurements shall be rederred to the Executive Director, Procurement, HQ DLA, ATTN: DLA-PP.

§ 1206.703-51 Exceptions.

(a) In any case where a procurement has been restricted to domestic source end products and a foreign offer is, nonetheless, received which meets the criteria in Section IV, paragraph B.4 of DOD Directive 2125.1, the procurement will be referred to the Executive Director, Procurement, HQ DLA, ATTN: DLA-PP.

(b) Notwithstanding the above, DPSC is referred to the restriction in Section 606(c) of the Foreign Assistance Act of 1961, as amended, against the procurement of patented drugs from foreign sources when MAP funds are used.

Subpart H—Balance of Payments Program

§ 1206.805 Supply and service contracts.

§ 1206.805-2 Procurement limitations.

(b) For procurements estimated not to exceed $100,000, the authority in ASPR 6-805.2(b)(1) is redelegated to HPAs within DLA. This authority may be delegated to the principal staff officer responsible for procurement within the Procuring Activity. DGSC is authorized to redelegate this authority to purchase foreign books and publications not to exceed $10,000 to the contracting officer concerned.

(e) The documentation referred to in ASPR 6-805.2(e) shall be prepared in the form of a Determination and Findings and shall be forwarded to the Executive Director, Procurement, HQ DLA, Attn: DLA-PP. When the procurement is justified under ASPR 6-805.2(a)(v), the Determination and Findings shall include a statement of facts establishing nonavailability and an indication of the consideration given to foregoing the requirement or providing a domestic made substitute. The following specific information shall be furnished in letter transmitting the Determination and Findings:

(1) Stock number;

(2) Item nomenclature;

(3) Description (to include pertinent specification citations);

(4) Backorder situation;

(5) Average monthly demand;

(6) Due-in quantities by date;

(7) Average price paid during the previous year;

(8) Latest procured quantity and price;

(9) Quantity and delivery schedule recommended for offshore procurement (OSP);

(10) Fund availability;

(11) Offshore source, if known; and

(12) Any other pertinent data for justifying the proposed procurement.

Subpart I—International Agreements and Coordination

§ 1206.902 International agreements.

§ 1206.902-50 Procurement services for the FRG.

(a) *General.* Based on principles expressed in the Mutual Defense Agreement between the USA and the Federal Republic of Germany (FRG) of 8 October 1976 (TIAS 3660) and its subsequent amendments of 24 October 1960 (TIAS 4599) and 24 November 1961 (TIAS 4903), the U.S. Government has agreed to sell to the FRG certain military equipment, materials and services pursuant to Sec. 106 of the Mutual Security Act of 1954 as amended. The 1961 amendment broadened the Agreement to provide U.S. Government procurement for the FRG of items not previously procured. These procurement services include sale to or purchase for the FRG of certain articles and services which are not standard military items but which are directly related to or essential for the operational capability of the Armed Forces of the FRG.

(b) *Definitions.*

(1) *Nonstandard Items.* The Military Services will make the determination of whether an item is nonstandard. However, in cases where the determination has not been made and where the item has not previously been purchased as a standard item, the determination of whether the item is standard or nonstandard will be made by Plans and Operations Branch, Procurement Division, Directorate of Procurement, HQ DLA, (DLA-PPP).

(2) *Procurement Services.* The purchase, inspection, processing, financing, and delivery of nonstandard items to the FRG.

(c) *Policies.* The furnishing of procurement services for nonstandard military items will be provided the FRG by DSCs according to the following policies.

(1) Contract clauses and procedures will be in accordance with the Armed Services Procurement Regulation (ASPR). In no event will contracts be awarded at other than prices which are determined to be reasonable.

(2) Items not covered by U.S. Government specifications will be procured according to manufacturers' specifications and warranties, unless the FRG requests other specifications, qualifications, and warranties. If the specifications and warranties of the manufacturer are considered inadequate for procurement purposes, such specifications and warranties may be adequately supplemented by the U.S. Government after consultation with FRG.

(d) *Responsibilities.*

(1) The DSCs will render prompt procurement services to the FRG for nonstandard items essential for the operational capability of the Armed Forces of the FRG.

(2) The questions or problems that cannot be resolved will be referred to HQ DLA, Attn: DLA-PPP.

Subpart M—Procurements for Foreign Military Sales

§ 1206.1303 Preparation of DOD offer and acceptance (DD Form 1513).

§ 1206.1303-1 Procedures.

(a) When new procurement over $10,000 is contemplated, requests from a Military Service International Logistics Control Office (ILCO, the activity normally responsible for submitting the DOD Offer and Acceptance, DD Form 1513, to a foreign country), for Price and Availability data, will be referred to the Directorate of Procurement and Production in each Center. The Directorate of Procurement and Production will obtain information relating to price and production leadtime; identify and review sales commissions and fees which may be involved; and identify any unusual contractual requirements or provisions which may impact on the procurement. This information shall be forwarded to the Supply Office which, in turn, will respond to the ILCO request.

(b) The Directorate of Procurement and Production in each Center will furnish whatever assistance it can reasonably give in identifying known or potential U.S. commercial suppliers for particular items being sought by foreign government authorities when the inquiry is received from an ILCO. In addition, such assistance shall be given directly to government authorities of Latin American countries.

§ 1206.1303-50 FMS shipping instructions.

(a) To reduce misdirected shipments of FMS materiel, no shipping addresses will be placed on FMS orders or contracts. Instead, a notice shall be placed in the order requiring the contractor to contact the transportation officer at the contract administration office for shipping instructions. A clause substantially as follows shall be used:

FMS Shipping Instructions (DLA 1977 Jul). Contractor will contact the transportation officer at the cognizant contract administration office for shipping instructions prior to shipment.

(b) A shipping address may be placed in FMS orders or contracts if complete shipment is anticipated within 120 days of award.

(c) Contracts or orders contemplating the use of the defense transportation system rather than a freight forwarder may include a firm shipping address.

(d) Additional contract provisions may be appropriate for requisitions which contain a "Z" or "Y" card column 46 to satisfy unique requirements of these requisitions. The clauses currently being used by DSCs for these requisitions may continue to be used. However, care should be taken to assure that freight forwarder or embassy addresses are not listed on the order/contract.

§ 1206.1310 Implementation of offset arrangements included in foreign military sales agreements.

§ 1206.1310-2 General.

The U.S. Government has entered into general offset agreements with the Governments of Norway, the United Kingdom, Switzerland and Australia which in general attempt to ensure that, to the maximum extent possible, purchases by these countries of major weapons systems and associated defense equipment from U.S. sources are offset by purchases of items produced in these countries.

§ 1206.1310-3 Procedures.

(a) Offset procurements will be conducted in accordance with ASPR and normal procurement procedure Eligible foreign sources will be provided the same technical information and help that is normally provided U.S. sources, insofar as this assistance is consistent with National Disclosure Policy and U.S. Industrial Security Regulations. Their names will be placed on the appropriate Bidders Mailing Lists in accordance with the procedures in ASPR 2-205.7. The normal criteria for making small business and labor surplus area set-asides are to be utilized without regard to the fact that there are potential foreign sources for the items. Procurements from foreign sources will not be made where prohibited by law (e.g., the DoD Appropriation Act).

(b) Solicitations on which a response is anticipated from a foreign source under an offset program should contain a Notice of Potential Foreign Source Competition and a Duty-Free Entry clause. The Notice of Potential Foreign Source Competition clause in ASPR 7-2003.75 may be used except that solicitations anticipating a response from a UK source should contain the clause in § 1206.1310-3(d)(2).

(c) As soon as it is determined that a bid or proposal involving a foreign product from one of the countries identified in DLPR 6-1310.2, other than the United Kingdom, would be accepted but for the Buy American or Balance of Payments Program evaluation factors prescribed by ASPR 6-104.4, the contracting officer shall prepare a statement of the facts surrounding the procurement in sufficient detail to permit judgement as to whether an exception from the Buy American or Balance of Payments restrictions should be authorized. The statement shall be referred to HQ DLA, Attn: DLA-PPR, for appropriate action. Procedures for UK bids or proposals are provided in (d) below.

(d) The Secretary of Defense has executed a Determination and Findings authorizing waiver of the Buy American Act differentials (ASPR 6-104.4) for United Kingdom items. In addition, the Secretary has stated that the Balance of Payments price differentials (ASPR 6-104.4) are inapplicable to UK items. Thus, bids or proposals from UK firms which would be accepted but for the Buy American or Balance of Payments Program will normally be awarded to the UK firm. No further approval of the exception to the Buy American Act is required.

(1) *Exceptions.* There are three exceptions to the above policy.

(i) Restrictions other than the Buy American Act, such as the DOD Appropriation Act, continue to apply to UK items.

(ii) Restricted items set forth in ASPR 1-2207 are excepted.

(iii) Items for which contracts are negotiated pursuant to the authority of ASPR 3-216 are excepted.

(2) *Solicitation provisions.* Solicitations which anticipate competition from UK sources will contain the notice below in lieu of or in addition to the clause set forth in ASPR 7-2003.75:

NOTICE OF POTENTIAL FOREIGN SOURCE COMPETITION

Bids or proposals for this procurement are being solicited from sources in the United Kingdom of Great Britain and Northern Ireland (UK). It has been determined by the Secretary of Defense that the restrictions of section 2 of title III of the Act of March 3, 1933 (47 Stat. 1520; 41 U.S.C. 10a; Buy American Act) shall not apply to items of Defense equipment described in this solicitation when produced or manufactured by UK sources.

(3) *Rejection of acceptable UK bids or proposals.* Otherwise acceptable UK bids or proposals may be rejected when the head of a Defense Agency considers it necessary for reasons of the national interest. Requests for a decision to reject UK offers on this basis should be sent to HQ DLA, Attn: DLA-PPR.

(e) To ensure that these programs are effective, each DSC will designate a contact point who shall be responsible for monitoring the programs. These contact points must be conversant with the policy of selective competitive procurement from foreign sources in the event that they are contacted by foreign officials or prospective foreign contractors. In addition, each contact point shall be prepared

to advise DLA-PPP of the current status of the programs and furnish reports as required.

(f) When an Australian source is solicited, two copies of the complete bid/proposal package (including the necessary specifications and/or drawings) should be sent to:

Chief, U.S. DOD Procurement Information Office, c/o Department of Supply, Constitution Avenue, Canberra, Australia 2600.

PART 1207—CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Subpart A—Clauses for Fixed-Price Supply Contracts

Sec.
1207.103 Required clauses.
1207.103-8 Assignment of claims.
1207.103-12 Disputes.

Subpart H—Letter Contracts

1207.850 Letter contract for DLA Industrial Readiness Planning Program.
1207.850-1 Format.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19023, May 3, 1978, unless otherwise noted.

Subpart A—Clauses for Fixed-Price Supply Contracts

§ 1207.103 Required clauses.

§ 1207.103-8 Assignment of claims.

In cases where special circumstances make it advisable in the best interest of the Government, HPAs may authorize deletion of the last sentence of paragraph (a) of the Assignment of Claims clause set forth in ASPR 7-103.8.

§ 1207.103-12 Disputes.

(c) The Disputes clauses contained in ASPR 7-103.12 shall not be modified to provide for an intermediate appeal board.

Subpart H—Letter Contracts

§ 1207.850 Letter contract for DSA Industrial Preparedness Planning Program.

§ 1207.850-1 Format.

Contract No. ————.

Gentlemen:

This Letter Contract, upon acceptance by your firm will constitute a contract on the terms and conditions stated herein and signifies the intention of the Defense Logistics Agency to enter into a firm fixed-price contract with you for the deliveries of the supplies and performance of the services listed on DD Form 1519 which was executed on ———— in furtherance of the Industrial Preparedness Program.

Schedule of Supplies or Services

The supplies and services to be furnished and the time and place of delivery are as follows:

Contract For ————————————

————————————

————————————

————————————

————————————

Specification Number ————————————

Appropriation and other Administrative Data

The supplies and services to be obtained under this Letter Contract are chargeable to the following allotments, the available balances of which are sufficient to cover the cost of same ————.

F.O.B. ————————————

Execution, Commencement of Work and Priority Rating

The Contractor's acceptance of this order will be indicated by affixing its signature to three copies thereof and returning the executed copies to the Contracting Officer not later than ————. Upon acceptance by both parties, the Contractor shall proceed with performance of the work described herein, including procurement of necessary materials. An appropriate priority rating, in accordance with the Department of Defense Priority and Allocation Manual, will be assigned to this Letter Contract. (ASPR 7-802.2).

Priority Rating

DO or DX ———— (appropriate program code symbol) Certified for national de-

fense use under Defense Materials System Regulation 1.

DEFINITIZATION

(a) A firm fixed-price type definitive contract is contemplated. To accomplish this result, the Contractor agrees to enter into negotiation promptly with the Contracting Officer over the terms of a definitive contract, which will include all clauses required by the Armed Services Procurement Regulation on the date of execution of the letter contract, all clauses required by law on the date of the execution of the definitive contract and such other clauses, terms, and conditions as may be mutually agreeable. The Contractor agrees to submit a fixed-price proposal (cost and fee proposal), and cost or pricing data supporting that quotation.

(b) The schedule for definitization of this contract is set forth below:

_____

_____

_____

_____

Target Date for Definitization: _____

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date set forth in (b) above or any extension thereof by the Contracting Officer, the Contracting Officer may, with the approval of the Head of the Procuring Activity, determine a reasonable price or fee in accordance with ASPR Section III, Part 8, and Section XV, subject to appeal by the Contractor as provided in the "Disputes" clause of this contract. In any event, the Contractor shall proceed with completion of the contract, subject only to the "Limitation of Government Liability" clause. After the date of the Contracting Officer's determination of price or fee, the contract shall be governed by:

(1) All clauses required by the Armed Services Procurement Regulation on the date of execution of this letter contract for either a fixed price type contract or a cost reimbursement type contract as determined by the Contracting Officer under this paragraph (c);

(2) All clauses required by law as of the date of the Contracting Officer's determination; and

(3) Such other clauses, terms and conditions as may be mutually agreed upon.

To the extent consistent with the foregoing, all clauses, terms and conditions included in this letter contract except which by their nature are applicable only to a letter contract shall continue to be effective.

Limitation of Government Liability

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

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

(c) Unless otherwise provided herein no progress paymnent to the Contractor will be made under this contract.

The enclosed forms, with the exceptior of Enclosure(s) _____ and clause(s) _____ are hereby incorporated into this letter contract which is entered into pursuant to 10 U.S.C. 2304(a)(1) and any required determination and findings have been made.

Sincerely yours.

Enclosures.

Accepted _____ _____

_____

(Contractor)

_____

Contracting Officer

By _____ _____

_____

(Name—Official Title)

PART 1208—TERMINATION OF CONTRACTS

Subpart B—General Principles

Sec.

1208.201 Authority of contracting officers.

Subpart F—Termination for Default

1208.601 General.
1208.602 Termination of fixed-price supply contracts for default.
1208.602-3 Procedure for default.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19023, May 3, 1978, unless otherwise noted.

Subpart B—General Principles

§ 1208.201 Authority of contracting officers.

(a) The Head of the Procuring Activity shall prescribe procedures under which contracting officers may terminate contracts for the convenience of

the Government and in the case of cost-reimbursement type contracts for the default of the contractor. Notwithstanding a change in requirements a contract is not to be terminated for convenience (except at no cost to the Government as provided in ASPR 8-602.4(iii)) if the contractor is in unexcusable default and the Government has a legal right to terminate such contract for default.

(b) The settlement of contracts terminated for the convenience of the Government is the responsibility of the cognizant Defense Contract Administration Office (DCAS). A contract may be terminated for the convenience of the Government by the procuring contracting officer (PCO) at no cost to the Government and without referral to DCAS or the issuance of a notice of termination when the PCO is aware that (1) the contractor will accept a no-cost settlement, (2) Government property was not furnished, and (3) there are no outstanding payments, claims or other contractor obligations. In all other cases a notice of termination for the convenience of the Government shall be issued and a copy forwarded to DCAS for action as specified in ASPR 8-203(b).

Subpart F—Termination for Default

§ 1208.601 General.

The decision as to the type of termination action to be taken (i.e., for default, for convenience, or a no-cost settlement) shall be made only after a review of cognizant experienced procurement and technical personnel, and by counsel assigned or available to the particular procuring activity or purchasing office. Under no circumstances should any notice of termination be furnished to the contractor until this review has been made. Careful consideration should be given to the Government's interests whenever small business guaranteed loans (see § 1201.705-4(d)), progress payments, or advance payments are involved.

§ 1208.602 Termination of fixed-price supply contracts for default.

§ 1208.602-3 Procedure for default.

The following procedures, prescribed by the General Services Administration, shall be followed in terminating for default delivery orders placed against Federal Supply Schedule contracts.

(a) *Ordering Office.* Before declaring a contractor in default, ordering offices should ordinarily notify the contractor in writing that unless satisfactory performance occurs by a specified date, which should allow a reasonable time for performance, his right to proceed further under the delivery order will be considered terminated and he will be held liable for any excess costs resulting from purchasing the supplies or services elsewhere. This step will not be taken when the default involves an attempted fraud on the United States, or when it obviously would be futile, as for example, when the contractor has already declined to perform. Where excess costs are anticipated, the ordering office may withhold sufficient funds due to contractor as offset security. Ordering offices will endeavor to minimize excess costs to be charged against the contractor and to collect, by check or setoff, excess cost owed.

(b) *Federal Supply Service (FSS).* Where ordering offices are notified by the Federal Supply Service that it has declared the contractor in default, ordering offices will thereafter refuse to accept further performance by the contractor or place further delivery orders with it. Ordering offices will thereafter purchase against the account of the contractor from replacing contractors designated by the FSS or in such other manner as directed by the FSS.

(c) *Notification.* Ordering offices shall furnish to the Purchase Branch, FSS, Room 809, Crystal Mall, Building 4, Washington, D.C. 20406, the details concerning all material instances of unsatisfactory performance by the contractor, whether or not properly adjusted and settled. Ordering offices also shall report, as may be directed by the FSS, all purchases made

against the account of a contractor placed in default by the FSS.

PART 1209—PATENTS, DATA, AND COPYRIGHTS

Sec.

1209.000 Scope of section.
1209.000-50 Authority.
1209.000-51 Supply of patented components as GFP.

Subpart A—Patents

1209.103 Patent indemnification of government by contractor.
1209.103-4 Waiver of indemnity by the government.
1209.110 Reporting of royalties—anticipated or paid.
1209.112 Adjustments of royalties.

Subpart B—Rights in Technical and Other Data and Copyrights

1209.202 Acquisition of rights in technical data.
1209.202-50 Reporting of improper use of data or technical data.

Subpart C—Foreign License and Technical Assistance Agreements

1209.304 Foreign license and technical assistance agreements or concern.
1209.304-2 Review of agreements.

Subpart D—Processing Licenses, Assignments, and Infringement Claims

1209.401 Policy.
1209.401-50 Processing of infringement claims.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19024, May 3, 1978, unless otherwise noted.

§ 1209.000 Scope of section.

§ 1209.000-50 Authority.

The Counsel, DLA, is authorized to act for the Director, DLA, on all patent, copyright, rights in data and trademark matters arising in the DLA. Any question on such matters shall be referred to the Counsel, DLA.

§ 1209.000-51 Supply of patented components as GFP.

Where patented or proprietary components are required in end items purchased by DLA activities, particularly military type items, consideration may be given to furnishing such components as Government-furnished property.

Subpart A—Patents

§ 1209.103 Patent indemnification of government by contractor.

§ 1209.103-4 Waiver of indemnity by the government.

Specific patents may be excluded in accordance with ASPR 9-103.4 only with the prior approval of the Counsel, DLA, or the Patent Counsel, DLA.

§ 1209.110 Reporting of royalties—anticipated or paid.

Counsel for the procuring activity concerned will forward to the Counsel, DLA, a copy of each royalty report received in accordance with ASPR 9-110 which indicates that royalties in excess of $250 have been paid or are to be paid to any person or firm.

§ 1209.112 Adjustment of royalties.

The report required by ASPR 9-112 shall be made to Counsel for the procuring activity concerned who shall forward the report to the Counsel, DLA, for appropriate action.

Subpart B—Rights in Technical and Other Data and Copyrights

§ 1209.202 Acquisition of rights in technical data.

§ 1209.202-50 Reporting of improper use of data or technical data.

Any direct or indirect charge of improper use of data of technical data received by any procuring activity, shall be referred to Counsel for the activity who will notify and coordinate all actions on such cases with the Counsel, DLA.

Subpart C—Foreign License and Technical Assistance Agreements

§ 1209.304 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

§ 1209.304-2 Review of agreements.

Proposed foreign license and technical assistance agreements between domestic concerns and foreign governments or concerns forwarded to the DLA under the provisions of ASPR 9-304.1 shall be referred to the Counsel, DLA, for action in accordance with ASPR 9-304.2.

Subpart D—Processing Licenses, Assignments, and Infringement Claims

§ 1209.401 Policy.

§ 1209.401-50 Processing of infringement claims.

(a) Any direct or indirect charge or threat of patent, trademark or copyright infringement received by any procuring activity, shall be referred to Counsel for the activity who will notify and coordinate all actions on such cases with the Counsel, DLA.

(b) The Counsel, DLA, or the Patent Counsel, HQ DLA, are hereby authorized to make acquisitions in accordance with 10 U.S.C. 2386 and to enter into agreements in settlement of claims under the Foreign Assistance Act of 1961 (22 U.S.C. 2356) and 35 U.S.C. 181-188. Coordination with the Departments of the Army, Navy and Air Force in the processing and final disposition of each claim shall be effected by the Counsel, DLA or the Patent Counsel, HQ DLA.

PART 1210—BONDS, INSURANCE, AND INDEMNIFICATION

Subpart A—Bonds

§ 1210.112 Execution and administration *of bonds and consents of surety.*

(b) *Administration.* All bonds and all consents of surety will be reviewed by counsel of the activity for legal sufficiency. The original signed bond shall subsequently be retained with the original copy of the contract where practical.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977)

[43 FR 19025, May 3, 1978]

PART 1212—CONTRACTOR INDUSTRIAL LABOR RELATIONS

Subpart A—Basic Labor Policies

Sec.
1212.101 Labor relations.
1212.101-1 General.
1212.101-3 Reporting of labor disputes.
1212.107 Labor Standards Enforcement Report.

Subpart F—Walsh-Healey Public Contracts Act

1212.604 Eligibility of a bidder or offeror.
1212.650 Exception not stated in the publications furnished contracting officers.

Subpart G—Fair Labor Standards Act of 1938

1212.702 Suits against government contractors.

Subpart H—Equal Employment Opportunity

1212.804 Equal opportunity clauses.
1212.804-50 Equal employment opportunity compliances responsibilities.
1212.807 Affirmative action programs.
1212.808 Compliance reviews and clearances.
1212.808-50 Contractor compliance.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202 2301-2314; DOD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19025, May 3, 1978, unless otherwise noted.

Subpart A—Basic Labor Policies

§ 1212.101 Labor relations.

§ 1212.101-1 General.

Whenever labor representatives request permission to enter a DLA installation on which private contract employees are engaged in contract work to conduct union business during working hours, the commanding officer may admit such representatives, provided (a) the presence and activities of the labor representatives will

not interfere with the progress of the contract work involved, and (b) the entry of such representatives to the installation shall not violate pertinent safety or security regulations. Commanding officers shall take all necessary action to enforce the above policy and facilitate ready access to worksites within military installations. One method which has met with success in appropriate situations is the maintenance by commanding officers of a list of labor representatives, who have been cleared with regard to safety and security considerations and who may be admitted into respective installation to conduct union business. The determination as to who are appropriate labor representatives should be made by the commanding officer on recommendation of the contracting officer and representatives of the DLA Industrial Labor Relations Office after consultation with local union officials. Business offices or desk space for labor organizations for solicitation of membership, collection of dues, or other business of the labor organization not directly connected with the contract work, shall not be permitted on the installation except for the routine functions of the working steward whose union duties are incidental to his assigned job. In the event that a commanding officer of an installation or the contracting officer or his representative denies entry to a labor representative for any reason such officer shall notify, through channels, the DLA Industrial Labor Relations Advisor, HQ DLA, ATTN: DLA-HR. Such notification shall include the reasons for denial, including names, addresses, of representatives denied entry, and union affiliation, if known, of such representatives. An information copy of each notification shall be forwarded to HQ DLA, ATTN: DLA-PRS.

§ 1212.101-3 Reporting of labor disputes.

The report of labor disputes on DD Form 1507, Work Stoppage Report, in accordance with ASPR 12-101.3(c), is assigned Reports Control Symbol DD-DR&E(AR)1153.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[43 FR 19025, May 3, 1978, as amended at 44 FR 27099, May 9, 1979]

§ 1212.107 Labor Standards Enforcement Report.

The semiannual report of compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and Contract Work Hours and Safety Standards Act shall be prepared in accordance with DAR 12-107 and forwarded to HQ DLA, ATTN: DLA-PRS, so as to arrive not later than 15 days after the close of the reporting period (31 March and 30 September).

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[43 FR 19025, May 3, 1978, as amended at 44 FR 27099, May 9, 1979]

Subpart F—Walsh Healey Public Contracts Act

§ 1212.604 Eligibility of a bidder or offeror.

(a) In those instances where the contracting officer makes a determination of ineligibility as a manufacturer or regular dealer, such determination, together with supporting documentation, shall be submitted to the Head of the Procuring Activity or his designee for review and approval.

(b) In the case of DDMT, DDTC, DDOU, DIPEC, DLSC and DASC, the review responsibility set forth in § 1212.604 is hereby delegated to the Commander concerned, or his designee, in accordance with § 1201.201-14.

§ 1212.650 Exception not stated in the publications furnished contracting officers.

Certain of the exceptions stated in the publications furnished contracting officers which contain no specific expiration date may have been rescinded by the Secretary of Labor since date of publication. In case of doubt, inquiry may be directed to the appropriate Regional Director, Wage and Hour and Public Contracts Divisions, Department of Labor indicated in ASPR 12-607.

Subpart G—Fair Labor Standards Act of 1938

§ 1212.702 Suits against Government contractors.

Cost-plus-a-fixed-fee contractors and subcontractors should be advised that immediately upon receipt of process in any legal action filed against them they must furnish a copy of all papers to the contracting officer. An immediate report of the legal action shall be made direct to the Counsel, HQ DLA.

Subpart H—Equal Employment Opportunity

§ 1212.804 Equal opportunity clauses.

§ 1212.804-50 Equal employment opportunity compliances responsibilities.

(a) In all cases in which a Center or Depot retains the administration of a contract which contains the Standard Equal Opportunity clause or an approved local plan bid conditions, a letter of notification of such award shall be sent to the cognizant DCASR which includes the location in which the work is to be performed. The DCASR Contract Compliance Office (CCO) has the responsibility for insuring contractor compliance with the EEO provisions. The letter of notification will be marked to the attention of the Compliance-Office and will contain the following information.

(1) Contract number and dollar value.

(2) Contractor name and address.

(3) Nature of services to be performed.

(4) Site of work.

§ 1212.807 Affirmative action programs.

§ 1212.807-2 Construction contracts.

The DCASR CCO shall be notified of the date, time and place of any preconstruction conferences so that the Compliance Office may have an opportunity to review the EEO requirements with the contractor.

§ 1212.808 Compliance review and clearances.

§ 1212.808-50 Contractor compliance.

(a) Policy Branch, Procurement Division, Directorate of Procurement (DLA-PPR) will issue semi-monthly a list of contractors found not in compliance with current Equal Employment Opportunity (EEO) regulations. This list shall be utilized by DLA contracting elements to determine, from an EEO standpoint, the eligibility of a contractor for an award.

(b) DLA PPR will maintain a master list of contractors who, for reasons of noncompliance with EEO regulations, have been debarred. Notices of debarment/reinstatement will be issued by DLA-PPR as they are received.

(c) Any questions relating to the eligibility of a contractor for award should be directed to HQ DLA, ATTN: DLA-PPR.

PART 1213—GOVERNMENT PROPERTY

Subpart C—Providing Government Property to Contractors

Sec.
1213.301 Providing facilities.

Subpart E—Competitive Advantage

1213.501 Policy.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19026, May 3, 1978, unless otherwise noted.

Subpart C—Providing Government Property to Contractors

§ 1213.301 Providing facilities.

(a) (1) (i) Requests for new facilities will be forwarded to HQ DLA, Attn: DLA-P, for approval by the Executive Director or Deputy Executive Director, Procurement. Sufficient documentation will be provided with the request to show that the need for supplies or services cannot be met by any other practical means or that the furnishing of facilities will be in the public interest. Commanders of De-

fense Supply Centers, DIPEC, DDMT, DDOU and DDTC are authorized to provide existing facilities under the conditions set forth in ASPR 13-301.

(ii) A copy of the contractor's written statement, expressing his unwillingness or financial inability to acquire the necessary facilities with his resources, will be included as a part of requests for new facilities. A copy of the written statement obtained in connection with provision of existing facilities will be furnished to HQ DLA, Attn: DLA-PR, within 15 days after receipt from contractor.

The foregoing actions are not required when Government facilities to be utilized in the performance of a DLA contract are in the contractor's possession under a prior authorization. (ASPR Case 72-2-2).

(b) When determination is made that solicitations should include an offer to furnish existing Government facilities because adequate price competition cannot be otherwise obtained, the case will be fully documented to indicate the basis for such determination. Referral to HQ DLA, Attn: DLA-PR is not required prior to inclusion of an offer to provide existing facilities except for Approved Plant Equipment Packages. Requests for use of equipment included in such packages will be processed in accordance with procedures set forth in paragraph 10-403, DLAM 4005.1.

Subpart E—Competitve Advantage

§ 1213.501 Policy.

It is DOD policy to eliminate the competitive advantage that might otherwise arise from acquisition or use of Government production and research property. This is accomplished by charging rental or by use of rental equivalents in evaluating bids and proposals. Within the Defense Logistics Agency, the more desirable procedure is to develop an evaluation factor equal to the rent (ASPR 13-502.2), obtain the necessary approvals to authorize rent-free use of the Government property and award less the evaluation factor. A lower unit cost is thereby achieved and procurement funds are conserved. Rental monies eventually flow back into the U.S. Treasury but at the expense of the DLA budget. Accordingly, the rental procedure will be utilized only when absolutely necessary.

PART 1214—PROCUREMENT QUALITY ASSURANCE

Subpart A—General

Sec.
1214.101-5 Criteria for applying contract quality requirements.

Subpart C—Contract Provisions

1214.305 Places of performance of Government procurement quality assurance actions.
1214.305-1 General.
1214.305-2 Government procurement quality assurance at source.
1214.305-3 Government procurement quality assurance at destination.
1214.306 Acceptance of supplies or services.
1214.307 Place of acceptance.

Subpart D—Government Procurement Quality Assurance Actions

1214.406 Nonconforming supplies and services.
1214.406-50 Nonconforming supplies and services.
1214.406-51 Definitions.
1214.406-52 Processing of requests for waiver.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19026, May 3, 1978, unless otherwise noted.

Subpart A—General

§ 1214.101-5 Criteria for applying contract quality requirements.

(a) (1) (i) *No Specific Contract Quality Requirement.* This type of quality requirement in DAR 14.101.5(a)(i)(A) shall not be used in DLA contracts. Contractors shall be held responsible for the quality of products and services by means of:

(A) Contract provisions that place responsibility on contractors; and

(B) Warranty clauses, when appropriate.

(d) When a commercial item is purchased to satisfy a military need, contract quality requirements shall be tai-

80-109 O—81——9

lored with the concurrence of the Engineering Support Activity to:

(1) Eliminate or minimize special Government testing, quality control and inspection requirements consistent with the need and cost objectives, in consideration of the reliability established in the commercial market;

(2) Maximize use of the Certificate of Conformance (COC);

(3) Provide for examination and acceptance at the most economical point of delivery (source or destination); and

(4) Facilitate the exercise of any warranty rights.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[44 FR 27099, May 9, 1979]

Subpart C—Contract Provisions

§ 1214.305 Places of performance of government procurement quality assurance actions.

§ 1214.305-1 General.

In addition to DAR 14-305.1, contracts and purchase orders will be assigned for source inspection only when absolutely necessary. In general, source inspection may be necessary when there are requirements for technical inspection; e.g., first article inspection, in-process inspection, and/or requirements for special testing or detailed inspection. Purchases should be assigned for destination inspection if verification as to type and kind, quantity and condition is sufficient.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[44 FR 27099, May 9, 1979]

§ 1214.305-2 Government procurement quality assurance at source.

In addition to the provisions of ASPR 14-305.2, Government procurement quality assurance actions will be performed at source for supplies having a critical application. When a critical application item is procured from a sole source and the supplier will not permit source inspection, recommend this matter be negotiated with adequate consideration flowing to the Government, on a case-by-case basis, for the added cost of performance of the necessary technical inspection at destination at a designated Government laboratory or at the using activity. Conversely, if the supplier insists on source inspection for non-critical or non-complex items which are normally assigned for destination inspection, recommend this matter be negotiated with adequate consideration flowing to the Government, on a case-by-case basis, for the added cost of performance of unnecessary Government technical inspection at source.

(b)(5) *With reference to DAR 3-606.2, purchases of items for direct shipment overseas may be assigned for destination using the Fast Payment procedure if there are no requirements for technical inspection.* The Fast Payment procedure applies to small purchases of $10,000 or less and without dollar limitation to brand name commissary resale subsistence and commercial-type medical supplies. Other purchases for direct shipment overseas shall be assigned for source inspection, unless the Contracting Officer determines that inspection can be performed overseas. Contracts for the latter shall include the CoC clause whenever practical.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105-22, June 8, 1978)

[43 FR 19026, May 3, 1978, as amended at 44 FR 27099, May 9, 1979; 44 FR 52199, Sept. 7, 1979]

§ 1214.305-3 Government procurement quality assurance at destination.

Prior to designating that Government procurement quality assurance actions will be performed at destination the contracting officer shall determine that the:

(a) Depot or receiving activity has the technical ability to perform the inspections;

(b) Necessary technical data, specifications, blue prints, etc., are available at the receiving point or will be furnished the receiving activity prior to receipt of the supplies; and

(c) Equipment required to perform the inspection is available at the receiving point.

§ 1214.306 Acceptance of supplies or services.

(c) Based upon criteria contained in DAR 14-306(c), maximum use will be made of contractor's CoC to reduce Government inspection for acceptance of supplies. Whenever practical, all DLA contracts, except those for bulk fuel, assigned for source inspection to the DCASRs shall include the CoC clause given below. If a sole source or existing contractor refuses to accept the CoC clause; i.e., execute the CoC, there is little we can do. Also, the use of the CoC clause may not be appropriate for purchases of surplus materiel. Principal Contracting Officers shall document the contract file giving the reason why the optional CoC clause is not included in a particular contract. Each Defense Supply Center will monitor supplies accepted on contractor's CoC through the DLA Quality Audit or through special inspections of receipts at the Depots.

(1) A clause worded as follows will be inserted in the contract:

CERTIFICATE OF CONFORMANCE (DLA 1979 FEB)

Unless required otherwise in the contract or by the Contract Administration Office, the Contractor is required to deliver the supplies to be furnished hereunder with a "Certificate of Conformance." In no case shall the Government's right to inspect supplies under the inspection provisions of this contract be prejudiced. The Contractor signed certificate shall be attached to or included on the top copy of the DD 250 or 1155 copies distributed to the payment office. When acceptance is at destination, a copy of the signed certificates shall also be attached to or entered on copies of the DD 250, DD 1155, or other appropriate documents accompanying the shipment. This certificate shall read as follows:

"I hereby certify that on (date) ———— the (contractor's name) ———— shipped the supplies called for by Contract No. DLA ———— via (carrier) ———— on (Bill of Lading or *Shipping Document*) ————

in accordance with all applicable requirements for shipment. I further certify that the supplies are of the quality specified and are in all respect in conformance with the contract requirements, including specifications and/or drawings, preservation, packaging, packing and marking requirements; physical item identification (part number), and in the quantity shown on this, or the attached acceptance document."

Date of Execution: ————

Signature ————

Title: ————

(2) The execution of the COC as a condition for acceptance by the Government is advantageous because of the reduction in time and cost of Government inspection without reducing the quality of supplies received. The contractor's COC is used principally (i) as an alternative to Government procurement quality assurance at source, (in this instance the contract should specify inspection and acceptance at destination); (ii) at the option of the Government Contract Administration Office when inspection and acceptance are at source and the value of supplies or the condition of purchase, delivery, or receipt or use thereof makes it desirable to have additional assurance that supplies conform to contract requirements; and (iii) at the option of the Government Contract Administration Office, when inspection and acceptance are at source and COC is used as the sole basis for acceptance for supplies when there is satisfactory quality history for the item/contractor.

(3) The inclusion of post acceptance remedies in the COC clause is not appropriate. Post acceptance remedies for purchase orders (ASPR 3-608) are limited to the commercial warranty on the reverse side of DD Form 1155. For other contracts which include the inspection clause in ASPR 7-103.5, inspection rights of the Government are cut off after acceptance of supplies except as regard latent defects, fraud or such gross mistakes as amount to fraud. If post acceptance rights are desired, warranty clauses should be prepared in accordance with criteria of ASPR 1-324 for inclusion in the contract.

(4) The use of such terminology as "inspection and acceptance by COC" is improper and is not authorized. The place of acceptance, as determined under the criteria set forth in ASPR 14-305, 14-307 and 14-308, shall be clearly stated on the contract or pur-

chase order. Except as authorized under Fast Pay procedures, acceptance by the contracting officer is required prior to payment. The COC and the Fast Pay procedure, ASPR 3-606 are separate and distinct concepts and will not be combined in any manner.

(5) When a contract or purchase order is assigned to a Contract Administration Office (CAO) for inspection and acceptance at source, the CAO's right to base its acceptance upon actual inspection of the supplies shall not be abridged. The insertion of a COC clause that requires the CAO to accept the supplies based solely upon a COC is not authorized. The CAO shall be given the options of performing inspection and/or based upon contractor's reputation or past performance, requiring the contractor to furnish a COC for use as additional assurance or as the sole basis for acceptance of supplies and services.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105-22, June 8, 1978)

[43 FR 19026, May 3, 1978, as amended at 44 FR 27099, May 9, 1979]

§ 1214.307 Place of acceptance.

In addition to provisions of DAR 14-307, when a contract provides for Government procurement qualify assurance at source, only one inspection point (location) shall be designated for each contract line or sub-line item. This is necessary to effectively exercise the Certificate of Conformance clause and to prevent increased administrative costs to the Government involved in multiple inspection points.

[44 FR 52199, Sept. 7, 1979]

Subpart D—Government Procurement Quality Assurance Actions

§ 1214.406 Nonconforming supplies and services.

§ 1214.406-50 Nonconforming supplies and services.

(a) ASPR 14-406 states that it is Government policy that supplies which do not conform in all respects to the contract requirements should be rejected, but provides for exceptions when acceptance of such nonconforming supplies is in the interests of the Government (e.g., for reasons of economy or urgency). This ASPR guidance provides the basis for the contractor practice of requesting waiver of nonconformances in supplies that have been tendered to and rejected by a Government quality assurance representative.

(b) It is DLA policy that the granting of waivers shall be emphatically discouraged in all cases where the contractor is at fault in producing the nonconforming supplies.

(c) For supplies having minor nonconformances, as defined below, contractor requests for waiver shall be rejected except in those few cases where it is clearly advantageous to the Government to accept the nonconforming supplies and they are suitable "as is" for the intended use or the nonconformance results in a superior product.

(d) For supplies having major nonconformances, as defined below, the final determination as to their suitability for use is the responsibility of the activity responsible for technical requirements. The concurrence of such technical activity shall be obtained before waiver of a major nonconformance is granted.

§ 1214.406-51 Definitions.

(a) *Nonconforming Supplies.* Those supplies which contain one or more departures from contractual requirements. Nonconformances are categorized as follows:

(1) *Major Nonconformance.* The failure to conform adversely affects one or more of the following major areas: (i) Performance; (ii) durability; (iii) reliability, interchangeability or maintainability of the item or its repair parts; (iv) effective use or operation; (v) weight or appearance (where a factor); or (vi) health or safety.

(2) *Minor Nonconformance.* The failure to conform does not adversely affect any of the major areas listed above. However, when several minor nonconformances exist on a single item, a determination will be made as to whether the cumulative effect is, in reality, a major nonconformance.

(b) *Request for Waiver.* A request for acceptance of nonconforming supplies or services which is prepared by a con-

tractor on his own form or letterhead, unless a specific form is designated by contract.

(c) *Waiver.* A written authorization to accept an item which during production or upon being offered to the Government for inspection and acceptance is found to depart from specified requirements, but nevertheless is considered suitable for use "as is."

§ 1214.406–52 Processing of requests for waiver.

The procuring contracting officer (PCO) shall:

(a) Process requests for waiver expeditiously to avoid production delays and possible claims against the Government, and to assure full utilization of the technical information obtained as a result of waivers.

(b) Ascertain whether the contractor's request for waiver was forwarded through the administrative contracting officer (ACO) and includes the ACO's recommendations for approval or disapproval. The PCO must have the ACO's comments and recommendations in order to properly evaluate a request for waiver. Conversely, the ACO must be fully apprised of the request for waiver in order to assure that the contractor has taken action to correct and prevent recurrence of the conditions causing the nonconformance. Therefore, requests for waiver submitted directly to the PCO shall be returned to the contractor for resubmission through the ACO, except in those situations where time is an essential element. In such cases, the ACO's recommendations will be obtained by the most expeditious means available.

(c) Ascertain the supply position of the item and the effect that rejecting the request for waiver will have on the delivery schedule.

(d) Refer the request for wavier to the quality element of the DSC for evaluation and recommendations. The quality element shall serve as the technical support focal point for waiver actions at the DSC's.

(e) Make a determination, based on the above, as to whether the request for waiver should be accepted (if a minor nonconformance), rejected or referred to the appropriate technical activity for concurrence.

(f) Modify those contracts under which nonconforming supplies are accepted to provide for an equitable price reduction or other consideration. In the case of minor nonconformances, the contract shall not be modified except when it appears that the price reduction or other consideration accruing to the Government will exceed the administrative cost to the Government of processing a contract modification (normally $100), or the best interests of the Government otherwise require that the contract be modified.

(g) Consider repetitive requests for waiver as a factor when making determination of a contractor's responsibility.

PART 1215—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart A—Applicability

§ 1215.107 Advance agreements on particular cost items.

(e) The ASPR Committee will cause a master list to be published annually which will contain the names of commercial contractors, nonprofit institutions, and educational organizations operating under negotiated overhead rates (ASPR 3-700) for cost reimbursement type contracts and contractors selected for tri-service departmental negotiation of advance agreements for independent research and development and bid and proposal costs (ASPR 15-107, 15-205.35 and 15-205.3). Interim changes will be published as required and will show only the specific additions, deletions, or changes that have occured.

(f) HQ DLA receives and will retain copies of reports/amendments of negotiated overhead rates and advance agreements for independent research and development, and bid and proposal costs for the entities on this master list. HQ DLA (DLA-PPP) will provide copies to DSCs upon request.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977)

[43 FR 19028, May 3, 1978]

PART 1216—PROCUREMENT FORMS

Subpart A—Forms for Supply and Services Contracts

Sec.

1216.104 Instructions for preparation of forms for advertised and negotiated supply and services contracts (standard forms 33, 26, 30 and 18).
1216.104-1 General.
1216.104-2 Solicitation, offer and award (standard form 33).

Subpart C—Purchase and Delivery Order Forms

1216.350 Blanket purchase agreement delivery ticket (DLA Form 470).
1216.350-1 General.
1216.350-2 Procedure.
1216.350-3 General instructions for preparing the blanket purchase agreement delivery ticket.

Subpart H—Miscellaneous Forms

1216.850 Special quality assurance instructions.
1216.850-1 General.
1216.850-2 Conditions for use.
1216.850-3 Procedures.
1216.850-4 General instructions for preparing DLA Form 677.
1216.851 Request for contract review/approval (DLA Form 677).
1216.851-1 General.
1216.851-2 General instructions for preparation and use of DLA Form 677.
1216.852 Contract file content list (DLA Form 678).
1216.852-1 General.
1216.852-2 General instructions for preparation and use of DLA Form 678.
1216.853 Loan agreement for government property (DLA Form 491).
1216.854 Record of set-aside action (DLA Form 1360).
1216.854-1 General.
1216.854-2 General instructions for preparation and use of DLA Form 1360.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19028, May 3, 1978, unless otherwise noted.

Subpart A—Forms for Supply and Services Contracts

§ 1216.104 Instructions for preparation of forms for advertised and negotiated supply and services contracts (standard forms 33, 26, 30 and 18).

1216.104-1 General.

(a) "Continental United States" is as defined in JCS Pub. 1; i.e., CONUS is limited to the 48 contiguous states and the District of Columbia, and excludes Alaska and Hawaii.

§ 1216.104-2 Solicitation, offer and award (standard form 33).

Instructions for block entries are as follows:

Block Number, Title and/or Instructions

9—Time for receipt of offers. The terms "Standard Time" and "Daylight Savings Time" or abbreviations thereof shall not be used in DLA Solicitations. In lieu thereof, the terms "Local time at the place of bid opening" or "local time at the place where proposals are received" shall be used. The first sentence of Block 9 on the SF 33 (For an IFB would now read as follows: "Sealed offers in original and . . . copies for furnishing the supplies or services described in the schedule will be received at the place specified in Block 8, OR IF HAND CARRIED, IN THE DEPOSITORY LOCATED IN Building 4, 4D175, until 1:00 PM, local time at the place of bid opening, May 25, 1977."

Subpart C—Purchase and Delivery Order Forms

§ 1216-350 Blanket purchase agreement delivery ticket (DLA Form 470).

This form may be used when supplies or servies are procured by means of a blanket purchase agreement (BPA). (See ASPR 3-605.3(f)(vi).)

§ 1216.350-1 General.

The Blanket Purchase Agreement Delivery Ticket is a cut sheet form and

is designed to be used by the vendor as an acknowledgment of a call, notice of shipment, packing list, and invoice. This form eliminates the need for preparations by the contractor of separate forms for these purposes. Also, Government personnel requiring information on these forms will receive it on a standard format.

§ 1216.350-2 Procedure.

A supply of the forms may be provided by the Center to each contractor who has entered into a blanket purchase agreement with the Center. Upon the placing of a call the contractor may be required to complete the BPA delivery ticket based on information contained in the written or oral call in accordance with detailed instructions to be provided by the Center.

§ 1216.350-3 General instructions for preparing the blanket purchase agreement delivery ticket.

After the placing of each call, complete the call, complete the form in accordance with the general instructions below and any specific instructions you may receive with the placing of the call. Entries should be typed.

(a) Block 11. This is the date the supplies are to reach destination, not the date you make shipment. Convert the number of delivery days you offered to an actual date. For example, if you offered a 30 day delivery and received the oral or written call on October 1, enter 10/31/76 as the required date.

(b) Block 12. This is the date the supplies are to be shipped, not delivered.

(c) Blocks 13 through 19. Information for these blocks will be furnished by the Center at the time of the call. Enter the name and address of the consignee in Block 15.

(d) Blocks 21 through 23. Entries in these blocks will be made at the time of shipment. Enter actual date shipped or delivered. No partial shipments to a particular destination may be made. If more than one shipment is made against a call, prepare 2 copies of this form for each shipment. Copies of the shipping documents may be attached as an alternative to completing Blocks 21 and 22.

(e) When using the form as an ACKNOWLEDGMENT OF CALL. Place a check mark on "*" copies of the form in the box "ACKNOWLEDGMENT OF CALL" (Block 9).

(f) When using this form as a NOTICE OF SHIPMENT. Place a check mark in the box "PACKING LIST" (Block 9) on "*" copies of the form in the box "NOTICE OF SHIPMENT" (Block 9).

(g) When using the form as a PACKING LIST. Place a check mark in the box "PACKING LIST" (Block 9) on "*" copies of the reproduced form for each consignee. Be sure Blocks 21 through 23 have been completed, as applicable, on the forms used. Send "*" copies to each consignee by placing copies inside the container or in an envelope attached to the exterior of the container.

(h) When using this form as an INVOICE. At the end of the billing period, fill in "*" copies of the reproduced form which includes the shipment data for all destinations of that call as follows:

(1) Place a check mark in the box marked INVOICE (Block 9) of each copy of the form.

(2) Sign and date Blocks 24 and 25 of the top copy only of the form. If the Blanket Purchase Agreement under which this call was issued does not provide for the fast payment procedure, the top copy must contain the signature and date (Blocks 27A and 27B) of the authorized Government representative receiving and/or accepting for the Government.

"*" The number required shall be in accordance with the needs of the Center.

Subpart H—Miscellaneous Forms

§ 1216.850 Special quality assurance instructions.

§ 1216.850-1 General.

DLA Form 970, Special Inspection Requirements, is designed to be used by the PCO and his quality assurance specialist to inform the inspection activity at source or destination, as appropriate, of pertinent contract requirements, identification of critical

application items if not done so in the contract, special product inspection or verification required, and to provide quality history of the product and contractor (see 1201.903.1(a) and 1214.306(c)). The form also provides the name, address and phone number of the cognizant quality assurance specialist at the DSC.

[44 FR 52199, Sept. 7, 1979]

§ 1216.850-2 Conditions for Use.

DLA Form 970 shall be used on contracts when:

(a) There is unfavorable quality history for the product or the contractor:

(b) Special inspection is required at destination;

(c) It is necessary to identify critical application item or characteristics not so designated in the contract;

(d) The purchase is for a new item or the award is made to a new contractor for which there is no quality history, except when the purchase is made using the Fast Payment procedure.

[44 FR 52199, Sept. 7, 1979]

§ 1216.850-3 Procedures.

Two copies of the completed form will be forwarded to the cognizant inspection activity or attached to inspection element copies of contracts when distributed.

[44 FR 52199, Sept. 7, 1979]

§ 1216.850-4 General instructions for preparing DLA Form 970.

Instructions for block entries are as follows:

Title and/or Instructions

Block No:

8 *Contract Quality/Inspection Requirements*—Identify the contract quality/inspection requirements using DAR 14-301 as a guide.

9 *Certificate of Conformance*—Indicate "Required" when the CoC clause (see 1214.300(c)(1) is included in the contract and it is assigned for destination inspection. Indicate "Optional" when the CoC clause is included in the contract and it is assigned for source inspection.

11 *Authority for Acceptance of Nonconformng Supplies and Services is Withheld in Accordance with DAR 14-406(d).* Use only when PCO retains authority.

12 *Special Contractor Examination and Tests.* Identify any special contractor examinations and tests which would be witnessed or verified. Also, identify any special contractor examinations or tests for which the DSC quality assurance specialist desires to be present.

13 and 13a To inform when and for what purpose DSC technical representatives will participate in the contractor test program (source inspection only).

14 To provide verification test requirements and laboratory address.

15 *Product Quality History.* To provide pertinent information on problems experienced and possible trouble areas.

16 *Contractor Quality History.* To provide a pertinent general summary of contractor's past performance, where the performance may affect the quality of the supplies or services being contracted. Statements which because of their sensitive nature would have to be classified as "For Official Government Use Only" will be avoided. If sensitive data must be provided, a statement to the following effect will be included: "The Government representative should contact the individual shown in Block 18 for specific details relating to the quality history of the contractor."

[44 FR 52199, Sept. 7, 1979]

§ 1216.851 Request for contract review/approval (DLA Form 677).

§ 1216.851-1 General.

DLA Form 677 shall be used as prescribed in § 1201.542-3. Requests for contract review/approval shall be addressed to the attention of DLA-PC.

§ 1216.851-2 General instructions for preparation of DLA form 677.

Instructions for block entries are as follows:

1/1a—Insert the subparagraph number of § 1201.452-2(a) that is applicable to the type of action for which approval is being requested.

Place an "X" in the appropriate block to signify that the proposed action is either a new contract or a modification of an existing contract and, if the latter, the basis for the modification.

2/2a—Insert the date of expiration of the bid or proposal, or the date by which existing contract terms require exercise of the option. If the date entered allows less than thirteen calendar days from date of dispatch of the request (as entered in Block 16a), the request is to be considered a request for expedited review, and the block provided (2a) is to be checked. The reason for requiring expedited review is to be given in Block 14; e.g., explain why an extension of the bid or proposal cannot be obtained or should not be requested. If the date entered allows thirteen calendar days or more, but an expedited review is desired, the same procedure should be followed.

3—Describe the type of contract briefly to identify the terms governing quantity, price and delivery, e.g., Firm Fixed Price (FFP), Requirements—Fixed Price, with EPA (Rqmts—FP w/EPA).

4/4a/4b/4c—If more than one CLIN is applicable because of different destinations (FOB destination), cite total quantity and give the unit price range. If both fob origin and fob destination prices are applicable, give the total quantity applicable to each, with the applicable prices/price ranges. When services are described, include the location of performance and the period during which services will be performed.

5/5a/5b—Check the applicable block to indicate whether the authority for purchase is a Center generated purchase request (PR) or a service generated military interdepartmental purchase request (MIPR). IOM's requesting establishment of requirement contracts are to be considered as PRs. Requests for procurement action by a military service on other than the prescribed MIPR form are to be considered as MIPRs. The receipt dates desired in 5a and 5b are: (a) for PRs the date of receipt in Procurement; (b) for MIPRs the date of receipt in the Center.

6a/6b/6c—Solicitation number(s) and amendment number(s) are to be listed, with issue and opening/closing dates applicable.

7/7a/8—Self-explanatory.

9/9a/9b—If the action proposed is on a definite quantity, firm fixed price basis, check "actual". For all other types, check "estimate". The total dollar value to be entered is that shown on the face of the proposed contract as the total amount, or total estimated amount of the action. If the action is a modification, only the amount, actual or estimated, of the modification is to be entered. Under 9b give the fixed dollar amount to be obligated by the contract execution for which funds have been committed.

9c/9d—If Government facilities are to be provided under the contract, check the GFP block. If facilities are being furnished rent free, insert "Rent Free" in lieu of dollar value. If facilities are being furnished on a rental basis, give the anticipated dollar amount of rental based on the proposed contract delivery schedule. If material is to be furnished, check the GFM block. If the material is being furnished by the bailment method, give the total estimated value of the material included in the total contract price. If GFM is not being provided by the bailment method, insert "N/A" in block 9d.

10—For Small Business Restricted Advertising, check negotiated, insert the applicable authority and add "SBRA". For options, enter the information applicable to the basic contract.

11—If option is to a service contract to be extended without change in quantity of work covered, insert N/A after maximum %.

12a/12b—In block 12a, include the number of concerns to whom solicitations were sent as the result of individual requests, after issuance of the initial solicitation. Note that 12b requires the number of responsive bids/proposals.

13a/13b—Self-explanatory.

13c/13d—The price analysis, whether prepared by the cost and pricing element or by the contracting element, will be inserted under TAB 22 of the contract file and will include (i) the quantities, unit prices, fob points of preceding procurements (at least two); (ii) the basis for determining price reasonableness on the preceding procurements listed; and (iii) the increase/decrease in prices of the proposed contract as compared to the preceding procurements. The percentage relationship of the proposed price to the immediately preceding procurement will be shown in Block 13d. If the procurement is the first by DLA and information on prior procurements is not obtainable, a brief description of the efforts made to obtain prior procurement information will be included in Remarks (Block 14) and any back-up documentation included under TAB 22.

14-16—Self-explanatory.

17—Enclosure blocks to the DLA 677 have been prechecked. The contract file forwarded will contain all documents/papers which comprise the official contract file up to the date of the request, HQ DLA will review on the basis that there are no other applicable documents to be added to the official contract folder, unless the DLA Form 677 (Remarks Block 14) indicates that additional documentation is being obtained. The HQ DLA file copy to be provided is to contain the following: (A complete duplicate file *will not be provided.*).

(a) A copy of the DLA Form 677 request to include the names of signatures to the request, and the dates of the signatures.

(b) A copy of the DLA Form 678 which is *identical* to that in the contract file.

(c) A COMPLETE copy of the proposed contract, modification. When the request covers a proposed contract modification to a contract (or modification) which has been previously reviewed and approved by HQ DLA, the basic contract, or previously approved modification need not be provided; however, any modifications made subsequent to the last HQ DLA review will be included.

(d) When applicable, a copy of the determination and findings authorizing negotiation.

(e) A copy of the price analysis/contracting officer's determination of price reasonableness and, where applicable, a copy of the record of prenegotiation review and the price negotiation memorandum. Should any of these documents refer to other documents in the official contract file for detail information, or depend on such documentation as the source of information a copy of those documents will also be included (this includes DCAS/DCAA reports, and preaward survey reports if applicable).

General

1. Should the space allotted on the DLA Form 677 be insufficient, the additional information is to be included on a plain sheet of paper identified as Sheet Nr.2, etc., to DLA 677, Contract Nr. (as shown under Block Nr. 8). The total number of pages will be shown in the space provided at the bottom of DLA Form 677.

2. The reverse of DLA Form 677 will be used both for replies to requests for preaward approvals (Section I) and to return contract files submitted as requested for post award review (Section II). When a post award review has been made, remarks previously furnished by separate letter will be included in the "Remarks" space on the DLA Form 677 reverse.

§ 1216.852 Contract file content list (DLA Form 678).

§ 1216.852-1 General.

DLA Form 678 shall be used as prescribed in § 1201.452-3.

§ 1216.852-2 General instructions for preparation and use of DLA Form 678.

(a) *Filing Instructions.*

(1) Contract file sections will be identified by inclusion of a divider annotated with the Section Identification and Title, e.g., "Section A—Planning and Solicitation." Sections A and

B will be filed on the *left* side of the file folder with Section A on the *bottom.* Sections C and D will be filed on the *right* side of the file folder with Section C on the *bottom.*

(2) The lowest numbered TAB within each Section will be placed at the *bottom* of that Section. When multiple documents are present under a number TAB, i.e., correspondence, memoranda, etc., they will be filed chronologically with the *most recent* document on top.

(3) It is impossible to enumerate all of the factors or conditions which may require specific documentation over and above that normally required. Therefore, as circumstances dictate, contracting officers will describe, under the appropriate "blank" TAB Nos., e.g., Nos. 14-17; 29-32, etc., such documentation as may be peculiar to the procurement involved and file same in the analagous contract file section.

(b) *Contract Documentation.* (1) The documents identified on DLA Form 678 are those which are normally required to support an advertised/negotiated procurement action, other than a small purchase. The file sections provided establish the logical procurement cycle sequence of documentation. The completed file will constitute a complete chronological history of the transaction and permit ready reconstruction of the actions taken in processing the procurement.

(2) The following sections discuss those elements of contract documentation which merit special attention and indicate documentation requirements which are most frequently "overlooked":

(i) Section A—*Planning and Solicitation:*

(A) *Tab No. 1 PR/MIPR.* The contract file must reflect the manner and extent to which the needs of the requiring activity have been met. It is essential, therefore, that in addition to the basic purchase authority, any changes and justification therefor be included under this Tab. In the case of amendments, the basis for change must be evidenced, e.g., in those instances where items on the purchase request have been completely lined out or quantities changed, indication *must* be made of the identity or authority of the individual or activity which requested/authorized the change. In other instances where contracts have been issued calling for something other than that specified on the PR/MIPR explanation must be included as to the authority/approval for the change and from whom received. Memoranda must adequately identify individuals referred to in memoranda, e.g., statements such as "this was discussed with and concurred in by Mr. Smith in Supply" are inadequate. An individual's full name, title or position and his relationship to the subject matter of the memorandum must be clearly established; this is of particular importance should post award questions arise. Requirements should be revalidated in those instances where excessive time has elapsed between the issuance of the Purchase Directive and consummation of the contract.

(B) *Tab No. 2 Specification/Drawing.* These documents in many instances either dictate source selection or indicate to the contracting officer the extent of possible competition. Any change either prior or subsequent to solicitation may affect final source selection. When such changes are effected, explanatory memorandum (or actual documentation supporting the change) must be included in the file indicating as a minimum (*1*) the basis and authority for initiating specification/drawing change (*2*) coordination received from appropriate technical personnel and (*3*) approval/concurrence of the requiring activity. When specification/drawing changes are initiated/confirmed by the requiring agency on a PR/MIPR amendment, the documentation should be included in Tab No. 1 with an annotation in Tab No. 2 identifying the amendment number.

(C) *Tab No. 3 Procurement Plan (1201.2100-1).* The Procurement Plan will include, as a minimum, the information included in § 1201.2102. The use of preprinted forms for this purpose is acceptable.

(D) *Tab No. 4 Determination and Findings (Authority to Negotiate).* The determination to negotiate is governed by specific facts inherent in a pro-

posed procurement; the D&F must include those facts which will clearly and convincingly establish that the use of formal advertising would not be practical. The information provided must be *explicit, current* (revised in those instances where requirements have changed subsequent to issuance of the initial D&F) and *accurate* as to (i) format (ASPR, Appendix J, Part 503, (ii) citation of appropriate negotiation authority ASPR 3-201 through 3-217), (iii) estimated dollar amount, including where applicable, the value of proposed option quantities and (iv) appropriate signatory authority and date. Each D&F must reflect the circumstances peculiar to the instant procurement. The use of previous D&Fs as a "model" often results in inaccuracies and the necessity to reaccomplish the D&F.

(E) *Tab No. 5 Nonpersonal Services Determination.* A statement by the contracting officer that the services proposed for procurement have been determined to be nonpersonal in nature is *not* sufficient to meet the requirements of ASPR 22-102.4. Such determination must include the reasons and *all* of the facts which were deemed to substantiate the nonpersonal aspect of the services; examples of criteria for characterizing services as nonpersonal rather than personal are set forth in ASPR 22-102.3.

(F) *Tab No. 6 DOL Wage Determination.* Department of Labor Wage Determinations are normally effective for a period of 120 days after issuance and *must* be in effect at the time of solicitation and at the time of award. When it is necessary to obtain extensions on determinations in order to carry them through the period until award is to be made, the documentation authorizing such extension by the Department of Labor must be included under this Tab.

(G) *Tab No. 7 Small Business/Labor Area Determination.* The determinations required under ASPR 1-706 and 1-804.1 must be accurate and complete insofar as the reason given for not having a small business or labor surplus area set aside. Statements such as "a set-aside was not considered because of insufficent quantity" must be supported. Statements such as "no known source located in labor surplus area" must be based on historical and current facts. The information included in this determination must accurately reflect the consideration given to compliance with ASPR 1-706.1 and 1-804.1; the information included therein imposes, in turn, a responsibility to make a realistic evaluation of requirements and a current review of possible sources to substantiate the information used in determining the proposed procurement method.

(H) *Tab No. 10 Source List.* The list of sources initially solicited *and* those to whom solicitations were subsequently issued as a result of requests are to be included; in the latter case, the date requested solicitation was issued will be indicated. Where it is *clear* that a single source of supply exists, the reason for soliciting any additional firms will be included under this Tab.

(I) *Tab No. 13 IFB/RFP & Amendment.* The contract file must include the solicitation document and, as applicable, any amendments thereto. With respect to the latter, it is of utmost importance that amendments accurately reflect their issuance date. Inclusion of this date in Block 2, "Effective Date" of Standard Form 30 is extremely important if for no other reason than to preclude any controversies which might arise as to whether offerors were provided sufficient time to respond to the amendment. In case of oral solicitations, the requirements of ASPR 3-501(d)(ii) must be satisfied, i.e., with documentation supporting the fact that use of oral solicitation had been approved at a level higher than the contracting officer. As the use of oral solicitation requires careful monitoring, such documentation is extremely important.

(ii) *Section B—Preaward Support Data:*

(A) *Tab No. 18 Abstract of Bid Proposal.* Generally, abstracts on formally advertised solicitation are found to be complete and accurate. The same care must be taken in the preparation of an abstract on negotiated procurements, i.e., any conditions of the offers which are related to their evaluation must be included on the abstract; if lengthy, the "Remarks" column should be an-

notated with information indicating the location in the offer of the condition, e.g., "See page ——— of the proposal for exception to specification."

(B) *Tab No. 19 Packaging/Transportation/Freight Rate Data.* Inclusion of Transportation/Freight Rate Data, normally provided the contracting officer by the Center transportation activity, is essential as it enables a ready means of determining the manner in which transportation costs were applied in arriving at the evaluated prices. Files must also include sufficient information to substantiate the equitability of packaging costs. Statements in the price analysis or PNM indicating that a price increase is not unreasonable because the contracting officer has found it to be "attributable to the requirement for Government specification pack in lieu of normal commercial pack" must be supported, i.e., must indicate what the differential is and that technical personnel have, in fact, reviewed the costs associated with Government packaging requirements versus commercial packaging to arrive at figures which support the price reasonableness conclusion.

(C) *Tab No. 20 Cost/Pricing Data.* All cost or pricing data received from the offeror in support of his proposal is to be included under this Tab. If any *data* should be included in correspondence dealing with other matters which are pertinent to the final contract, e.g., delivery schedule, contract clauses, etc., the original correspondence will be filed under this Tab and a cross reference (or copy of such correspondence) placed in Tab No. 44. Submission/acceptance of inadequate or incomplete cost or pricing data is a recurring problem. To establish completeness, each data element must be identified as to (*1*) what it is, (*2*) where it is, (*3*) what it represents and (*4*) how it was used. A *fully completed "Reference"* column on the DD Form 633 is the key to these four points. If the data are not complete, that required must be obtained from the offeror; it is neither the responsibility of DCAS or the auditor to obtain the data. The review of data for adequacy and any requirement placed on the contractor to submit additional data required must be made *prior* to forwarding request to DCAS for audit. In those instances where time is of the essence, it is permissible to request the contractor to submit copies of any additional data direct to the cognizant DCAS/DCAA activity; the original of such documents to be provided the purchasing activity. Immediately upon receipt of such additional required data, it must be reviewed to assure it is adequate. The cost/price analysis element is charged with responsibility for determining the adequacy of data received; however, the final responsibility rests with the contracting officer.

(D) *Tab No. 21 Field Pricing Report/Waiver.* When field pricing support is requested from the cognizant contract administration services activity pursuant to ASPR 3-801.5, the report obtained, together with any attached assist reports will be included under this Tab. If the authority contained in ASPR 3-801.5 to waive field pricing support is exercised by the contracting officer, his determination and the supporting available information on which the determination is based will be included, e.g., should part of the available information include a recent, prior field pricing support report, a copy of the prior field pricing support report will be included.

(E) *Tab No. 25 Certificate of Current Cost/Pricing Data.* Often a contractor will provide a Certificate of Current Cost or Pricing Data at the close of the negotiation session and will subsequently confirm, by letter, details of the agreements reached. In some instances, the confirming letter will include data which although previously discussed and accepted, have not previously been presented in writing. In such cases, the Certificate of Current Cost of Pricing Data presented at the close of negotiations becomes invalid; a new Certificate must be obtained to reflect the contractor's last data submission upon which the final price agreement was concluded.

(F) *Tab No. 26 Government Facilities Use Approval.* ASPR 13-402 requires a determination that the Government will receive adequate compensation for the contractor's use of Government property through reduced costs or otherwise. This determination is mandatory to support a proposal to

provide a contractor with Government facilities.

(G) *Tab No. 29.* This tab will be used to incorporate, when applicable, information received from a cognizant ACO relative to the acceptability of the contractor's Disclosure Statement when the firm has indicated submission of same under ASPR clause 7-2003.67 of the contract schedule.

(iii) *Section C—Other Support Data:*

(A) *Tab No. 34 Unsuccessful Bid/Proposal.* Required under this Tab along with the unsuccessful bid/proposal itself, is the notification to the offerors (either that already issued or that proposed to be issued) that bids/offers were unacceptable and the reasons therefor.

(B) *Tab No. 36 Determination of Late/Bid Proposal.* All actions taken in accordance with the procedures prescribed under ASPR 2-303 and 3-506 will be included under this Tab.

§ 1216.853 Loan agreement for Government property (DLA Form 491).

DLA Form 491 is authorized for use in lending Government-owned property to prospective bidders or offerors in accordance with § 1250.101.

§ 1216.854 Record of set-aside action (DLA Form 1360).

§ 1216.854-1 General.

DLA Form 1360 shall be used as prescribed in § 1201.706-1.

§ 1216.854-2 General instructions for preparation of DLA Form 1360.

The header portion of this form includes check-off boxes within the block, "Type of Action." The appropriate box should be checked off to indicate whether action contemplates an initial set-aside determination; modification of an existing determination; or withdrawal of an existing determination. The remaining blocks within the header portion of the form are self-explanatory. Instructions for section/item/block entries are as follows:

Section, Item/Block Number, and Instructions

Section I, Item 1—Enter date bids/offers were opened on last procurement.

Section I, Item 1a—Enter total numbers of bids received on most recent procurement, broken out by bidder preference status or other status in the blocks provided; i.e., small business concerns which are also LSA concerns; small business concerns which are not LSA concerns; or large business concerns which are either LSA qualified or are not LSA qualified.

Section I, Item 1b—Enter numbers of bids/offers received on the most recent procurement which were determined to have fallen within a competitive price range. Breakout by bidder preference status or other status, as appropriate.

Section I, Item 2—Enter numbers of firms to be solicited on current procurement (through review of bidders lists and/or personal contracts). Breakout by bidder preference status or other status.

Section II—Self-explanatory.

Section III—Use in conjunction with remarks block to support unrestricted procurement or the use of a lower priority set-aside in accordance with the order of preference set forth in ASPR 1-706.1. Individual check-off items are self-explanatory.

Sections IV and V—Self-explanatory.

PART 1217—EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE

Subpart B—Requests for Contractual Adjustment

Sec.

1217.201 Authority of the Director, DLA.
1217.203 Authority of other officers and officials.
1217.207 Submission of requests by contractors.
1217.207-3 Records.
1217.208 Processing cases.
1217.208-2 Disposition below secretarial level.
1217.208-3 Submission of cases to the Contract Adjustment Board.
1217.208-5 Maintenance of records.
1217.208-6 Interdepartmental coordination.

Subpart C—Residual Powers

1217.301 Delegation of authority.
1217.304 Maintenance of records.

Subpart D—Records of Requests and Dispositions

Sec.
1217.403 Sample format for preliminary and final records.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19033, May 3, 1978, unless otherwise noted.

Subpart B—Requests for Contractual Adjustment

§ 1217.201 Authority of the Director, DLA.

Authority vested in the Director under ASPR 17-201(b) has been delegated to Counsel and Assistant Counsel, DLA.

§ 1217.203 Authority of other officers and officials.

The authority in ASPR 17-203(a) (i) and (ii) has been delegated to HPAs. This authority may be redelegated only to a staff official reporting directly to the HPA. Two copies of any redelegation shall be furnished the Counsel, DLA, one copy of which will be transmitted to the Office, Secretary of Defense (ODDR&E).

§ 1217.207 Submission of requests by contractors.

§ 1217.207-3 Records.

Records required by ASPR 17-207.3 shall be forwarded to the Counsel, DLA.

§ 1217.208 Processing cases.

§ 1217.208-2 Disposition below secretarial level.

The documents required by ASPR 17-208.2(b) shall be forwarded to the Counsel, DLA. When a procuring activity denies a request, a copy of the letter of explanation to the contractor shall be included.

§ 1217.208-3 Submission of cases to the Contract Adjustment Board.

Cases not within the approval authority of HPAs and any doubtful or unusual cases shall be forwarded to Counsel, DLA, for further processing. The forwarding letter shall contain the information and evidentiary materials outlined in ASPR 17-208.3.

§ 1217.208-5 Maintenance of records.

The records required by ASPR 17-207.3, 17-208.2(b) and 17-208.4(a) and (b) shall be maintained by the Counsel, DLA.

§ 1217.208-6 Interdepartmental coordination.

The procuring activity responsible for processing a contractor's request for contractual adjustment shall be responsible for establishing liaison and joint action with other Military Departments and other departments and agencies of the Government, except that the Counsel, DLA, shall have such responsibility after any case is forwarded for further processing.

Subpart C—Residual Powers

§ 1217.301 Delegation of authority.

Authority vested in the Director under ASPR 17-201 has been delegated to Counsel and Assistant Counsel, DLA.

§ 1217.304 Maintenance of records.

Counsel, DLA, shall be responsible for maintaining the records required by ASPR 17-303(b) (RCS DD-I&L(A)597).

Subpart D—Records of Requests and Dispositions

§ 1217.403 Sample format for preliminary and final records.

Record of the field activity responsible for the case when submitting preliminary and final records described in ASPR 17-401 and 402.

PART 1219—TRANSPORTATION

Subpart A—Introduction

Sec.
1219.104 F.O.B. point.
1219.104-2 Determination of F.O.B. terms of procurement of items originating in the continental United States.

Subpart B—Planning and Solicitation

Sec.
1219.213 Shipments to ports.
1219.213-50 Designation of ports for bid evaluation.

Subpart C—Evaluation of Bids and Proposals

1219.301 Transportation rates and related costs to be used.
1219.301-1 General.
1219.301-50 Port handling and ocean costs in bid evaluation.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19033, May 3, 1978, unless otherwise noted.

Subpart A—Introduction

§ 1219.104 F.O.B. point.

§ 1219.104-2 Determination of f.o.b. terms of procurement of items originating in the Continental United States.

Each requirement considered for purchase of an f.o.b. destination only basis under the authority of ASPR 19-104.2(d)(1)(VI) shall be considered on its own merits. If it is decided to effect purchases on an f.o.b. destination only basis, the contract file shall be documented to reflect the basis on which the decision was reached.

Subpart B—Planning and Solicitation

§ 1219.213 Shipments to ports.

§ 1219.213-50 Designation of ports for bid evaluation.

When a contract will not generate any shipments destined overseas for which an Export Release is required (less than 10,000 lb., etc., Military Traffic Management Regulation paragraph 20205), offers shall be solicited only f.o.b. appropriate ports published in Appendix G of DOD Regulation 4500.32-R (MILSTAMP). The supporting provision in ASPR 7-2003.20 shall be included in the solicitation and be modified to:

(a) Delete paragraph B pertaining to f.o.b. origin basis;

(b) Delete the following from paragraph C(2) "Unless bids (or offers) are applicable only to f.o.b. origin delivery under Government bills of lading (see B above)";

(c) Include the applicable port handling and ocean charges adjacent to the port(s) listed in paragraph D; and

(d) Delete paragraph E pertaining to ports nominated by bidder (offeror).

Subpart C—Evaluation of Bids and Proposals

§ 1219.301 Transportation rates and related costs to be used.

§ 1219.301-1 General.

§ 1219.301-50 Port handling and ocean costs in bid evaluation.

Those port handling and ocean charges available at time of issuance of a solicitation shall be published in those solicitations for the procurement of supplies for overseas shipment. The provision set forth below, advising that these charges are tentative and not necessarily those that will be used in the evaluation, shall also be included in the solicitation, just below any charges published. This provision will preclude the need for extension of opening dates or cancellation of solicitations and will still permit award to that bidder who is, in fact, low at time of bid opening as a result of any change in charges after issuance of the solicitation.

PORT HANDLING AND OCEAN COSTS IN BID EVALUATION (DLA APR 1975)

The above tentative port handling and ocean freight charges are set forth for the information of offerors. In evaluating offers received in response to this solicitation, the Government will utilize those charges which are on file as of the date of bid opening (or closing time specified for receipt of proposals) and effective for the date of expected initial shipment. A list of port handling and ocean freight charges actually used in evaluation, if substituted for any listed above, will be furnished interested offerors upon request.

PART 1220—ADMINISTRATIVE MATTERS

Subpart B—Uniform Procurement Instrument Identification Numbers

Sec.
1220.203 Uniform procurement instrument identification numbers.
1220.203-1 Elements of number.
1220.204 Supplementary procurement instrument identification numbers.
1220.204-50 First delivery orders against indefinite delivery type contracts.

Subpart G—Assignment of Contract Administration

1220.703 Retention of contract administration by the purchasing office.
1220.703-50 Criteria for evaluating the need for field contract administration services.
1220.703-51 Need for extraordinary contracting officer communication to field CAS activities.
1220.703-52 Assignment of contracts or orders originally retained.
1220.703-53 DCAS support for subcontracting programs when administration is retained by the buying activity.
1220.704 Delegation of optional contract administration functions.
1220.706 Designation of the disbursing office.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19034, May 3, 1978, unless otherwise noted.

Subpart B—Uniform Procurement Instrument Identification Numbers

§ 1220.203 Uniform procurement instrument identification numbers.

§ 1220.203-1 Elements of number.

(a) The letter Y in the ninth position of the basic PII number is reserved to identify imprest fund orders posted to the Standard Automated Materiel Management System (SAMMS) or other DLA automated systems.

§ 1220.204 Supplementary procurement instrument identification numbers.

§ 1220.204-50 First delivery orders against indefinite delivery type contracts.

A delivery order number shall be established for the first order quantity by issuing a separate DD Form 1155. Where it is necessary to order an initial quantity at the time of establishing an indefinite delivery type contract such as when using the incremental purchasing system, the DD Form 1155 should be issued concurrently and be cross-referenced with the indefinite delivery type contract.

Subpart G—Assignment of Contract Administration

§ 1220.703 Retention of contract administration by the purchasing office.

§ 1220.703-50 Criteria for evaluating the need for field contract administration services.

Although the need for quality source inspection is the predominant reason DLA contracts and orders are assigned for field contract administration services (CAS), Contracting Officers shall also consider the existence of the following criteria when determining the need for field assignment of new awards:

(a) *Complexity of Procurement.* When unique or special contract clauses apply in the instant procurement and it may be expected that significant post-award involvement will occur. Some examples are: MIL SPECs, FED SPECs, First Article, Premium Pay, Economic Price Adjustments, Liquidated Damages, FMS/Export Requirements, Canadian firms, etc.

(b) *Supply Criticality.* When the urgency of a requirement is classified as a UMMIPS priority 01 through 06, or when the item(s) being procured significantly impact the DSCs' supply availability rate. These conditions would indicate that intensified contract management can be anticipated.

(c) *Pre-Award Surveys (PAS).* When a PAS indicates possible problem areas; e.g., financial, production, capacity, or technical capability.

80-109 O—81——10

(d) *Previous Contractor Performance.* When data provided by the F–42, Contractor Performance Summary Report, F–38, Contract Delinquency Report, or other internal information indicates potential delivery or quality problems are likely to cause a need for intensified post-award contract management.

(e) *Low Dollar Value Commercial Item Exception.* Contracting Officers normally will not assign orders for field administration if they are for commercial items and are under $100 in total value.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301–2314; DoD Directive 5105.22, June 8, 1978)
[44 FR 27100, May 9, 1979]

§ 1220.703–51 Need for extraordinary contracting officer communication to field CAS activities.

When, in the Contracting Officer's judgment, a contract or order requires special attention by a field CAS activity that cannot be adequately conveyed by a criticality designator, this need will be communicated in writing. Drawing the attention of field CAS activities to special Contracting Officer area(s) of concern should normally be accomplished during this assignment process or as soon as possible thereafter.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301–2314; DoD Directive 5105.22, June 8, 1978)
[44 FR 27100, May 9, 1979]

§ 1220.703–52 Assignment of contracts or orders originally retained.

If the Contracting Officer retains administration of a contract or order and a need subsequently arises to delegate any aspect of contract administration to a CAO, the contract or order shall be assigned for performance of all contract administration functions when the need is recognized.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301–2314; DoD Directive 5105.22, June 8, 1978)
[44 FR 27100, May 9, 1979]

§ 1220.703–53 DCAS support for subcontracting programs when administration is retained by the buying activity.

"When contracts containing the small business, labor surplus area, or disadvantaged small business subcontracting clauses are retained for contract administration by the buying activity, the PCO will request support from the appropriate DCAS office to administer the programs imposed by these clauses. Section C of these contracts will contain a statement substantially as follows: "The Small Business, Labor Surplus Area, and Minority Business Enterprise Subcontracting Program clauses in this contract will be administered by the cognizant Defense Contract Administration Services Office." (Note: Assignment for supporting administration will be made to the DCAS office cognizant of the geographical area in which the contractor is located). Three copies of the contract shall be forwarded to the appropriate DCAS office with a request for supporting contract administration of these clauses in accordance with DAR 20–703.2. The DCAS office will monitor the prime contractor's small business, labor surplus area, and minority business enterprise subcontracting programs and accomplish the periodic reviews required by DAR 1–406(c)(1).

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301–2314; DoD Directive 5105.22, June 8, 1978)
[44 FR 27100, May 9, 1979]

§ 1220.704 Delegation of optional contract administration functions.

When assignments are made to a field Contract Administration Office (CAO) under provisions of 20–703.50 of either contracts and orders subject to a Master Solicitation Agreement or of large purchase awards, which are not subject to a Master Solicitation Agreement, the following additional, optional functions should be delegated:

Administrative Changes—Modification for minor corrections (e.g., typographical errors, incorrect name and address, wrong computations not requiring additional funds, errors/omissions pertaining to Accounting Classification Reference Number (ACRN), Facility Codes, or DoD Activity Address Directory (DoDAAD) Codes).

Cancellations—Modifications to cancel CLINs not shipped, when requested by the PCO.

Diversions—Modifications effecting diversion when notice from the PCO provides new shipping instructions.

Excusable Delays (e.g., strikes, floods, etc.)—Modifications to extend delivery date when delinquencies will result because of excusable delays.

Nonexcusable Delays—Modifications, to revise delivery time up to 90 days, issued for consideration

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)
[44 FR 27100, May 9, 1979]

§ 1220.706 Designation of the disbursing office.

(b) All contracts assigned to a Service Plant Cognizance Representative for administration shall designate the disbursing office supporting the purchasing office as disbursing office for the contract except for contracts resulting from MIPRs, which will cite the disbursing office in accordance with DLAR 4115.3, paragraph VI A 13.

PART 1221—PROCUREMENT MANAGEMENT REPORTING SYSTEM

Subpart A—Individual Procurement Action Report (DD Form 350)

Sec.

1221.102 Applicability and coverage.
1221.103 Due date and distribution.
1221.106 Item 1B, (No title).
1221.108 Item 2, contract number.
1221.117 Item 10B, system or equipment code.
1221.119 Item 11, description of commodity or service.
1221.120 Item 12, coordinated procurement.
1221.123 Item 15, contract placement.
1221.125 Item 17, negotiated under 10 U.S.C. 2304(a) exception.
1221.126 Item 18, extent of competition in negotiation.
1221.130 Item 22, date of this action.
1221.131 Item 23, estimated completion date.

Subpart B—Monthly Procurement Summary (DD Form 1057)

1221.201 Applicability and coverage.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19034, May 3, 1978, unless otherwise noted.

Subpart A—Individual Procurement Action Report (DD Form 350)

§ 1221.102 Applicability and coverage.

(a) To assure that the procurement statistics prepared at HQ DLA, and furnished to the Office of the Secretary of Defense, correspond with the data of the reporting activities, each purchasing office shall furnish HQ DLA, ATTN: DLA-PA, within one day following the close of each month, with the first and last report number of the DD Forms 350 that were issued in the preceding month's report period, listing any exceptions to the consecutive numbering pattern. In addition, furnish the total dollar value involved in these DD Forms 350.

(b) Each item on the DD Form 350 shall contain only one entry.

§ 1221.103 Due date and distribution.

The DLA Form 556 must be submitted so as to reach HQ DLA within 3 workdays following the end of each month. To meet this due date, the cutoff for the DLA Form 556 shall be the 25th calendar day of the month being reported on. RCS DD-I&L (M) 1014 applies to this report.

§ 1221.106 Item 1B, (No title).

Leave blank

§ 1221.108 Item 2, contract number.

(a) *Sub-Item A. Dept.* Enter the alphabetic characters in the contract number which denote the Department or Agency executing the contract as follows:

(1) For departments within DOD, enter—DLA(S) for Defense Logistics Agency, DA(A) for Army, (N) for Navy, (F) for Air Force, and (D) for all other Defense Agencies.

(2) For orders under contracts awarded by General Services Administration (Federal Supply Schedule contracts) enter GS(G), and for orders under contracts awarded by the Government Printing Office enter GP(P). Enter five zeros in Sub-Item B.

(3) For orders covering purchases from other Federal agencies (see ASPR 21-108(a)(iii)), enter X in parentheses. Enter five zeros in Sub-Item B.

§ 1221.117 Item 10B, system or equipment code.

Not applicable to DLA. Leave blank.

§ 1221.119 Item 11, description of commodity or service.

In addition to or as a part of the regular item description, place in parentheses an abbreviated description which must not exceed 10 typewritten characters, including spaces but omitting punctuation marks, e.g., Pallet Aircraft, Cargo HCU-6/S (Pallet), Coal, Bituminous (Coal Bitum), Yellow Fever Vaccine (Y1 Fev Vac), Tetanus and Diphtheria Toxoids (Toxoid TD), Handbag, Women's, Brown, Calfskin (Handbag Wmn), (Fuel Oil).

If action involves more than one item, enter in Item 11 the one having the greatest dollar value. Additional items may be entered on the reverse side of the form; abbreviated descriptions are not required for these additional items.

§ 1221.120 Item 12, coordinated procurement.

Codes 3 and 6 are the only codes applicable to DLA.

§ 1221.123 Item 15, contract placement.

(f) *Code J. Military Assistance Sales.* The ASPR instruction for separate reporting where a single action is partly for Military Assistance Sales applies only when each of the individual parts exceeds $10,000. If one or both of the parts are less than $10,000 but the sum of both parts is more than $10,000, the total shall be reported as one action on a single DD Form 350, and reporting based on the part of the action that involves the greatest dollar value.

§ 1221.125 Item 17, negotiated under 10 U.S.C. 2304(a) exception.

Enter code as follows: For codes 1A through 1E, enter as 01A0 through 01E0; For codes 2 through 9, enter as 0200 through 0900; For codes 10-1 through 10-9, enter as 1001 through 1009; For codes 11 through 16 and 17A and 17B, enter as 1100 through 1600; 17A0 and 17B0.

§ 1221.126 Item 18, extent of competition in negotiation.

When the exemption of ASPR 3-1204(a)(ii) applies, the contract award shall be reported as having been made on the basis of adequate price competition.

§ 1221.130 Item 22, date of this action.

Enter this following alphabetical code for the month: A-Jan; B-Feb; C-Mar; D-Apr; E-May; F-Jun; G-Jul; H-Aug; I-Sept; J-Oct; K-Nov; and L-Dec. For example: Date of this Action: 77/G/5 for 5 July 1977.

§ 1221.131 Item 23, estimated completion date.

Same as 21-130 above. For example: Estimated Completion Date: 77B for February 1977.

Subpart B—Monthly Procurement Summary (DD Form 1057)

§ 1221.201 Applicability and coverage.

Defense Personnel Support Center Defense Subsistence Regions shall submit separate DD Forms 1057 for perishable and nonperishable subsistence activity. RCS DD-DRE(M) 1015 applies.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[43 FR 19034, May 3, 1978, as amended at 44 FR 27100, May 9, 1979]

PART 1225—PRODUCTION SURVEILLANCE AND REPORTING

Subpart A—Production Surveillance

Sec.

1225.103 Assignment of critically designator by purchasing office.
1225.103-50 Criticality designator "A".

Subpart B—Production Reporting

1225.202 Production progress reporting by contractors.
1225.204 Special production progress reports.
1225.204-50 Contract acceleration/status requests.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19035, May 3, 1978, unless otherwise noted.

Subpart A—Production Surveillance

§ 1225.103 Assignment of criticality designator by purchasing office.

General criteria for designator assignments are included in ASPR 25-103. The lowest Surveillance Criticality Designator consistent with Government requirements shall be assigned. The increased flexibility provided to the Defense Supply Centers (DSCs) in the assignment of Surveillance Criticality Designators is not to be misused. Misuse will create an overall degradation of the production support provided, rather than an improvement.

§ 1225.103-50 Criticality designator "A".

Criteria for Contracts/Purchase Orders in support of a Department of Defense (DOD) or Military Service Directed Critical Program.

(a) Items in direct support of the DOD Master Urgency List (MUL), DX rated contracts (BRICK-BAT 01).

(b) Items or programs designated critical by Departmental Headquarters or HQ DLA.

(c) Items in support of programs designated in writing as critical by DSC Commander.

Subpart B—Production Reporting

§ 1225.202 Production progress reporting by contractors.

The requirement for Production Progress Reports (DD Form 375) will be limited to the following and then only when circumstances make such reporting appropriate:

(a) Items required to satisfy requisitions bearing UMMIPS priority 01 through 06.

(b) Items that have been designated by the DSC Commanders as being in a critical supply position.

(c) Items on the DOD, Military Service, or DLA critical list.

(d) Items in direct support of the DOD MUL categories.

(e) Items which require Material Readiness Studies under DLAR 4140.3.

(f) Contractors on the Military Services Contractor Experience Lists.

(g) When requested by the DOD Project Manager.

§ 1225.204 Special production progress reports.

§ 1225.204-50 Contract acceleration/status requests.

As a general policy, the Directorates of Procurement and Production (D/PP) will initate contract acceleration/status requests to contractors and DCAS activities as appropriate. However, to facilitate the handling of special emphasis and high priority items, Centers may, at their option, establish local procedures which will permit the Directorate of Supply Operations (D/SO) to initiate contract acceleration/status requests to DCAS activities. Those Centers using this option must assure that local procedures are jointly developed by the D/PPs and D/SOs and contain the following controls and provisions:

(a) Strong prohibitions against Center D/SO personnel contacting contractors directly.

(b) Strict controls to preclude identical requests for the same item being sent by D/O and D/PP to DCAS activities.

(c) A procedure whereby information obtained by the D/SO from DCAS is fed to the D/PP for updating the active contract file.

(d) In accordance with the intent of ASPR 20-801(a), direct communications between D/SO personnel and DCAS offices shall normally be by letter or message. Under the most urgent of circumstances (UMMIPS priorities 01s thru 03s), telephone requests for acceleration/status are permitted after the D/SO determines that the D/PP is not working the same items. D/SO telephone requests for contract acceleration will be immediately followed by confirming documentation to DCAS activities.

(e) In accordance with the intent of ASPR 25-204, requests for contract status/acceleration will be kept to a minimum and specify, at a minimum, contract number, contractor, and location. In addition, such requests shall contain sufficient information to convey the urgency of the circumstances and minimum quantities

needed to satisfy high priority requisitions and/or backorders. Requests for contract status/acceleration will not be initiated for convenience or for non-critical items.

PART 1250—SUPPLEMENTAL PROCEDURES

Subpart A—Sale, Loan, Gift of Property

Sec.
1250.101 Sale, loan or gift of certain property (10 U.S.C. 4506).

Subpart B—[Reserved]

Subpart C—Training

1250.301 Training of procurement personnel.
1250.301-1 General.
1250.301-2 Policy.
1250.301-3 Small Purchase Orientation Course for "New" Buying Personnel (44 hours).
1250.302 Attendance of civilian contractor personnel at defense management courses.
1250.302-1 General.
1250.302-2 Policy.
1250.302-3 Administration.

Subpart D—Selection of Contracts to be Terminated for Convenience in Event of Unexpected Deceleration in Military Requirements

1250.401 General.
1250.402 Policy.
1250.403 Priority of termination type.
1250.404 Responsibilities.
1250.405 Complete and partial terminations.
1250.406 Procedures.
1250.406-1 Operational procedures.

Subpart E—Recovery and Utilization of Precious Metals (Silver, Gold, Platinum, Palladium) from Scrap Materials

1250.501 General.
1250.502 Policy.
1250.503 Responsibilities.
1250.504 Procedures.

Subpart F—Contract Review Checklist

1250.601 General.
1250.602 Contract review checklist.

Subpart G—The DLA Master Solicitation Program

1250.701 General.
1250.702 Scope.
Sec.
1250.703 Definitions.
1250.704 Format.
1250.705 Policy.
1250.705-1 The master solicitation.
1250.705-2 The individually numbered solicitations.
1250.706 Incorporation by reference.
1250.706-1 Incorporation of ASPR provisions.
1250.706-2 Incorporation of standard Forms 32 and 33A.
1250.707 Termination for convenience clause.
1250.708 Distribution.
1250.708-1 Copies to DCAS.
1250.708-2 Copies to suppliers.
1250.708-3 Copies to GAO.

APPENDIX E—DLA CONTRACT FINANCING REGULATIONS

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

SOURCE: 43 FR 19036, May 3, 1978, unless otherwise noted.

Subpart A—Sale, Loan, Gift of Property

§ 1250.101 Sale, loan, or gift of certain property (10 U.S.C. 4506).

(a) The HPAs and their authorized designees are authorized to sell, give, or lend drawings, manufacturing and other information, and samples of supplies and equipment to be manufactured or furnished, to contractors and private firms which are or may likely be manufacturers or furnishers of supplies and equipment for use under approved production plans, whenever they determine that such action is necessary in the interest of national defense.

(b) Such drawings, manufacturing and other information, and samples of supplies and equipment to be manufactured or furnished shall be sold, given or loaned by appropriate written agreement, reciting the above determination (10 U.S.C. 4506).

(c) The foregoing determination and requirement for a written agreement will not be mandatory in the case of invitations for bids and requests for proposals. Drawings, specifications and data furnished need not be returned unless otherwise directed by the contracting officer.

(1) The determination to request the return of such specifications, drawings, or any other data furnished the contracting officer should take into consideration the following factors:

(i) The current or probable future need of the Government for the items.

(ii) The residual value of such items.

(iii) Administrative and other expenses incident to handling and storage of such items.

(iv) The probable cost of reproduction of such items in event of future procurement.

(2) Classified material as a general rule will be required to be returned regardless of the criteria established above.

Subpart B—[Reserved]

Subpart C—Training

§ 1250.301 Training of procurement personnel.

§ 1250.301-1 General.

DOD Manual 1430.10-M-1 is very specific as to the training required for people working in the procurement career field. Every effort must be made to follow the concepts outlined in this manual. This will help assure the availability of a trained work force and will allow for normal job progression in this important function.

§ 1250.301-2 Policy.

In addition to providing adequate training at Service sponsored schools, all newly employed professional personnel in the procurement and production area (i.e., buyers) will be given a minimum of about forty-four hours of orientation in Small Purchases. All new buyers shall be required to read the ASPR Small Purchase Manual (ASPM No. 2) prior to beginning Phase I of the orientation course. See 50-301.3 for proposed course outline. This instruction should include clear guidance on the necessity for making buys at reasonable prices. This orientation course will be conducted in two phases. Phase I will be completed before any work assignments are made. Phase II will be given four to six weeks later. This will permit new employees to have a better grasp of the actual duties to be performed. In addition to the new buying personnel, any persons currently assigned to buying tasks, who have not had formal procurement training, will also be given this orientation. For these people, only Phase II may be required.

§ 1250.301-3 Small Purchase Orientation Course for "New" Buying Personnel (44 Hours).

Phase I

Agenda	Time
1. Organization (hour)	1
(a) DOD	
(b) DLA	
(c) DSC	
2. Ethics and standards of conduct (hour)	1
3. Basic procurement policies/statutes (hours)	2
(a) Delegation of authority	
(b) Contracting officers	
4. ASPR section III, part 6 (hours)	2
(a) Competition	
(b) Purchase orders	
(c) Imprest funds	
(d) BPA's	
(e) Fast pay	
(f) Unpriced orders	
5. Standard automated materiel management system (SAMMS):	
(a) General SAMMS orientation (minutes)	30
(b) Automated small purchase procedures, ASPS phase I (hour)	1
(c) Award input procedures (hour)	1
(d) SAMMS reports and output products affecting small purchase operation (hour)	1
(e) SAMMS modification to small purchase awards (minutes)	30
6. Local procurement forms (hours)	4
(a) How to prepare	
(b) When to use	
(c) Records-documentation	
7. Sources of supply-general (hours)	2
8. Soliciting and evaluating quotes (hours)	2
9. Cost and price analysis techniques (hours)	4
(a) Catalogs	
(b) Price reasonableness	
10. Adequacy of purchase request (hours)	2
(a) Technical data	
(b) Priorities	
(c) Quantities required	
Phase I, Total (hours)	24

Phase II

Agenda	Time
1. Administration of small purchases (hours)	2
(a) Change orders	
(b) Terminations	
2. Sources of supply (hour)	1
(a) Federal supply schedules	
(b) Federal prison industries	
(c) Industries for blind	
3. ASPR section III, part 6 (hours)	4

Phase II—Continued

Agenda	Time
4. Cost and price analysis price reasonableness (hours)	4
5. Orientation by technical operations (hours)	4
(a) Technical data	
(b) Specifications	
6. Local procurement forms (hour)	1
7. Review overall orientation (as required) (hours)	4
Phase II, Total (hours)	20

§ 1250.302 Attendance of civilian contractor personnel at defense management courses.

§ 1250.302-1 General.

Employees of private organizations performing on contracts with the Defense Logistics Agency are authorized to attend Defense Management Courses when it is certified that a valid requirement exists for the training. Such courses are contained in the Defense Management Education and Training Catalog (DOD 5010.16-C).

§ 1250.302-2 Policy.

Attendance of civilian contractor personnel at Defense Management Courses will be considered only when the HPA finds in writing that such attendance is in the best interest of the Government. The finding must demonstrate the relationship between the requested training and the successful performance of the DLA contract(s) reviewed. Also, a determination as to whether the cost of the training should be borne by the employer or the Government shall be made by the HPA. This determination will be based upon whether the course is primarily advantageous to the Government or to the contractor. Requests for quota will be processed as prescribed in DLAR 1430.10.

§ 1250.302-3 Administration.

Details related to administration of the Defense Management Education and Training Program are contained in DOD 5010.16-C.

Subpart D—Selection of Contracts to be Terminated for Convenience In Event of Unexpected Deceleration in Military Requirements

§ 1250.401 General.

(a) *References.*

(1) ASPR, Section 1, Part 4.
(2) ASPR, Section VIII.
(3) ASPR, Section XXIV.
(4) DLAM 8110.1, Termination Manual for Contract Administration Services.
(5) DLAM 8130.1, Contractor Inventory Management Manual for Contract Administration Services.

§ 1250.402 Policy.

Terminations for convenience will be based on individual decisions resulting from a comparison of costs for termination and excess position of items versus the need for release of obligated funds for higher priority use.

§ 1250.403 Priority of termination type.

A termination for default gives the Government certain rights that should be surrendered only when this is to the Government's best interest. Whenever unsatisfactory performance occurs, the possibility of terminating for default should be examined; this should be done before considering other means of ending the contract.

§ 1250.404 Responsibilities.

The decision to terminate a contract for the convenience of the Government is the joint responsibility of the commodity manager and the PCO at the cognizant DSC. In those cases where the contract resulted from a MIPR, the decision to terminate for convenience is the responsibility of the MIPR initiator; however, the PCO upon request must inform the initiator of all elements which have any bearing on the status of the contract.

§ 1250.405 Complete and partial terminations.

Terminations may be complete or partial. A complete termination requires the contractor to stop all work under the contract upon receipt of the Notice of Termination or on the date

specified in the Notice. A partial termination discontinues only a portion of the uncompleted work under a contract. (The part of the work that the contractor must continue to perform is called the continued portion. The part of the contract that has been completed and accepted before the effective date of the termination is called the completed portion. The terminated portion of the contract is any part that does not relate to either the completed or the continued work.)

§ 1250.406 Procedures.

Upon receipt of a request for a cutback in contract quantities from the cognizant commodity manager, the following information will be utilized in selecting the contracts for termination:

(a) Ascertain all current contracts for items involved.

(1) Determine the undelivered portion of each contract.

(2) Consider suppliers in transit (F.O.B. destination contract) as deliveries, unless contract is delinquent and a notice to terminate for default has been sent to the contractor.

(3) Determine what deliveries, if any, are delinquent.

(4) Determine whether the delinquency is excusable or inexcusable.

(5) Contractual quantities scheduled for direct delivery to users are not subject to termination action unless specifically so designated.

(b) If delinquency is considered inexcusable, terminate for default where appropriate.

(c) Where Termination for Default is not appropriate or where additional quantities remain to be cut back after Termination for Default, proceed in the selection of contracts to be terminated for convenience.

(1) First Choice should be where contractors are agreeable to total or partial termination (voluntary or no cost settlement).

(2) Consider the following factors:

(i) Contracts involving contractors' commercial item.

(ii) Contracts awarded as rated orders [ASPR 1-307.3].

(iii) Contracts for mandatory procurement. [ASPR Section V].

(iv) Contracts most recently awarded and those providing for longest production lead time where production has not progressed to an appreciable degree.

(v) Contracts awarded at the highest price and work down pricewise.

(vi) Partial termination of all contracts where two or more contractors are involved in lieu of total termination of a few.

(d) The dollar amount of potential settlement claims should be estimated with the assistance of DCAS. Consider:

(1) Unit price of undelivered items.

(2) Raw material on hand and/or on order.

(3) Components on hand or on order.

(4) Work in process.

(5) Unamortized start up costs.

(6) Percentage of completion.

(7) Current commercial value and saleability of the item involved.

(8) Disposal actions required taking into consideration recoupment through sales of items to be disposed.

§ 1250.406–1 Operational procedures.

(a) The Directorate of Supply Operations or the MIPR initiator will advise Procurement and Production to cancel an item by quantities and consignee. The Directorate of Supply Operations or the MIPR initiator will be required to indicate all open purchase requests and/or contracts when requesting information upon which to base a termination decision or when requesting cancellation by item and consignee.

(b) Procurement and Production, using procedures in § 1250.406 will determine what portion of each open contract (or contracts) should be terminated.

(c) If Procurement and Production decision indicates that Supply Operations original request should be revised, decision will be coordinated with Supply Operations. The final authority for deciding whether or not to terminate, when substantial claims are involved, is the Center Commander.

(d) Upon completion of above actions, Procurement and Production will issue the Termination Notice with

a copy to DCAS for termination settlement action.

Subpart E—Recovery and Utilization of Precious Metals (Silver, Gold, Platinum, Palladium) from Scrap Materials

§ 1250.501 General.

The critical shortage of precious metals from United States sources, the large amount of precious metals required in the manufacture of items for defense, and the need to reduce procurement costs of material with precious metal content dictated the need for DOD to establish and monitor a program to (a) reclaim precious metals from precious metal bearing scrap and waste materials, and (b) to utilize reclaimed precious metals as Government Furnished Material (GFM) in procurement of items containing precious metals. This Section implements DOD Directive 4160.22 (as revised) and establishes DOD policy governing the management of the recovery and the use of precious metals derived from precious metals bearing scrap and waste materials generated by all elements of DOD world-wide. The DLA is assigned the responsibility for managing the overall program and has designated the Defense Property Disposal Service (DPDS), Battle Creek, Michigan, as the activity charged with the responsibility for managing the retrieval and refining of precious metals. DISC has been assigned the supply management function for precious metals.

§ 1250.502 Policy.

(a) All DLA elements generating precious metal bearing scrap and waste materials will establish and monitor an internal program to assure the economical reclamation of precious metals, consistent with the overall DOD policy of effecting maximum use of excess property to meet DOD needs.

(b) Recovered precious metals, after refinement, will be made available to DOD elements for their use as GFM to reduce new procurement costs.

§ 1250.503 Responsibilities.

Commanders of each DLA field activity are responsible for the following:

(a) Reporting precious metal bearing scrap and waste materials to the DPDS Manager for disposition and shipment to destination upon notification by the DPDS Manager.

(b) Using the refined precious metals maintained in storage by the DISC Precious Metals Inventory Manager, as GFM, whenever feasible, for contracts requiring precious metals bearing materials.

§ 1250.504 Procedures.

(a) Prior to soliciting bids for award of contracts requiring precious metals contact the DISC Precious Metals Inventory Manager, DISC-ODCA/TD, indicating the item, quantity and grade of precious metal required for the procurement. The precious metals are identified as follows:

NSN	Nomenclature	Unit of issue
9960-00-042-7768.	Platinum	Troy ounce
9660-00-042-7733.	Gold	Do.
9660-00-042-7765.	Palladium	Do.
9660-00-106-9432.	Silver	Do.
9660-01-010-2625.	Rhodium	Do.
9660-01-011-1937.	Iridium	Do.

If the required amount is available, forward a letter or TWX to DISC-ODCA/TD, requesting that the required quantity be reserved to cover the procurement including the estimated delivery schedule.

(b) When a contract is awarded, a MILSTRIP requisition is to be submitted to DISC-ODCA/TD. The requisition must cite full Troy ounces (partial ounces shall be rounded off to the nearest whole ounce). Exception data are to be cited. The exception data are (1) the exact "ship to" address, the DoDAAC sometimes cites post office boxes or is not always accurate; (2) the contract number on which the precious metals are committed for use, this is necessary for control and audit

purposes; (3) the end item application, the NSN, part number or any other identifying data which is necessary in order that the precious metal may be recovered from the item when it reaches the end of its life cycle, and (4) a contact point with phone number at the requisitioning activity, this is required in case it is necessary to resolve any problems.

(c) Transportation charges are included in the unit price. Transportation is usually accomplished by premium method (armored van); therefore, multiple requisitions to the same destination should be consolidated whenever possible. Delivery normally will be accomplished within three weeks after receipt of the requisition by the DISC Inventory Manager.

Subpart F—Contract Review Checklist

§ 1250.601 General.

The following contract review checklist has been developed for use as a guide by DLA contracting officers and buyers in their individual contract reviews. The checklist may be modified to suit the needs of the procurement activity. A standard DLA-wide form is not prescribed in order to permit development of a local checklist.

§ 1250.602 Contract review checklist.

Contractor:

Contract No.: Dollar value: $

Brief description of supplies or services

Quantity Unit Price ($) Extension ($)

☐ PR ☐ MIPR

YES ☐ No ☐ N/A

1. In file?
2. Are amendments approved by appropriate authority and are they attached?
3. Adequately funded?
4. Is sole source justification adequate?
5. Option quantity included?

Procurement plan

6. Is information sufficient to support proposed method of procurement? (Advertised-Negotiated)
7. Was the procurement plan approved at a level above the buyer in accordance with DLPR 1-2100?
8. Is procurement administrative leadtime realistic?
9. If option proposed, is its use authorized/appropriate?
10. If nonpersonal services involved, was determination issued per ASPR 22-102.4?
11. If provision for progress payments contemplated, is it appropriate? (ASPR Appendix E)

Determination and findings (negotiation)

12. Proper format? (ASPR Appendix J)
13. Option quantity included/value noted?
14. Proper negotiating authority cited?
15. Any changes requiring determination and findings amendment?
16. If so, properly executed?
17. Signed and dated?

Small business/labor surplus area set-aside determination

18. Does information provided support the determination?
19. Is withdrawal/modification of the initial set-aside determination explained?

Source list

20. Is the list excessively long?
21. Should preinvitation notice have been used?
22. Is list annotated as to "no bids" received?
23. If history of sole source, are reasons given for soliciting additional firms?

Synopsis

24. Evidence in file?
25. No synopsis; justification adequate? (ASPR 1-1003.1(c))

Solicitation—IFB/RFP

26. Was solicitation issued in a timely manner?
27. Do solicitation provisions reflect PR/MIPR requirements?

28. If oral solicitation, does file contain justification for its use? (ASPR 3-501(d))
29. Bidding time/RFP response time adequate?
30. Format in accordance with ASPR 2-201 (IFB) or 3-501 (RFP)?
31. Were amendments sent to all originally solicited?
32. Were amendments properly dated?
33. Are contract clauses and provisions current/complete?
34. Was cost or pricing data (DD Form 633) requested in the initial solicitation?
35. Was DD Form 633-7 requested in initial solicitation?
36. If cost or pricing data was or was not requested, does the file include an explanation? (ASPR 3-811(a))
37. Is a disclosure statement on cost accounting practices and certification required? (ASPR 3-1203)
38. If required, did the contractor:
(1) Submit same?
(2) Execute a certificate of monetary exemption?
(3) Execute a certificate of previously submitted disclosure statement?

Evaluation

39. Abstract of bids/proposals: (ASPR 1-308, 2-403, 3-109)
(1) Signed and dated?
(2) All bids/offers entered properly?
(3) Exceptions noted?
40. Nonresponsive determinations checked with counsel; file documented as to causes?
41. Disposition of late bids/proposals adequately documented?
42. Unsuccessful bids/proposals included in the file?
43. Were unsuccessful offerors notified promptly?
44. If sole bid/offer received, file documented as to why previous suppliers failed to offer?
45. If small business determined to be nonresponsive, was certificate of competency obtained? If not, why not?
46. Packaging/transportation/freight rate data obtained and determined to be adequate?
47. If DD Form 633-7 submitted, is it complete and does it support commerciality? (Quantities comparable?)
48. If cost of pricing data (DD Form 633) submitted, was it reviewed by the cost/price analysis element?
49. Was it found to be acceptable?
50. Was field pricing support obtained (DCAA audit; DCAS pricing/technical report)?
51. If not, was waiver executed?
52. Was independent price analysis performed by the cost/price analysis element?
53. If not, was waiver executed? (PROCLTR 75-10)
54. Were auditor's recommendations accepted?
55. Was weighted guideline analysis prepared?
56. Were realistic negotiation objectives established?
57. Was prenegotiation briefing presented to appropriate authority before commencement of negotiations?
58. Does prenegotiation briefing memorandum clearly establish basis for negotiating position?
59. Does it include all of the required elements? (§ 1203.805)
60. Was basis for decision to negotiate, or decision to accept the initial offer without discussion, documented?
61. Is prenegotation briefing memorandum signed and dated?

Negotiations

62. Were negotiations conducted with all responsible offerors within a competitive range?
63. If changes occurred in requirements, were prospective contractors notified in accordance with ASPR 3-805.4?
64. Was an amendment to the solicitation issued?
65. Were acknowledgements of changed requirements confirmed in writing by offerors?
66. If negotiation objectives were changed or exceeded, was prenegotiation briefing authority notified?
67. Were negotiations conducted on an individual cost element basis?
68. Was option quantity considered in negotiations?
69. Was rent-free use of Government property considered in the negotiations?
70. Was authority obtained for rent-free use from cognizant administrative contracting officer?

71. Was common cut-off date for negotiations established with all offerors?
72. Was certificate of current cost or pricing data obtained?
73. If so, does it reflect date of contractor's last data submission/final agreement as to price?
74. Does price negotiation memorandum format conform with § 1203.811?
75. Does the price negotiation memorandum clearly and conclusively support price reasonableness determination?
76. Is statement of same included in the price negotiation memorandum?
77. Is the price negotiation memorandum signed and dated?

Pre-award and other support data

78. Was pre-award survey conducted?
79. If no pre-award survey, was waiver executed by appropriate authority? (§ 1201.905-4)
80. Were requirements revalidated per § 1201.452-11?
81. If $1,000,000 or more, was equal employment opportunity clearance report obtained?
82. Is Individual Procurement Action Report (DD Form 350) in file?
83. Is it in accordance with ASPR and DLPR Sections XXI?
84. If royalty payments involved, did DLA-G concur?

Contract

85. Was proper award document utilized (SF26-SF33)?
86. Does contract agree in all respects with contractor's bid/proposal?
87. If single signature document, does it reflect contractor's letter/message amendments?
88. Is contract being awarded within bid/proposal acceptance period?
89. Is arithmetic correct? (Extensions and totals)

Remarks

Subpart G—The DLA Master Solicitation Program

§ 1250.701 General.

In most purchasing offices, solicitations have been constructed to show all the requirements, terms, and conditions involved in one package, which was then sent to potential suppliers. When many thousands of purchases were made, the repetitive preparation and issuance of the millions of sheets of paper which made up the solicitations became significant not only to purchasing offices, but also to contractors who had to receive, consider, and respond to these solicitations. The Master Solicitation Program was developed in an effort to reduce the paperwork flowing between DLA buying offices and potential suppliers, to simplify solicitation and award documents, and to achieve time and dollar savings for DLA and industry. Authority for the Program is ASPR Deviation No. 73-1, granted on 16 June 1972 by the ASPR Committee. It pertains to ASPR 2-200, 3-501, and 16-101.2 and extends through 30 June 1978.

§ 1250.702 Scope.

Master solicitations may be tailored in scope according to the needs and judgments of each purchasing activity. If it is advantageous to utilize separate Master Solicitations for large and small purchases, geographic regions or major commodities, a purchasing activity may wish to use several Master Solicitation documents rather than one. The Program may be applied to any appropriate solicitation process as determined by the purchasing activity. It is applicable to both large and small purchases.

§ 1250.703 Definitions.

(a) *Master Solicitation (MS)* is a document containing provisions repetitively used in any type of solicitation. It is prepositioned with all potential sources.

(b) *Individually Numbered Solicitation (INS)* covers specific requirements of a particular solicitation. It includes only those required provisions which are not in the MS and incorporates applicable provisions of the MS by reference.

(c) Change to the MS is an alteration of, addition to, or deletion from the clauses of the MS for one particular solicitation only.

(d) *Incorporation by Reference (IBR)* is the inclusion of the clauses of one document in another by stating

the proper reference numbers of those clauses in the second document.

§ 1250.704 Format.

(a) The preferred format (print size, numbering system and two column display) for MS documents is that of the SF 33A. If in-house capability does not exist and time or monetary considerations dictate a departure, this format is optional as determined by the purchasing activity.

(b) Clauses shall be segregated to conform with the Uniform Contract Format Sections. However, the most frequently used clauses shall be placed at the beginning of each section.

§ 1250.705 Policy.

§ 1250.705-1 The master solicitation.

(a) The MS shall include essential and frequently used material as determined by individual Centers on the basis of the cost effectiveness of inclusion in the MS rather than the INS. Convenience to industry and to DLA shall also be a consideration. There shall be no interim changes, revisions or amendments to the master solicitation itself. The schedule of individually numbered solicitations shall reflect any revised clauses or solicitation provisions pending revision and reissuance of the entire master solicitation. All interim changes must be entitled: "FOR THIS SOLICITATION ONLY; the following changes are hereby made to DSC Master Solicitation, (Date)." Large numbers of interim changes will indicate a need for reissuance of the master.

(b) All new and/or revisions to Master Solicitations and copies of local implementing amplifying instructions, including revisions thereto, shall be submitted to this Headquarters, ATTN: DLA-PPR, for review and approval prior to implementation. The Headquarters review will concentrate primarily on solicitation format and the appropriateness/legality of local clauses. The correct usage of ASPR clauses is a responsibility of the field activity. In the event the new or revised MS contains a new or revised clause requiring separate review and approval pursuant to ASPR/DLPR, such clause shall be identified in the letter transmitting the MS to DLA.

(c) The master solicitation should be kept as brief as possible (typically not exceeding 25 or 30 pages). Local clauses should be combined, condensed, or eliminated wherever possible. Locally developed manuals, packing/consignment instruction, etc., should be included in the master solicitation when such documents are used repetitively.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, June 8, 1978)

[43 FR 19036, May 3, 1978, as amended at 44 FR 27100, May 9, 1979]

§ 1250.705-2 The individually numbered solicitations.

The INS shall contain all information pertinent to a specific solicitation. It shall incorporate the appropriate provisions of the MS by reference and shall be prepared in a manner which provides for award to be made without physically attaching the MS.

§ 1250.706 Incorporation by reference (IBR)

§ 1250.706-1 Incorporation of ASPR provisions.

(a) Mandatory UCF Section L, ASPR Section VII clauses shall be incorporated by reference in either the MS or the INS, as decided by each buying activity.

(b) Clauses other than mandatory UCF Section L, ASPR Section VII clauses which are not fill-in clauses shall be incorporated by reference by title, number, and date, or in full text in either the MS or the INS, according to the judgments of each Center.

(c) Fill-in clauses shall be placed in full text in either the MS or the INS at the discretion of each Center.

§ 1250.706-2 Incorporation of standard forms 32 and 33A.

Standard Forms 32 and 33A shall be incorporated by reference.

The SF 33A shall be incorporated by reference by including in Section B Uniform Contract Format a notification substantially as follows:

"Paragraph 1 of Block 9 to the SF 33 is deleted and the following is substi-

tuted therefor: Solicitation instructions and conditions, SF 33A is incorporated herein by reference".

§ 1250.707 Termination for convenience clause.

ASPR Deviation No. 74-14 with respect to ASPR 3-608.2(b)(1)(ix) permits the Termination for Convenience Clause to be included in the schedule of the purchase order at the time of issuance so that additional paperwork involved in obtaining the contractor's signature may be avoided. The clause may either be set forth verbatim or incorporated by reference.

§ 1250.708 Distribution.

§ 1250.708-1 Copies to DCAS.

An initial distribution of the appropriate MS to each DCAS component shall be made as follows:

DCASR—30 copies
DCASMA—15 copies
DCASPRO—6 copies

Additional copies shall be furnished upon request.

§ 1250.708-2 Copies to suppliers.

All potential suppliers shall be provided with copies of the appropriate MS.

§ 1250.708-3 Copies to GAO.

Copies of contracts sent to the GAO shall include a copy of the Master Solicitation.

APPENDIX E—DLA CONTRACT FINANCING REGULATIONS

Sec.

E-001 Purpose.
E-003 Implementation.

Subpart B—Basic Policies

E-200 Scope of Part.
E-200.50 Submission of Contractual Instruments for Audit by the U.S. General Accounting Office.
E-218 Deviations—Amendments.
E-218.50 Submission of Request for Deviations.
E-219 Interpretations.
E-220 Foreign Procurement.
E-220.50 Use of Foreign Currencies.

Subpart C—Guaranteed Loans

E-303 Procedure on Application of a Private Financing Institution.
E-303.50 Submission of applications and Supporting Documents.
E-306 Guaranteeing Agency.
E-306.50 Account, Accounting Office, Disbursing Office.

Subpart D—Advance Payments

E-412 Action by Contracting Officer—Approval.
E-412.50 Transmittal of Documents.
E-412.51 Accounting and Disbursing Procedures.

Subpart E—Progress Payments Based on Costs

E-505 Unusual Progress Payments—Standards—Procedures.
E-505.50 Submission of Requests.
E-506 Accounting System and Controls.
E-506.50 Accounting and Disbursing Procedures.

Subpart F—Contract Debts—Interest—Deferred Payments

E-600.50
E-620 Contract Clause-Interest.

E-001 Purpose.

This appendix outlines the methods by which the provisions of ASPR Appendix E will be applied in DLA (other than DCASRs).

E-003 Implementation.

Changes and additions to, as well as interpretations of, this appendix will be developed within the Accounting and Finance Division, Office of the Comptroller, HQ DLA.

Subpart B—Basic Policies

E-200 Scope of Part.

E-200.50 Submission of contractual instruments for audit by the U.S. General Accounting Office.

DLA contractual instruments required by the U.S. General Accounting Office for audit purposes must be submitted to one of the Military Service finance centers. The appropriate center for a specific DLA contractual instrument can be determined by reference to the accounting and finance (disbursing) office designated to make payment under the basic contractual instrument, e.g., if the disbursing office operates under an Army disbursing station number, the contractual instruments should be transmitted to Indianapolis. The addresses of these centers are as follows:

Army

Processing and Disposal Branch, Retained Accounts Division, Settlement Operations, Finance Center, U.S. Army, Indianapolis, Ind. 46249.

Air Force

Air Force Accounting and Finance Center, Attn: SAA, 3800 York Street, Denver, Colo. 80205.

Navy

Navy Finance Center, Administrative Services Department, Code SSP, Federal Office Building, 1240 East QM Street, Cleveland, Ohio 44199.

Marine Corps

Commandant, Marine Corps, Headquarters, Washington, D.C. 20380.

E-218 Deviations—amendments.

E-218.50 Submission of request for deviations.

Request for authority to deviate from the provisions of ASPR Appendix E will be submitted (in an original and four copies) to HQ DLA, Attn: DLA-CF.

E-219 Interpretations.

Problems of interpretations and applications of the type indicated in ASPR E-219 should be transmitted to HQ DLA, Attn: DLA-PP. This office will effect any necessary coordination with the DLA Contract Financing Officer and determine whether dissemination to the other procuring activities is appropriate.

E-220 Foreign procurement.

E-220.50 Use of foreign currencies.

Foreign currencies owned by the United States Government shall be used, when feasible, to make payments under contracts in foreign countries. The provisions of DLAR 7000.2, Use of United States-owned Foreign Currencies for Payment of Contracts in Foreign Countries, will govern.

Subpart C—Guaranteed Loans

E-303 Procedure on application of a private financing institution.

E-303.50 Submission of applications and supporting documents.

Any application based on a contract which cites or will cite DLA funds will be transmitted to HQ DLA, Attn: DLA-CF. This address will be used regardless of the office responsible for administration of or payment under the contract.

E-306 Guaranteeing agency.

E-306.50 Account, accounting office, disbursing office.

(a) The following revolving fund account has been established on the books of the Treasury for receipts and expenditures under the DLA guaranteed loan program:

Symbol—97X4080.

Title—Defense Production Guarantees, DLA.

To assure proper processing through accounting and finance reporting channels of the Military Departments, the subhead .5149 will be added to the symbol.

(b) The single central accounting office responsible for maintaining the accounting records of the DLA's guaranteed loan program is the Office of the Comptroller (Contract Financing Office), HQ DLA.

(c) The single disbursing office which shall be responsible for taking up all collections and making all disbursements incident to DLA's guaranteed loan program is the Accounting and Finance Office, Disbursing Symbol 5016, DASC, Cameron Station, Alexandria, Va. 22314.

Subpart D—Advance Payments

E-412 Action by contracting officer—approval.

E-412.50 Transmittal of documents.

The contracting officer's report should be forwarded in original and two copies in the format and outline indicated by ASPR E-412. Unless otherwise requested, the contracting officer should furnish the items indicated by ASPR E-412(v) and (vi); this action will normally obviate the need for the separate comments required by ASPR E-412(vii). If the contracting officer recommends disapproval (ASPR E-412.1) he should include suggestions as to alternate financing methods. The documents should be transmitted to HQ DLA, Attn: DLA-CF, if the contracts cites DLA funds; the office administering or making payments under the contracts or maintaining the allotment records to which the payment will finally be charged are not pertinent.

E-412.51 Accounting and Disbursing Procedures.

Each of the three Military Departments employs different accounting and disbursing procedures for making and recouping advance payments. The prescribed procedures of each Department meet the requirements for advance payments and recoupments made under contracts citing DLA funds; therefore, the paying office designated in the contract and/or the allottee or suballottee, depending upon the local arrangement, should utilize the procedures outlined by

the Military Department under which paying office operates.

Subpart E—Progress Payments Based on Costs

E-505 Unusual Progress Payments—Standards—Procedures.

E-505.50 Submission of Requests.

The documents indicated in the third subparagraph ASPR E-505, if the request concerns a contract which cites DLA funds, will be submitted for coordination and approval to HQ DLA, ATTN: DLA-CF. The command jurisdiction of the office administering the contract, making payments on the contract or maintaining accounting records of the allotment or suballotment which will be charged for the payment is not pertinent.

E-506 Accounting System and Controls.

E-506.50 Accounting and Disbursing Procedures.

Each of the three Military Departments employs different accounting and disbursing procedures for making progress payments. The prescribed procedures of each Department meet the requirements for progress payments made under contracts citing DLA funds; therefore the paying office cited in the contract and/or the allottee or suballottee should utilize the procedures outlined by the Military Department under which the paying office operates. Allottees and suballottees of DLA funds, whose allotments or suballotments are charged with progress payments, will render the same type of report to the allottor or suballottor as are required by the Military Department procedures under which the disbursing office, which services the allottee or suballottee, operates. The "same type report" means the same format, form, content and due dates prescribed by the appropriate Military Department directive. Allottees may consolidate the reports of suballottees or transmit them as received. Reports on progress payments should be submitted in accordance with paragraph 5i, Section VII, Chapter 5, DLAM 700.1.

Subpart F—Contract Debts—Interest—Deferred Payments

E-600.50 Follow directions contained in DLAM 7000.1, Chapter 12, Sections I and II and Figures 12-1, 12-2 and 12-11.

E-620 Contract Clause—Interest. (See 3-1300.3(c)).

Supplement No. 2—Contract File Maintenance, Closeout and Disposition

Subpart A—Documentation of Contract Actions

S-2101.2 Contractor General File.

Subpart A—Documentation of Contract Actions

S-2101.2 Contractor General File.

The basic purpose of the contractor general file is to provide complete and current information on a contractor's capability or responsibility within a single reference. The file on each contractor should include financial statements and reports, scope of work he performs, personnel data, quality of his operations, and any other correspondence and reports relating to the contractor generally and considered worthy of management's attention. These files shall be maintained at one central point within the purchasing activity.

(5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, January 5, 1977, as revised June 8, 1978)

[43 FR 19041, May 3, 1978, as amended at 44 FR 27101, May 9, 1979]

80-109 O—81——11

SUBCHAPTER B—MISCELLANEOUS

PART 1280—INVESTIGATING AND PROCESSING CERTAIN NONCONTRACTUAL CLAIMS AND REPORTING RELATED LITIGATION

Sec.
1280.1 Purpose and scope.
1280.2 Definitions.
1280.3 Significant changes.
1280.4 Responsibilities.
1280.5 Procedures.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125; 28 U.S.C. 2672; and DoD Directive 5105.22 dated December 9, 1965.

SOURCE: 39 FR 19470, June 3, 1974, unless otherwise noted.

§ 1280.1 Purpose and scope.

(a) This Part 1280 provides procedures for investigating and processing claims and related litigation:

(1) By civilian and military personnel of DLA for property lost or damaged incident to service (31 U.S.C. 240-243).

(2) Incident to use of Government vehicles and other property of the United States not cognizable under other law (10 U.S.C. 2737).

(3) Based on Negligence of Civilian and Military Employees under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671 thru 2680.

(4) In favor of the United States, other than contractual, for loss, damage, or destruction of real or personal property in the possession, custody, or control of DLA.

(b) This Part 1280 is applicable to HQ DLA and DLA field activities, except nonappropriated funds and related activities established pursuant to DSAR 1330.2, Open Messes and Other Military Sundry Associations and Funds, and DSAR 1330.4, Civilian Nonappropriated Funds and Related Activities. Claims involving these activities are processed pursuant to the regulations referenced therein.

§ 1280.2 Definitions.

(a) *Claims Investigating Officer.* A military officer or civilian employee of DLA, appointed in accordance with this Part 1280, to investigate and process claims within the purview of this Part 1280.

(b) *Member of the Army, member of the Navy, member of the Marine Corps, member of the Air Force.* Officers and enlisted personnel of these Military Services.

§ 1280.3 Significant changes.

This revision provides current citations to the Army regulations which have superseded those previously prescribed for the processing of some claims. It reflects the new Army claims processing procedures effected upon the reorganization of the Army. Finally, it provides specific procedures for Air Force processed claims.

§ 1280.4 Responsibilities.

(a) *DLA field activities.* (1) Heads of DLA Primary Level Field Activities are responsible for:

(i) Designating a qualified individual under their command, preferably one experienced in the conduct of investigations, as the Claims Investigating Officer for the activity.

(ii) Authorizing Heads of subordinate activities to appoint Claims Investigating Officers where necessary.

(2) The Commander, DLA Administrative Support Center (DLASC) is responsible for designating a qualified individual, preferably one experienced in the conduct of investigations, as the Claims Investigating Officer for DLASC and HQ DLA.

(3) Claims Investigating Officers are responsible for the expeditious conduct of all investigations and the processing of reports in accordance with appropriate Departmental regulations as prescribed by this Part 1280. To ensure prompt investigation of every incident while witnesses are available, and before damage has been repaired, the duties of personnel as Claims Investigating Officers will ordinarily have priority over any other assignments they may have.

(4) The Counsel, DLA Field Activities are responsible for:

(i) Receiving claims reports and information about related litigation, and

processing these reports and information in accordance with this Part 1280 and appropriate Departmental regulations.

(ii) Providing directions and guidance to Claims Investigating Officers in the investigation and processing of claims.

(b) The Counsel, DLA (DLAH-G) is responsible for:

(1) Providing guidance to Counsel at DLA field activities on all claims and litigation matters within the purview of this Part 1280.

(2) Receiving claims reports and information on related litigation forwarded to HQ DLA, Attention: DLAH-G, and processing these in accordance with this Part 1280 and appropriate Departmental regulations.

(3) Maintaining this Part 1280 in a current status and reviewing it annually.

§ 1280.5 Procedures.[1]

(a) *Claims by military and civilian personnel of DLA for property lost or damaged incident to service (31 U.S.C. 240-243).* (1) The Claims Investigating Officer will conduct his investigation and prepare all necessary forms and reports in accordance with the appropriate portions of AR 27-20 where the claimant is a member of the Army or a DLA civilian employee; JAGINST 5800.7A where the claimant is a member of the Navy or Marine Corps; or AFM 112-1 where the claimant is a member of the Air Force.

(2) The completed report will be forwarded by the Claims Investigating Officer to one of the following activities for settlement:

(i) Where the claimant is a DLA civilian employee or a member of the Army; the Staff Judge Advocate designated in AR 27-20, Appendix F, as the Area Claims Authority where the claim arose.

(ii) Where the claimant is a member of the Navy or Marine Corps the cognizant adjudicating authority as listed in JAGINST 5800.7A, paragraph 2124.

(iii) Where the claimant is a member of the Air Force; the Base Staff Judge Advocate of the nearest Air Force Base.

(b) *Claims incident to the use of Government property not cognizable under any other law (10 U.S.C. 2737).* (1) The Claims Investigating Officer will conduct his investigation and prepare all necessary forms and reports in accordance with the appropriate portions of AR 27-20 where the claimant is a member of the Army or a DLA civilian employee; JAGINST 5800.7A where the claimant is a member of the Navy or Marine Corps; or AFM 112-1 where the claimant is a member of the Air Force.

(2) The completed report will be forwarded by the Claims Investigating Officer to the Counsel for his activity or, if the activity has no Counsel, to the next higher echelon having such a position.

(3) The activity Counsel receiving the Claims Investigating Officer's report will review the report, and take all necessary action to assure that it is complete and in accordance with the appropriate regulation. He will forward the report together with his comments and recommendations to one of the following activities for settlement. Where the incident giving rise to the claim was occasioned by an act or omission of:

(i) *DLA civilian personnel.* Counsel, DLA.

(ii) *A member of the Army.* The Staff Judge Advocate designated in AR 27-20, Appendix F, as the Area Claims Authority where the claim arose.

(iii) *A member of the Navy or Marine Corps.* The Director of the Navy Law Center in the Naval District in which the incident giving rise to the claim occurred.

(iv) *A member of the Air Force.* The Base Staff Judge Advocate of the Air Force Base nearest the place where the incident giving rise to the claim occurred.

(c) *Claims under the Federal Tort Claims Act arising from negligence of DLA military or civilian personnel.* (1) The Claims Investigating Officer will conduct his investigation and prepare all necessary forms and reports in accordance with the appropriate por-

[1] Copies of the Military Department regulations mentioned herein may be obtained from the Departments of the Army and Navy, and the Superintendent of Documents, U.S. Government Printing Office.

tions of AR 27-20 where the claim involves a member of the Army or a DLA civilian employee; JAGINST 5800.7A where the claim involves a member of the Navy or Marine Corps; or AFM 112-1 where the claim involves a member of the Air Force.

(2) The completed report of investigation will be forwarded by the Claims Investigating Officer to one of the following activities for settlement. Where the incident giving rise to the claim was occasioned by an act or omission of:

(i) *DLA civilian personnel or a member of the Army.* The Staff Judge Advocate designated in AR 27-20, Appendix F, as the Area Claims Authority where the incident giving rise to the claim occurred.

(ii) *A member of the Navy or Marine Corps.* The Director of the Navy Law Center in the Naval District in which the incident giving rise to the claim occurred.

(iii) *A member of the Air Force.* The Base Staff Judge Advocate of the Air Force Base nearest the place where the incident giving rise to the claim occurred.

(d) *Tort claims in favor of the United States for damage to or loss or destruction of DLA property, or property in its custody or control.* (1) These claims will be investigated and processed in accordance with the provisions of AR 27-40, Chapter 5, except:

(i) The duties of the claims officer will be performed by the Claims Investigating Officer.

(ii) The duties of the Staff Judge Advocate will be performed by Counsel, except where the property is a GSA motor pool system vehicle (see paragraph (e) of this section).

(iii) The reports of the Claims Investigating Officer will be furnished direct to Counsel for his activity or, if his activity has no Counsel, to the next higher echelon having such a position.

(iv) With respect to reports referred to them, Counsel are authorized to give receipts for any payments received and to execute releases where payment in full is received, except where the property is a GSA motor pool system vehicle (see paragraph (e) of this section). Offers of compromise will be processed pursuant to DSAM 7000.1, Chapter 12, Section V, paragraph 120502.

(v) Where payment in full is not received after reasonable efforts have been made to collect the claim administratively, Counsel will refer the case directly to the U.S. Attorney unless:

(*a*) The amount of the claim exceeds $10,000, in which event the case will be referred to Counsel, DLA.

(*b*) The amount of the debt is less than $250; or the record clearly shows that the debtor is unable to pay; or the debtor cannot be located; in which event the file may be closed and the debt treated as an uncollectable which does not have to be referred to the General Accounting Office.

(2) If, at any stage of the processing of a claim under this paragraph (d), a claim is filed against the Government arising out of the same incident, or it becomes apparent that one will be filed, the claim under this paragraph (d) will be treated as a counterclaim, and included under the report filed in accordance with the applicable paragraph of this Part 1280.

(e) *Claims involving GSA motor pool system vehicles.* (1) Where a motor pool system vehicle issued to a DLA activity is involved in an accident giving rise to a claim under the Federal Tort Claims Act, the claim will be handled pursuant to paragraph (c) of this section.

(2) In the event of damage to a motor pool system vehicle which is not due to the fault of the operator, Counsel receiving the report will submit the report to GSA's Regional Counsel for the region that issued the vehicle pursuant to the Federal Property Management Regulation, § 101-39.805. Damages to motor pool system vehicles caused by the negligence of vehicle operator employed by DLA or caused by the negligence or misconduct of any other officer or employee of DLA are reimbursed to General Services Administration (GSA). Determination affixing responsibility will be made by the Counsel to which the report is referred, after considering the views of GSA.

(f) *Reporting legal proceedings.* (1) All process and pleadings served on any personnel or activity of DLA, and

related to a claim covered by this Part 1280 or involving an incident which may give rise to a claim covered by this Part 1280, together with other immediately available data concerning the commencement of legal proceedings, will be promptly referred to Counsel for the activity involved, or, if the activity has no Counsel, to the next higher echelon having such a position.

(2) Any Military Service member or civilian employee of DLA (or his personal representative) against whom a domestic civil action or proceeding is brought for damage to property, or for personal injury or death, on account of his operation of a motor vehicle (Government- or privately-owned) in the scope of his employment (28 U.S.C. 2679) will:

(i) Upon receipt of process and pleadings or any other information regarding the commencement of such action or proceeding, immediately inform the Head of his activity and Counsel as specified in paragraph (f)(1) of this section.

(ii) Promptly deliver all process and pleadings served upon him, or an attested true copy thereof, to Counsel.

(3) Upon receipt of information or process and pleadings pursuant to paragraph (f)(1) or (2) of this section, Counsel will promptly prepare and process reports in accordance with the appropriate portions of AR 27-40 except that:

(i) If the incident giving rise to the litigation was occasioned by an act or omission of a member of the Navy or Marine Corps, or a member of the Air Force, information and reports required to be furnished to The Judge Advocate General of the Army will be furnished instead to The Judge Advocate General of the Navy and Air Force respectively.

(ii) If the litigation is under the Federal Tort Claims Act and no administrative claim has been filed, Counsel will immediately advise the U.S. Attorney and furnish him a report of all information the activity has with respect to the claim and an affidavit by the Claims Investigating Officer to the effect that no administrative claim has been filed. Two copies of the foregoing will be provided to the appropriate Military Service Judge Advocate General. If an administrative claim has been filed and has been referred to a Military Service, a copy of the process and pleadings and any information not previously furnished will be sent to the appropriate Military Service Judge Advocate General.

PART 1285—AVAILABILITY TO THE PUBLIC OF OFFICIAL INFORMATION

Sec.

1285.1 References.
1285.2 Purpose and scope.
1285.3 Policy.
1285.4 Definitions.
1285.5 Background.
1285.6 Significant changes.
1285.7 Responsibilities.
1285.8 Procedures.
1285.9 Reports.
APPENDIX A—FEE SCHEDULE
APPENDIX B—FOR OFFICIAL USE ONLY (FOUO)
APPENDIX C—JUDICIAL ACTIONS
APPENDIX D—FOI ANNUAL REPORT—CY

AUTHORITY: DOD Directive 5400.7, 5, U.S.C. 552.

SOURCE: 46 FR 20541, Apr. 6, 1981, unless otherwise noted.

§ 1285.1 References.

(a) Title 5, U.S.C. 552, as amended by Pub. L. 93-502.

(b) Title 18, U.S.C. 798, Communication Intelligence.

(c) Title 18, U.S.C. 1905, Disclosure of Confidential Information Generally.

(d) Title 18, U.S.C. 3500, The Jencks Act.

(e) Title 35, U.S.C. 181-188, Secrecy of Certain Inventions and Filing Applications in Foreign Countries.

(f) Title 42, U.S.C. 2162, Classification and Declassification of Restricted Data Periodic Determinations.

(g) Title 44, U.S.C. 33, Disposal of Records.

(h) Pub. L. 86-36, National Security Information Exemption.

(i) Pub. L. 90-620, 44 U.S.C. 3301, Definition of Records.

(j) DoD Directive 5200.1-R, Information Security Program Regulation.

(k) DoD Directive 5200.20, Distribution Statements on Technical Documents.

(l) DoD Directive 5400.4, Provision of Information to Congress.

(m) DoD Directive 5400.7, DoD Freedom of Information Act Program.

(n) DoD Directive 5400.11, Personal Privacy and Rights of Individuals Regarding Their Personal Records.

(o) DoD Directive 7650.1, General Accounting Office Comprehensive Audits.

§ 1285.2 Purpose and scope.

To establish/provide policy, procedures, and uniformity within DLA for implementation of the DoD Freedom of Information Act (FOIA) Program, pursuant to the provisions of Title 5, U.S.C. 552, as amended by Pub. L. 93-502, and DoD Directive 5400.7. This Part 1285 is applicable to HQ DLA and all DLA field activities.

§ 1285.3 Policy.

(a) *General.*

(1) It is the policy of DLA to promote public trust by making the maximum amount of information available to the public on the operation and activities of DLA. Records that are exempt from release to the public, and meet the exemption criteria spelled out in paragraph (f) of this section, need not be published in the FEDERAL REGISTER, made available in a library reading room, or provided in response to a FOIA request.

(2) Information exempt from public disclosure, under provisions of paragraph (f) of this section, will be made available to the public when its disclosure is not inconsistent with statutory requirements or with DLA Supplement 1 to DoD 5200.1-R, and when officials determine that no significant purpose would be served by withholding the information. The determination of whether a significant purpose is served by withholding information under provisions of paragraph (f) of this section is within the sole discretion of the DLA official authorized by this Part 1285 to deny release.

(3) Records and other documents or related material may be withheld from the public only as authorized by this Part 1285.

(b) ***Availability of Records.*** (1) DLA will conduct activities in an open manner, consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the FOIA shall, upon request, be made readily accessible to the public whether or not the FOIA is invoked.

(2) DLA will ensure that procedural matters do not unnecessarily impede a requester from obtaining records promptly. Assistance will be provided to requesters to help them understand and comply with procedures established by this Part 1285.

(3) When a member of the public complies with the procedures for obtaining DLA records, the request will receive prompt attention. A reply will be dispatched within 10 working days unless an extension is authorized. Requests by individuals for access to records about themselves will be processed under the Privacy Act procedures.

(4) Records that may be withheld under the exemptions outlined in paragraph (f) of this Part 1285 will be made available to the public when no significant, legitimate Government purpose is served by withholding them. Determination of significant and legitimate Government purpose is within the sole discretion of DLA, consistent with statutory requirements, security classification requirements, or other requirements of law.

(5) Nonexempt records released under the authority of this Part 1285 are considered to be in the public domain. However, exempt records released pursuant to this Part 1285, or other statutory or regulatory authority, may be considered to be in the public domain only when their release constitutes a waiver of FOIA exemption. When the release does not consitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this Part 1285 apply if the same individual seeks the records in a private or personal capacity.

(6) A record must exist and be in the possession or control of DLA at the

time of the request to be considered subject to this Part 1285. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request. A new record may be compiled or created, when so doing would result in a more useful response to the requester, or be less burdensome than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is less than the fee which would be charged for providing the existing record. Fee assessment for direct search and duplication associated with the request will be in accordance with the fees set forth in Appendix A.

(7) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record to enable location of the record with a reasonable amount of effort. When a request does not "reasonably describe" the record, the requester will be so advised.

(i) Generally, a record is not reasonably described unless the description contains sufficient information to permit the conduct of an organized, nonrandom search based on the DLA filing arrangements and existing retrieval systems, or unless the record contains sufficient information to permit inference of the elements needed to conduct such a search. Descriptive information about a record is divided into the following two categories:

(A) Category I is file-related and includes information such as type of record or memorandum, title, index citation, subject area, date the record was created, and originator.

(B) Category II is event-related and includes the circumstances that resulted in the record being created, or the date and circumstances surrounding the event the record covers.

(ii) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers only are provided in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

(8) The above guidelines notwithstanding, the decision of DLA concerning reasonableness of description must be based on knowledge of the files. If the description enables DLA personnel to locate the record with reasonable effort, the description is adequate.

(9) A request received by a DLA activity having no records responsive to a request shall be referred routinely to another DoD Component, if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. If the DoD Component that is consulted determines that the existence or nonexistence of any record of the DoD Component responsive to the request is in itself classified, the requester will be so notified. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DLA activity receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

(10) Whenever a record, or a portion of a record is referred to another DoD Component or to a Government agency outside DoD for a release determination and direct response, the requester shall be given a description of the record referred, as furnished by the DoD Component.

(11) A DLA activity will refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the DoD, if the record originated in the other DoD Component or outside agency, or if the classification is derivative. Telephonic coordination with the DoD Component or outside agency will be made prior to the referral.

(12) A DLA activity may also refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component or agency. The DoD Component or agency for which the record was created may have as significant and as legitimate an interest in withholding the record as the DLA activity that

created the record would have. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of the contracting officer. Any FOIA request will be referred to the appropriate contracting officer and the requester will be notified of the referral.

(13) Within DoD, a DLA activity will ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and concurrence from the Component. The requester should then be notified of such referral. DLA activities will not, in any case, release or deny such records without prior consultation with the other DoD Component.

(14) DoD Components that receive referred requests will answer them in accordance with the time limits established by the FOIA and this past 1285. Those time limits will begin to run upon receipt of the referral by the official designated to respond.

(15) *Agencies outside DoD that are subject to the FOIA:*

(i) DLA may refer an FOIA request for any record that originated in an agency outside DoD, or that is based on information obtained from an outside agency, to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA and if the requester does not object. Otherwise DLA must respond to the request.

(ii) DLA will not honor any FOIA request for investigative or intelligence records or any type of records that are on loan to DoD for a specific purpose, if the records are restricted from further release and so marked. Such requests will be referred to the agency that provided the record.

(c) ***Inspection and Copying of Opinions, Orders, and Manuals.*** (1) Subject to the exemptions set forth in paragraph (f) of this section, DLA will make the following materials available for public inspection and copying in an appropriate facility or facilities in accordance with the procedures in § 1285.8 of this part, unless such materials are published and copies offered for sale:

(i) All final opinions (including concurring and dissenting opinions) and orders in adjudication, as defined in 5 U.S.C. 551 (Section 2 of the Administrative Procedure Act) that may be cited, used, or relied upon as precedents in future adjudication.

(ii) Statements of policy and interpretations of less than general applicability affecting the public but not published in the FEDERAL REGISTER.

(iii) Administrative staff manuals and instructions, or portions of such, which establish DLA policy or interpretation of policy that is determinative of the rights of members of the public. This provision does not apply to instructions for employees on the tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of DLA. Examples of manuals and instructions not normally made available are:

(A) Those issued for audit and inspection purposes.

(B) Those which prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(C) Operations and maintenance manuals and technical information concerning munitions, equipment, and systems.

(2) The cost to the DLA activity of copying any such opinion, order, or statement of policy or interpretation shall be imposed on the person requesting the copy in accordance with appendix A.

(3) When feasible, all material published in the FEDERAL REGISTER will be made available for inspection and copying, along with any available index of that published material, in the same facility or facilities provided for inspection and copying of opinions, orders, and manuals.

(4) Identifying details, which if revealed would create a clearly unwarranted invasion of personal privacy, may be deleted from any final opinion, order, statement of policy, interpreta-

tion, staff manual, or instruction made available for inspection and copying. In every such case, the justification for the deletion must be fully explained in writing.

(5) No order, opinion, statement of policy, interpretation, staff manual, or instruction issued, promulgated, or adopted after 4 July 1967, which is not indexed and either made available or published, may be relied upon, used, or cited as a precedent against any member of the public unless he/she has actual and timely notice of terms. If the order, opinion, statement of policy, interpretation, staff manual, or instruction was issued, promulgated, or adopted before 4 July 1967, it need not be indexed but must be made available in accordance with paragraph (c)(1) of this section. In determining whether an order, opinion, statement of policy, interpretation, staff manual, or instruction is likely to be used or relied upon as precedent, the primary test will be whether it is intended to provide binding guidance for decisions or evaluations by subordinates, or for future decisions by the same authority in adjudications of cases affecting the public, where similar facts or issues are presented.

(d) *Fee Assessment.* (1) Fees may not be used to discourage requests, and to this end FOI fees are limited to standard charges for direct document search and duplication. Documents may be furnished without charge or at a reduced charge when the releasing authority determines that waiver or reduction of the fees is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Based on this guidance, the DoD has established a liberal fee schedule, outlined in Appendix A of this Part 1285.

(2) In order to be as responsive as possible to FOIA requests, while minimizing unwarranted costs to the taxpayer, DLA activities will adhere to the following procedures:

(i) If the requester declares an unwillingness to pay fees and does not substantiate a request for waiver, and if it appears that the direct search and reproduction costs associated with the request will exceed the automatic waiver threshold, the request need not be processed and the requester will be so informed.

(ii) If the requester declares a willingness to pay fees up to a specified amount and does not substantiate a request for waiver, then the specified amount or the automatic waiver threshold, whichever is greater, will not be exceeded without the consent of the requester.

(iii) If the requester makes no declaration concerning fees and does not substantiate a request for waiver, and if it appears that the direct search and reproduction fees to be assessed will exceed the automatic waiver threshold, the request will not be processed until the requester is advised of anticipated charges and agrees to pay them.

(iv) Activities may require payment of all or a portion of estimated fees before processing a request.

(v) Subsequent requests from persons who fail to discharge fee obligations need not be processed until previous obligations have been discharged or waived.

(e) *Records Management.* FOIA records will be maintained and disposed of in accordance with DLAM 5015.1, Files Maintenance and Disposition.

(f) *FOIA Exemptions.* The following types of records may be withheld from public disclosure unless otherwise prescribed by law:

(1) Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1-R and DLA Supplement 1 to DoD 5200.1-R.

(2) Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of DLA, if their release to the public would substantially hinder the effective performance of a significant function of DoD and they do not impose requirements directly on the general public. Examples include:

(i) Those rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners, that must remain privileged in order for DLA to fulfill a legal requirement.

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(3) Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(i) National Security Agency Information Exemption, Pub. L. 86-36, Section 6 (reference (c)).

(ii) Patent Secrecy, 35 U.S.C. 181-188 (reference (k)). Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(iii) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162 (reference (m)).

(iv) Communication Intelligence, 18 U.S.C. 798 (reference (o)).

(4) Those containing trade secrets or commercial or financial information that DLA receives from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information, impair the government's ability to obtain necessary information in the future, or impair some other legitimate government interest. Examples include records that contain:

(i) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(ii) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(iii) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(iv) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate employees within DoD.

(v) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(5) Except as provided in paragraphs (f)(5) (ii) through (v) of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e) (reference (a))) or within or among DoD Components.

(i) Examples include:

(A) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

(B) Advice, suggestions, or evaluations prepared on behalf of DLA by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups formed for the purpose of obtaining advice and recommendations.

(C) Those nonfactual portions of evaluations by DLA personnel of contractors and their products.

(D) Information of a speculative, tentative, or evaluative nature on such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions, when such information would provide undue or unfair competitive advantage to private personal in-

terests or would impede legitimate government functions.

(E) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the government's negotiating position or other commercial interests.

(F) Records which are exchanged among Agency personnel or within and among elements of DoD and Federal Agencies preparing for anticipated legal proceedings before any Federal, State, or military court or before any regulatory body.

(G) Those portions of official reports of inspection, reports of the Inspectors General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of DLA, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(ii) If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with DLA, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of DLA in maintaining its confidentiality, then the record or document need not be made available under this Part 1285.

(iii) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(iv) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(v) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(6) Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

(i) *Examples of other files containing* personal information similar to that contained in personnel and medical files include:

(A) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(B) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(ii) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration will be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to

protect the privacy of the deceased person's family.

(iii) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11.

(iv) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical, or similar record may constitute a basis for deleting those reasonably segregable portions of that record even when providing it to the subject of the record.

(7) Those investigative records compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law.

(i) However, this exemption applies only to the extent that release of a record or portion of a record would:

(A) Interfere with enforcement proceedings.

(B) Deprive a person of the right to a fair trial or to an impartial adjudication.

(C) Constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(D) Disclose the identity of a confidential source.

(E) Disclose confidential information furnished only from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(F) Disclose investigative techniques and procedures not already in the public domain and requiring protection against public disclosure to ensure their continued effectiveness.

(G) Endanger the life, physical safety, or well-being of law enforcement personnel or their families.

(ii) Examples include:

(A) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(B) The identity of firms or individuals being investigated for alleged irregularities involving contracting with DoD when no indictment has been obtained nor any civil action filed against them by the United States.

(C) Information obtained in confidence, expressed or implied in the course of a criminal investigation by a criminal law enforcement agency or office within a DLA activity, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DLA activity. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(iii) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500, reference (p)) is not diminished.

(iv) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11.

(8) Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial instructions.

(9) Those containing geological and geophysical information and data (including maps) concerning wells.

§ 1285.4 Definitions.

(a) ***Administrative Appeal.*** A request by a member of the general public, made under the FOIA, asking the appellate authority of DLA to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

(b) ***Appellate Authority.*** The Director, DLA or designee.

(c) ***FOIA Request.*** A written request for DLA records made by a member of the public who either explicitly or implicitly invokes the FOIA (5 U.S.C. 552).

(d) ***Initial Denial Authority (IDA).*** An official who has been granted authority by the Director, DLA, to withhold records requested under the FOIA for one or more of the nine cate-

gories of records exempt from manadatory disclosure.

(e) *Record.* (1) The products of data compilation, regardless of physical form or characteristics, made or received by DLA in connection with the transaction of public business and preserved by DLA primarily as evidence of the organization, policies, functions, decisions, or procedures of DLA.

(2) The following are not included within the definition of the word "record":

(i) Library and museum material made, acquired, and preserved solely for reference or exhibition.

(ii) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

(iii) Commercially exploitable resources, including but not limited to formulae, designs, drawings, maps and charts, map compilation manuscripts and map research materials, research data, computer programs, and technical data packages that were not created and are not utilized as primary sources of information about organizations, policies, functions, decisions or procedures of DLA.

(iv) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

(v) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(vi) Personal notes of an individual not made available to other persons in an agency and not filed with agency records.

(vii) Information stored within a computer for which there is no existing computer program or printout.

§ 1285.5 Background.

The FOIA describes the kinds of official records and information that must be made available to the public and the kinds of information that need not be made available to the public, requires facilities be made available to the public for the examination and copying of records, and provides procedures for the review of denials to release records and information to the public. Requests from Members of Congress are governed by DLAR 5400.12, Administration of Congressional Matters.

§ 1285.6 Significant changes.

This revision spells out more clearly and in extensive detail the provisions of the nine exemptions as they pertain to the withholding of pertinent data. It upgrades the uniform agency fees for search and duplication, and incorporates the prerequisites for the marking and safeguarding of information designated "For Official Use Only."

§ 1285.7 Responsibilities.

(a) HQ DLA.

(1) The Staff Director, Administration (DLA-XA) will:

(i) Serve as the point of contact for referring members of the public, except the news media, desiring to examine and copy records to the appropriate staff element within HQ DLA, or within the DLA Administrative Support Center having custody of the records.

(ii) Maintain a copy of the material and documents referred to in paragraph (b)(3) of this section for examination and copying by the public.

(iii) Process requests for records received under provisions of § 1285.8(a)(1) of this section.

(iv) Review DLA publications to assure that those which meet the criteria for publication in the FEDERAL REGISTER are prepared in proper form and transmitted promptly for publication in the FEDERAL REGISTER, as required by DLAR 5025.19, Publication of Material in the FEDERAL REGISTER.

(2) The Special Assistant for Public Affairs, DLA (DLA-B) will serve as the central point of contact for the release of information to the news media.

(3) The Counsel, DLA (DLA-G) will:

(i) Provide advice and assistance in determining releasability of records.

(ii) Process appeals to the Director, DLA, of denials to provide records.

(iii) Coordinate denials of releases with Office of the General Counsel,

DoD, and the Department of Justice, as appropriate.

(4) The Heads of HQ DLA Principal Staff Elements (PSEs) will:

(i) Review all instructions for which they are the proponent to ensure that such instructions are not inconsistent with the provisions of this Part 1285.

(ii) Ensure that the provisions of this Part 1285 are followed in processing requests for records from members of the public.

(iii) Coordinate requests from the public for information with other HQ DLA staff elements, to the extent considered necessary.

(iv) Arrange for the collection of fees prescribed in Appendix A associated with locating and providing copies of documentary material requested.

(v) Furnish DLA-XA a copy of all denials to provide a record made under the provisions of §1285.8(b)(13). Copies will be identified using the office symbol, calendar year, FOIA, and serially numbered, e.g., DLA-X-80-FOIA-1.

(vi) Prepare and submit reports in accordance with §1285.9(b).

(vii) Make initial determination to deny release after coordination with DLA-G.

(b) The Heads of DLA Primary Level Field Activities (PLFAs) will:

(1) Ensure that the provisions of this Part 1285 are followed in processing requests for records from members of the public.

(2) Provide convenient facilities where members of the public may examine and copy documents to which they are entitled.

(3) Maintain for examination and copying by the public a copy of the following:

(i) All publications listed in §1285.1 above.

(ii) DLAH 5025.2, DLA Organization Directory, which reflects the mailing addresses of all activities of DLA.

(iii) DLAH 5025.1, PT I, Defense Logistics Agency Index of Publications (HSIs, Handbooks, Manuals and Regulations) which contains, among other things, a topical index of the publications issued by HQ DLA.

(iv) DLAM 5015.1, Files Maintenance and Disposition, which contains a functional description of all records and files generated by DLA. This manual also contains a topical index.

(v) A copy of such local indexes of opinions, orders, statements of policy, and publications that may exist, or that may be prepared in the future.

(4) Arrange for the collection of fees prescribed in Appendix A associated with locating and providing copies of documentary material requested.

(5) Furnish DLA-XA a copy of all denials to provide a record made under provisions of §1285.8(b)(13) below. In the case of the Defense Contract Administration Services Regions, the copy will be forwarded through the Deputy Director for Contract Administration Services. Copies will be identified using activity office symbol, calendar year, and FOIA, and serially numbered, e.g., DCSC-80-FOIA-1.

(6) Prepare and submit reports in accordance with §1285.9(b) below.

(7) Refer cases of significance to DLA-G for review and evaluation when the issues raised are unusual, precedent setting, matters of disagreement among components, or otherwise requiring special attention or guidance.

(8) Establish safeguards to ensure that the official records of the activity are properly safeguarded during the time they are made available for examination by a member of the public.

(9) Ensure that internal operating procedures provide for prompt response to all requests for records.

(10) Establish a training program for those personnel that may be involved in passing on requests from the public for records.

§ 1285.8 Procedures.

(a) *Requests for Records or for Permission to Examine Records.* (1) Members of the public may make requests in writing for copies of records or for permission to examine or copy records directly to the Head of the DLA activity having custody of the records, if the location of the document is known. If the location is not known, and it is reasonably certain that the document is in the custody of DLA, the requester should submit the request to HQ DLA, ATTN: DLA-XA, Cameron Station, Alexandria, Virginia 22314.

(2) Requests must identify each record with sufficient particularity to enable the custodian to locate the record with a reasonable amount of effort. Information as to where the record originated, its subject, date, number, or other identification that would enable the custodian to locate the document should be provided by the requester when possible. The DLA activity may require the requester to complete a form to facilitate efforts to locate a record not otherwise reasonably described.

(3) Because certain information and documents are exempt from the imposition of fees under provisions of appendix A, the requester need not submit payment for services with the initial written request. When it is anticipated that the cost of the record search and reproduction of the documents may exceed $30.00, the requester will be so advised and requested to submit payment prior to furnishing the records. In other instances, the requester will be advised of the charges involved at the time the record is found and prior to its release.

(4) Refusal to make a record available may be made only by the Heads of DLA PLFAs or the Heads of HQ DLA PSEs. The refusal may be appealed to the Director, DLA.

(b) *Processing Requests for Records or for Permission to Examine Records.* (1) Upon receipt of a request for records or for permission to examine records, the DLA activity having custody of the records will collect the documents, determine whether they are releasable under provisions of this Part 1285, determine the fees to be charged and advise the requester accordingly.

(2) If the request is for permission to examine releasable records, the requester will be advised as to where and when during normal working hours he may appear for this purpose. Every reasonable effort will be made to accommodate individuals granted permission to examine records; however, overtime is not authorized for this purpose.

(3) The DLA official having custody and control of any DLA record, requested by a member of the public, is authorized to make such record available unless the record falls within one of the exemptions listed in § 1285.3(f) above. In such case, the request will be referred promptly to the Head of the PLFA or the Head of a HQ DLA PSE, as appropriate. The marking or absence of the marking "FOR OFFICIAL USE ONLY" does not relieve the official who is authorized to release the record from the responsibility of reviewing the requested record for the purpose of determining whether an exemption under § 1285.3(f) of this part is applicable.

(4) The official designated by DLA to make initial determinations, if not a public affairs officer, should consult with the appropriate public affairs officer to determine if the subject matter is considered to be newsworthy. The Public Affairs Officer will be advised of all requests from news media representatives. In addition, public affairs officers will be informed in advance whenever a record containing potentially newsworthy material is to be released or to be withheld when it is likely that the withholding action will be publicly challenged.

(5) Initial determinations will normally be made within 10 working days of the date a request is received by the official designated to respond for the type of record sought, providing the requester indicates a willingness to reimburse the DLA activity for any search and duplication costs incurred in providing the record. If the willingness of the requester to reimburse the DLA activity for any required search and duplication costs is not expressed in the request, this issue must be resolved before the time for responding begins to run. The requester will be contacted as expeditiously as possible, usually by telephone, for assurance of his intent to reimburse the Government for these costs.

(6) When the request is received by someone other than the records custodian, it will be forwarded promptly to the records custodian with the period for response commencing upon his receipt.

(7) When a request is received for records which were obtained by DLA from a non-U.S. Government source and because of the source and the nature of the records or information, there is reason to believe that the

source of the information or records may object to release and may have an enforceable right to prevent release, prompt notification of intended release shall be given to the source. Release will normally be withheld until the source has a reasonable time to comment on the proposed release. Comments received will be considered in determining the releasability of the document. When the source advises that it is seeking a restraining order or other court action to prevent release, release will normally not be made pending the outcome of the court action.

(8) When a decision is made to release a record, it will be fowarded promptly to the requester, upon receipt of any required payment for search and duplication.

(9) In all cases where the time for response may become an issue, the official responsible for replying will acknowledge to the requester the date of the receipt of the request, for purposes of determining time limits.

(10) If additional time is needed in unusual circumstances to respond to requests for records, the DLA activity will acknowledge the request in writing within the 10-day period, briefly cite one of the unusual circumstances requiring delay, and indicate the anticipated date for substantive response which may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

(i) The requested records are located in whole or part at places other than the office processing the request.

(ii) The request requires the collection and coordination of a substantial number of records.

(iii) Consultation is required with other DoD components or agencies having substantial interest in the subject matter of the requested records to determine whether the records requested in whole or part are exempt from disclosure, in accordance with § 1285.3(f)(1) of this part, or should be released as a matter of discretion.

(11) The extension of time for responding to an initial request must be approved on a case-by-case basis by DLA-G.

(12) Requests for records will be denied only by the Head of a DLA PLFA or the Head of a HQ DLA PSE upon a determination after consultation with the appropriate Office of Counsel that:

(i) The record is subject to one or more of the exemptions set forth in § 1285.3(f) and a significant and legitimate Governmental purpose is served by withholding it.

(ii) The record cannot be found because it has not been described with sufficient particularity to enable the DLA activity to locate it with a reasonable amount of effort.

(13) When a request for a record or records is denied in whole or part, the designated official who has made the determination will explain to the requester in writing (with at least one additional copy), the basis for the determination that he may appeal the denial to the Director, DLA, and that such appeals sh. uld contain the basis for disagreement with the denials.

(i) Inability to process any part of the request within the specified time will be explained to the requester, with notification that delay may be treated as an initial denial with a right to appeal, or that he/she may agree to await a substantive response by an anticipated date. It will be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made.

(ii) The explanation of the substantive basis for a denial will include both specific citation of the exemption applied under the authority of § 1285.3(f) of this part, and a short discussion of the significant and legitimate Governmental purpose served by invoking an exemption. Reference to the marking "FOR OFFICIAL USE ONLY" on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

(iii) The name and title or position of the official responsible for the denial will be included in the written response to the requester.

(iv) When the initial denial is based in whole or part on a security classification pursuant to § 1285.3(f)(2)(i) of this part, the explanation will include a summary of the paragraph or paragraphs contained in DLA Supplement 1 to DoD 5200.1-R which set forth the

criteria or rationale for the current classification of the requested record. In addition, it will advise the requester of his optional right under DoD 5200.1-R and DLA Supplement 1 to DoD 5200.1-R to seek declassification review of a record more than 10 years old.

(v) Copies of all initial denials will be maintained by each DLA activity in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(vi) When there is good reason to believe that the requester will appeal the denial, the record, the letter of denial, and such other information as will assist the Director, DLA, will be promptly forwarded to DLA-G in order to permit timely response of the anticipated appeal.

(14) Final determination on appeals will normally be made within 20 working days of the receipt of the appeal by DLA-G. Misdirected appeals will be forwarded promptly to DLA-G with the period for response commencing upon their receipt, which should be acknowledged. If additional time is needed to decide the appeal because of unusual circumstances, as described in paragraph (b)(10) of this section, the final determination may be delayed for the number of working days, not to exceed 10, which were not utilized as additional time for responding to the initial request.

(15) A final denial to provide a requested record will be made in writing by the Director, DLA. Such a denial will be made in accordance with appeal procedures prescribed in this Part 1285 and will include, as a minimum, the following elements:

(i) The basis for the denial will be explained to the requester, in writing, both with regard to the applicable exemption under § 1285.3(f) of this part, and the significant and legitimate governmental purpose served by its withholding. More particularly:

(A) When the final denial is based in whole or part on a security classification, pursuant to § 1285.3(f)(2)(i) of this part, the explanation will include a statement that the record meets the cited criteria and rationale of DLA Supplement 1 to DoD 5200.1-R and that this determination is based on a declassification review. A brief explanation of why that review confirmed the continuing validity of the security classification will also be included.

(B) The requester will be advised of his optional right to seek declassification of the record by the appropriate component Classification Review Committee established pursuant to DoD 5200.1-R.

(C) Appeals from a denial by the appropriate component Classification Review Committee may be made to the Interdepartmental Classification Review Committee, established pursuant to Executive Order 11652, March 8, 1972, in lieu of immediate judicial of this part.

(D) The written final denial will include the name and title or position of the official responsible for the denial and of the provision for judicial review of the denial set forth in Appendix C of this part.

(ii) No final denial will be made without prior consultation with the Office of the General Counsel of DoD when there is reason to believe that the requester will file a complaint in a U.S. District Court to force release of the denied record.

(iii) Copies of ALL final denial letters will be maintained by DLA-G in a central repository. Whenever a complaint is filed in a U.S. District Court to force release of the record, a copy of the final denial letter from DLA will be forwarded to the General Counsel of DoD. DLA-G will also furnish to the General Counsel a copy of the requesters complaint and the DLA litigation report.

(iv) When the denial to provide the record is based in whole or in part on a security classification, pursuant to § 1285.3(f)(1) and (3)(i) of this part, the litigation report will include an affidavit from the Director, DLA, for this purpose explaining in as much detail as national security interests permit the basis under applicable statute, executive order, and regulations for the current security classification of the requested record.

(16) The costs of searching for and duplicating a requested record must be paid or waived in accordance with Appendix A. The time limits for responding to requests will be computed from

80-109 O—81——12

the date of receipt from the requester of clear evidence of willingness to pay any anticipated search and duplication costs under the schedule of fees set forth in Appendix A for providing the requested record. The record need not be forwarded until actual receipt of payment.

(c) *Release and Authentication of Copies of Official Records.*

(1) Records available to a person, requesting them under § 1285.3(b) above, will be authenticated with an appropriate seal whenever necessary to fulfill an official governmental or other legal function.

(2) Records exempt from release to a person requesting them may, nevertheless, be authenticated on request, and released in accordance with this Part 1285 to local, state, or other Federal Governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To the courts whenever ordered, as appropriate to the proper administration of justice.

(ii) To the Congress, in accordance with DLAR 5400.12.

(iii) To local and State legislative bodies, in accordance with the determination of the Director, DLA.

(iv) To other Federal agencies, both executive and administrative as determined by the Director, DLA, consistent with efficient administration and in accordance with law, including Pub. L. 93-579, 5 U.S.C. 552a, The Privacy Act of 1974.

(v) To local and state executive and administrative agencies as determined by the Director, DLA.

(d) *Reasons for Not Releasing a Record.* There are six reasons provided by the FOIA for not complying with a request for a record. They are:

(1) The information requested is not a record within the meaning of the FOIA and this Part 1285.

(2) A record has not been described with sufficient particularity to enable DLA to locate it by conducting a reasonable search.

(3) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this Part 1285.

(4) DLA determines through knowledge of its files and reasonable search efforts that it does not hold the requested record. (A "no record" determination is not considered a denial; therefore, an appeal is not appropriate.)

(5) DLA determines that the request should be handled under the provisions of the Privacy Act.

(6) The record is denied in accordance with procedures set forth in the FOIA and this Part 1285.

(e) *Denial Tests.* To deny a requested record that has been located, DLA must determine that the denial meets the following tests:

(1) The record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in this Part 1285.

(2) A significant and legitimate government purpose is served by withholding the record.

(f) *Reasonably Segregable Portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when the meaning of these portions is not distorted by deletion of the denied portions and when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not possible to reasonably segregate meaningful portions of the record for release.

§ 1285.9 Reports.

(a) An annual report will be prepared by DLA-XA from statistics furnished by HQ DLA PSEs and PLFAs for the preceding calendar year on those items prescribed by ASD(PA) on or before 1 February. The responsibility for submission of the data for each item will be as indicated following each item (see Appendix D). The feeder reports for the subject annual report will be prepared by the Heads of DLA PLFAs and Heads of HQ DLA PSEs for submission *in duplicate to DLA-XA on or before 15 January each year.* Negative reports are required. RCS DD-PA(TRA&A)1365 is assigned to this report.

(b) A tri-annual cost report will be prepared by DLA-XA from statistics furnished by HQ DLA PSEs and PLFAs for the following periods: Jan-Apr, May-Aug, and Sep-Dec each year and submitted to DLA-XA *in duplicate 15 days after the close of each 4-month reporting period.* The data in this report falls into three areas: costs attendant to administration of the FOIA Program; the amount collected from the public; and the number of reportable requests and appeals. See Appendix D for the required format.

APPENDIX A—FEE SCHEDULE

Application, Assessment, Computation, Collection, and Fee Rates

1. *Application.* The fee rates listed below reflect direct search and duplication costs, collection of which are permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees.

2. *Fee Assessment.*

a. Minimum fees shall not be charged.

b. When direct search and duplication costs for a single FOIA request total less than $30.00, fees should be waived automatically. DLA activities, however, may set aside the automatic waiver provision when, on the basis of good evidence, the activity can demonstrate that waiver of fees is not in the public interest. Multiple requests from a single requester or from those acting in behalf of a single requester in an effort to take advantage of the waiver may create a situation in which waiver should be denied by the activity.

c. Decisions to waiver or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis. However, the following circumstances describe the most common circumstances in which waiver or reduction of fees are most likely to be warranted.

(1) No record is located or all records are denied. However, fee charges are appropriate if the requester insists upon a search and agrees to such fees after being informed that the search is likely to be nonproductive or that the records are all likely to be exempt from release.

(2) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records including additional information not requested.

(3) The records are to be made available in response to a news media requester whose requests under this regulation are reasonable in scope and frequency.

(4) The record is for a nonprofit public interest group and the subject of the requested record is known to be of wide public interest, and furnishing the information can be considered as primarily benefiting the general public.

(5) A previous denial is reversed in whole or in part and the search and reproduction costs involved are not substantial.

3. *Computation of Fees.* The fee schedule contained herein is used to compute the search and duplication costs associated with processing a given FOIA request. Search fees shall be computed based on time actually spent. Neither time-based nor dollar-based minimum charges for search and duplication are authorized.

4. *Collection of Fees.* Collection of charges and fees need not be made in advance of rendering the service unless the costs are expected to exceed the fee waiver threshold and the requester has not indicated a willingness in writing to pay. It frequently is more practical to collect charges and fees at the time of providing the service or property to the recipient when the requester specifically states that the cost involved shall be acceptable or acceptable up to a specified limit that covers anticipated costs. Collection of fees in advance is an appropriate requirement only when the requester has not agreed in writing to pay the anticipated fee or has not honored previous commitments to pay fees.

5. *Fee Rates.*

a. *Search Fees.*

(1) Manual Search.

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below	8
Professional	01-06/GS9-GS-15	16
Executive	07/GS16/ES1 and above.	26

(2) Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

(3) Actual cost of transporting records or personnel to the search site may be included.

b. *Duplication Fees*

Type	Cost per page (cents)
Printed Material	01
Office Copy	10
Microfiche	25

c. *Audiovisual Documentary Materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

d. *Other Records.* Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

APPENDIX B—FOR OFFICIAL USE ONLY (FOUO)

Identification, Marketing, Release, Safeguarding, Termination, and Disposal of FOUO Information

1. *Identification.*

a. Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 shall be considered as being for official use only. *No other material shall be considered or marked "For Official Use Only"* (FOUO), and FOUO is not authorized as a lower form of classification to protect national security interests.

b. The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply and whether a significant and legitimate government purpose is served by withholding the record or portions of it.

2. *Marketing of Records.*

a. *When to Mark.* Marking records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

3. *Location of Markings.*

(1) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any).

(2) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(3) Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(4) Other records, such photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(5) FOUO material transmitted outside DoD requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions . . . apply.

3. *Release and Transmission Procedures.* Until FOUO status is terminated, the release and transmission instructions that follow apply:

a. FOUO information may be disseminated within DLA and between officials of DLA and DoD contractors, consultants and grantees to conduct official business for DoD. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

b. DLA holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

c. Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4. Release to the General Accounting Office (GAO) is governed by DoD Directive 7650.1. Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an expla-

nation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

d. Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

e. Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP-121 (US Supp 1) for FOUO information.

4. *Safeguarding FOUO Information.*

a. During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-Governmental personnel.

b. At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or Government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of P.L. 86-36, National Security Information Exemption, shall meet the safeguards outlined in any system notice for that group of records.

5. *Termination.* The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

6. *Disposal.*

a. Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experiences indicate that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

b. Record copies of FOUO documents shall be disposed of in accordance with the methods in DLAM 5015.1.

Appendix C—Judicial Actions

1. *General.* A requester may seek an order from a United States District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the Director, DLA, or an appellate designee, or when DLA has failed to respond within the time limits prescribed by the FOIA and set forth in this regulation.

2. *Jurisdiction.* The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

3. *Burden of Proof.* The burden of proof is on DLA to justify its refusal to provide a record. The court will evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

4. *Actions by the Court.*

a. When DLA has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow DLA additional time to complete its review of the records.

b. If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

c. When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding of the records raise questions whether DLA personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board will conduct an investigation to determine whether or not disciplinary action is warranted. DLA is obligated to take the action recommended by the special counsel.

d. The court may punish the responsible official for contempt when DLA fails to comply with the court order to produce records that it determines have been withheld improperly.

5. *Non-United States Government Source Information.* A requester may bring suit in a U.S. District Court to compel the release of records obtained from a non-Government

source or records based on information obtained from a non-Government source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

6. *Litigation Status Sheet.* Freedom of Information managers in DLA will be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by DLA personnel. The Litigation Status Sheet attached provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint will forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the Director of Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs). A revised Litigation Status Sheet will be provided at each stage of the litigation.

LITIGATION STATUS SHEET

1. Case Number [1]
2. Requester
3. Document Title or Description
4. Litigation
a. Date Complaint Filed
b. Court
c. Case File Number [1]
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action
a. Court's Finding
b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
a. Date Complaint Filed
b. Court
c. Case File Number [1]
d. Court's Finding
e. Disciplinary Action (as appropriate)

APPENDIX D—FOI ANNUAL REPORT—CY

Reporting Activity ————————
Date Completed ————————

Item 1. Total number of initial determinations not to comply with a request for records. (PSEs, DASC offices/divisions, and all PLFAs.)

a. Number of completed public requests ————

b. Number of completed reportable requests ————

[1] Number used by DLA for reference purposes.

c. Number of instances where at least one of the nine statutory exemptions was cited ————

d. Number of instances where other authority was cited ————

NOTE: A reportable request is that portion of an FOIA request resulting in a single record or group of records pertaining to one general subject area being acted upon by one IDA who concludes that a single type of determination applies. Example: A single public request that requires the action of three IDAs in determining if a record under their jurisdiction is to be released would be counted as three reportable requests, but one public request. Records released by two IDAs in response to one public request would be counted as two reportable requests.

Item 2. Provide statistics on the specific authorities—statutory exemptions, statutes, and categories of other reasons used in the totals above. (PSEs, DASC offices/divisions, and all PLFAs.)

a. Exemptions invoked on initial determination:

Exemptions (552(a))	Number of times invoked
(1)	
(2)	
(3)	
(4)	
(5)	
(6)	
(7)	
(8)	
(9)	

b. *Statute and number of times invoked*

c. Other reasons cited on initial determination and number of times each:

(1) Transferred Request (Appeal) ————

(2) Lack of Records ————

(3) Failure of Requester to Reasonably Describe Record ————

(4) Other Failures by Requesters to Comply with Published Rules and/or Directives ————

(5) Request (Appeal) Withdrawn by Requester ————

Item 3. Provide the name and title of person(s) cited as IDA followed thereafter in two subcolumns by the number of times each person cited exemptions on other authority categories (the vertical column or totals must match item 1). (PSEs and all PLFAs)

Name	Title	Participation	
		Exemption	Other authority

Item 4. Provide the number of appeals that, upon review, were granted, granted in part, or denied, followed by a total of those three numbers. (DLA-G only)

a. Granted ——— ———
b. Granted in part ——— ———
c. Denied ———————
Total ———————

Item 5. Repeat the three statistical requirements of item 2 for the appeals that were granted in part or denied. (DLA-G only)

Item 6. Repeat Item 3 for appellate authorities including both subcolumn statistics. (DLA-G only)

Item 7. When a court determines that DLA records were improperly withheld and issues a finding raising questions on the actions of DLA personnel, provide a copy of each such court opinion or order; a copy of the Office of Personnel Management finding and recommendation on each such proceeding; and a report of any disciplinary action taken against the person who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken. (PLFAs and DLA-G)

Item 8. List changes or revisions of DLA rules or regulations affecting the implementation of FOIA followed by the FEDERAL REGISTER reference (number, date, and page) that announced the change or revision to the public. Append a copy of each such change or revised rule or regulation. (DLA-XA only)

Item 9. The amount of fees collected from the public will be reported triannually to OASD(PA); thus, duplicate annual reporting by DoD Components is not required. (DLA-XA only)

Item 10. Number of times unusual circumstances required an extension of normal processing time limits. (DLA-G and PLFAs)

Item 11. List FOI instructional seminars, schools or courses attended during the period of this report. (DLA-G, DLA-K and all PLFAs)

FOI TRI-ANNUAL COST REPORT

Reporting activity ———————————
Period of Report ———————————

I. Cost of routine requests processed:
Number of reportable requests × (cost factor per request) ..... $———

II. Personnel costs (civilian and military):
A. Direct costs of personnel assigned FOI duties based upon estimated payroll man-hours by grade:
Total man-hours ..... $———
Cost ..... ———
B. Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:
(1) Search time costs ..... ———
(2) Classification review and excising action costs ..... ———
(3) Coordination and approval/denial decision costs ..... ———
(4) Corres. and form prep. costs ..... ———
(5) Other activity costs ..... ———
Total man-hour costs ..... ———
C. Application of overhead:
(Subtotal A) + (Subtotal B) × (overhead rate) ..... ———
Total of direct personnel costs and overhead ..... ———

III. Other case related costs:
A. Computer ..... ———
B. Office copy reproduction ..... ———
C. Microfiche reproduction ..... ———
D. Cost of printed records ..... ———
Total of other costs ..... ———

IV. Other operating costs:
A. Reporting costs:*
(1) Operational ..... ———
(2) User ..... ———
(3) Overhead (25 percent of (1) and (2)) ..... ———
Total reporting costs ..... ———
B. Other costs as directed or as can be reasonably ascertained. Itemize each expense category and cost ..... ———
Total other operating costs ..... ———

V. Summary:
A. Total costs of section I through IV above ..... ———
B. Amount collected from requesters this reporting period:
Search ..... ———
Copy ..... ———
Total ..... ———
C. No. of requests processed and completed during this reporting period:
Reportable requests ..... ———
Appeals ..... ———
Total ..... ———

*In the report for the last 4-month period (Sep–Dec) of each year include the costs attributable to the annual report. See encl 5 to DLAR 5000.12 for computing this cost.

PART 1286—PERSONAL PRIVACY AND RIGHTS OF INDIVIDUALS REGARDING THEIR PERSONAL RECORDS

Sec.

1286.1 Purpose and scope.
1286.2 Policy.
1286.3 Definitions.
1286.4 Responsibilities.
1286.5 Procedures.
1286.6 Forms and reports.

APPENDIX A
APPENDIX B
APPENDIX C

AUTHORITY: Pub. L. 93-579 (5 U.S.C. 552a).

SOURCE: 42 FR 45908, Sept. 13, 1977, unless otherwise noted.

§ 1286.1 Purpose and scope.

(a) This Part 1286 implements the Privacy Act of 1974 (hereinafter referred to as the Act) by prescribing:

(1) The procedures whereby an individual can be notified in response to his[1] request of any system of records named by the individual contains a record pertaining to him.

(2) The requirements for verifying the identity of an individual who requests his record or information pertaining to him before the record or information will be made available to him.

(3) The procedures for granting access to an individual upon his request of his record or information pertaining to him.

(4) The procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to him, for making a determination on the request, and for an appeal of an initial adverse determination.

(5) The procedures and policies governing the collection, safeguarding, maintenance, public notice, use, and dissemination of personal information.

(6) The conditions under which disclosure of personal information may be made and procedures for exempting systems of records from certain requirements of the Act.

(b) This Part 1286 is applicable to HQ DLA and all DLA field activities.

§ 1286.2 Policy.

It is the policy of DLA:

(a) To preserve the personal privacy of individuals, permitting an individual to know what records pertaining to him are collected, maintained, used, or disseminated in DLA, and to have access to and have a comprehensible copy made of all or any portion of such records and to correct or amend such records.

(b) To collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose; that the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information.

§ 1286.3 Definitions.

(a) *Individual.* A citizen of the United States or an alien lawfully admitted for permanent residence. A legal guardian or the parent of a minor have the same rights as the individual and may act on behalf of the individual.

(b) *Maintain.* (Records on individuals) collect, use, or disseminate.

(c) *Record.* Any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(d) *Routine Use.* The disclosure of a record, or the use of such record for a purpose which is compatible with the purpose for which it was collected. Routine use encompasses not only common or ordinary uses, but also all the proper and necessary uses of the record; even if such use occurs infrequently.

(e) *System Manager.* The official responsible for the policies and practices governing the system of records.

(f) *System of Records.* A group of records under the control of any system manager from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

[1] For convenience in reading, standard pronoun gender usage will be followed in this DSAR. Where such pronouns as "he" or "him", etc., are used, it should be understood to include "she" or "hers", etc.

§ 1286.4 Responsibilities.

(a) *HQ DLA*—(1) *The Chief, Administrative Management Division, Office of Administration (DLA-XA)* will:

(i) Formulate policy to provide comprehensive guidance necessary for uniform compliance with the Act by all elements of DLA.

(ii) Serve as the focal point on privacy matters for DLA in communication with the Defense Privacy Board and is designated the DLA Privacy Act Officer.

(iii) Supervise the preparation for publication in the FEDERAL REGISTER of all required information or systems of records affected by the Act.

(iv) Serve as the DLA representative on the Defense Privacy Board.

(v) Review for conformity with the Act, all procedures, including DLA and DD forms, which requires an individual to furnish information, and formulate corrective or supplementary provisions, as necessary.

(vi) Maintain this DSAR in a current status and review it annually.

(2) *The Chief, Publication Division, Office of Administration (DLA-XM)* will review DLA publications to assure that those which meet the criteria for publication in the FEDERAL REGISTER are prepared in proper form and transmitted promptly for publication in the FEDERAL REGISTER as required by DLAR 5025.19, Publication of Material in the FEDERAL REGISTER.

(3) *The Counsel (DLA-G)* will review policies, practices, and procedures to ensure conformity with the Act.

(4) *The Assistant Director, Plans, Programs and Systems (DLA-LS)* will provide policies and guidance to preclude unauthorized disclosure of protective information maintained in the automatic data processing facility.

(5) *The Chief, Training and Incentives Division, Office of Civilian Personnel (DLA-KT)* will, in conjunction with the DLA Privacy Board, ensure development of appropriate training program for all personnel where duties involve responsibilities for systems of records affected by the Act.

(6) *The Heads of HQ DLA Principal Staff Elements (PSEs)* will:

(i) Ensure that the collection, maintenance, use, or dissemination of record of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose, that the information is timely and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(ii) Ensure that internal operating procedures provide for effective compliance with the Act.

(iii) Establish procedures for the granting of confidentiality in regulations and procedures for investigations (e.g., law enforcement, suitability, etc.).

(iv) Prepare and submit reports in accordance with § 1286.6.

(7) *DLA Privacy Board.* Established under the chairmanship of the Chief, Administrative Management Division, Office of Administration (DLA-XA) with membership consisting of representatives from the Comptroller, DLA, Counsel, DLA, Staff Director, Civilian Personnel, DLA, Assistant Director, Plans, Programs, and Systems, DLA, Staff Director, Military Personnel, DLA, Command Security Officer, DLA, and the Executive Director, Industrial Security, HQ DLA CAS. The Board will cause to be reviewed for conformity with the Act, each category of information in a system of records for necessity and relevance; provide assistance in the development of DLA-wide Privacy training program; and review practices and procedures established by system managers to ensure they are in conformity with the Act.

(b) *The Heads of DLA Primary Level Field Activities (PLFAs)* will:

(1) Ensure that the collection, maintenance, use, or dissemination of record of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose, that the information is timely and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(2) Designate a Privacy Act officer to serve as the principal point of contact on privacy matters.

(3) Ensure that internal operating procedures provide for effective compliance with the Act.

(4) Establish a training program for those personnel whose duties involve responsibilities for systems of records affected by the Act.

§ 1286.5 Procedures.

(a) *Access to personal information.* (1) Upon request, an individual will be informed whether or not a system of records contains a record pertaining to him, and accompanied by a person of his own choosing, if he so desires, will be permitted to review his records, and to obtain a copy of such records in a form that is comprehensible to him at a reasonable cost, unless exempted in accordance with paragraph (o)(1)(v) of this section or paragraph (d) of this section. This Part 1286 does not require that a record be created or that an individual be given access to records which are not retrieved by name or other individual identifier. Only costs of reproduction, as set forth in DLAR 5400.14, Availability to the Public of Official Information, may be charged; however, if copying is the only means whereby the record can be made available to the individual, reproduction fees will not be assessed (i.e., when a copy must be made in order to delete information contained on the record pertaining to another individual).

(i) The granting of access to a record containing personal information will not be conditioned upon any requirement by the individual to state a reason or otherwise justify the need to gain access.

(ii) Prior to granting access to personal information, individuals may be required to provide reasonable verification of his identity.

(*a*) No verification of identity will be required of an individual seeking access to records which are otherwise available to any member of the public under DLAR 5400.14.

(*b*) For the individual who seeks access in person, verification of identity will normally be made by those documents which an individual is likely to have readily available, such as employee or military identification card, driver's license, or medical card.

(*c*) When access is requested by mail, verification of identity may consist of the individual providing certain minimum identifying data, such as name and date of birth or such other information deemed necessary by the system manager having custody of the record. If the sensitivity of the data warrants, a signed notarized statement of identity may be required.

(*d*) An individual will not be denied access to his record for refusing to disclose his social security number (SSN), unless disclosure of his SSN is required by Federal Statute or required for verification purposes under a system of records existing and operating before 1 January 1975, if such disclosure was required under statute or regulation adopted prior to such a date.

(*e*) Individuals may not be denied access to a record pertaining to themselves because those records are exempted from disclosure under the provisions of DLAR 5400.14.

(iii) Access to a record or a copy thereof will not be denied solely because the record's physical presence is not readily available (i.e., on magnetic tape), or because the context of the record may disclose sensitive information about another individual. To protect the personal privacy of other individuals who may be identified in a record, an extract will be prepared to delete only that information which would not be releasible to the requesting individual under DLAR 5400.14.

(iv) A medical record will be disclosed to the individual to whom it pertains unless, in the judgment of a physician, access to such record could have an adverse effect upon the individual's physical or mental health. When it has been determined that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, the information may be transmitted to a physician named by the requesting individual.

(v) This Part 1286 does not entitle an individual to have access to any information compiled in reasonable anticipation of a civil action or proceeding.

(vi) A system manager may require an individual who wishes to be accompanied by another person when receiving access to his records to furnish a written statement authorizing discus-

sion of the records in the presence of the accompanying person.

(vii) Any requests from an individual for access to or copies of records maintained on him will be processed in accordance with this Part 1286 and not the Freedom of Information Act. Normally, requests for access to records will be acknowledged within 10 working days of receipt and access provided within 30 working days.

(viii) Copies of investigatory records compiled by any investigative organization, but in the temporary custody of an element requesting the record for purposes of adjudication or other personnel action, are the records of the originating investigative organization. Individuals seeking access to such records will be directed to the originating investigative organization and should be instructed to direct all requests submitted under the Act to that organization. Records concerning the adjudication, or other personnel actions based on the investigative records, originated by the organization using the investigation, are the records of the using organization which shall respond to all other requests under the Act concerning them.

(2) *Amendment of personal information.* (i) An individual will be given the opportunity to request, either in person or through the mail, that his record be amended. The system manager may, however, require that such requests be made in writing. Instructions for the preparation of a request and any forms employed should be as brief and as simple as possible. Requests should contain as a minimum, identifying information to locate the record, a description of the items to be amended and the reason amendment is being requested. A request will not be rejected or required to be resubmitted unless additional information is essential to process the request. Incomplete or inaccurate requests will not be rejected categorically; the individual will be asked to clarify the request as needed. Individuals will be required to provide verification of identity as paragraph (a)(1)(ii) of this section to assure that the requester is seeking to amend records pertaining to him and not, inadvertently or intentionally, the records of another individual.

(ii) A written acknowledgement of the receipt of a request for amendment of a record must be provided to the individual within 10 working days (excluding Saturdays, Sundays, and legal public holidays) after receipt by the system managers. The acknowledgement will clearly identify the request and advise the individual when he may expect to be advised of action taken on the request. Whenever practicable, the decision will be made within 30 working days. No separate acknowledgement of receipt is necessary if the request can be either approved or denied, and the individual advised within the 10-day period. For requests presented in person, written acknowledgement should be provided at the time the request is presented.

(iii) If the system manager agrees with any portion or all or the individual's request to amend a record, the system manager will promptly advise the individual and amend the record accordingly. If disclosure accounting has been made, the system manager will advise all previous recipients of the record that the amendment has been made and the substance of the correction.

(iv) If the system manager disagrees with all or any portion of a request to amend a record, the system manager will promptly:

(*a*) Advise the individual of his refusal and the reasons therefor.

(*b*) Inform the individual that he may request a further review by the designated reviewing official.

(*c*) Describe the procedures for requesting such a review including the name and address of the official to whom the request should be directed.

(v) A review of the initial refusal to amend a record will be made if requested by the individual.

(*a*) Heads of HQ DLA PSEs and Heads of PLFAs, as applicable, are designated reviewing officials and will make a review of the initial determination. The Deputy Director, DLA, or the Deputy Director, CAS, for HQ DLA CAS elements and Defense Contract Administration Services Regions, will be the reviewing official when one of the aforementioned officials is identified as a system manager.

(*b*) If, after conducting the review, the reviewing official also refuses to amend the record in accordance with the individual's request, the individual will be notified:

(*1*) Of the refusal and the reasons therefor.

(*2*) Of his right to file a concise statement of reasons for disagreeing with the decisions of DLA.

(*3*) Of the procedures for filing a statement of disagreement and such statement will be made available to anyone to whom the record is subsequently disclosed.

(*4*) That prior recipients of the disputed record will be provided a copy of the statement of disagreement to the extent that an accounting of disclosure is maintained.

(*5*) Of his right to seek judicial review of DLA's refusal to amend a record.

(*c*) If the reviewing official determines that the record should be amended in accordance with the request, the system manager will amend the record, advise the individual, and inform previous recipients where an accounting of disclosure has been maintained.

(*d*) A final determination on the individual's request for a review of an initial refusal to amend a record must be completed within 30 days after receipt by the proper office unless the reviewing official determines that a fair and equitable review cannot be completed in that time. If additional time is required, the individual will be informed, in writing, of the reasons for the delay and of the approximate date on which the review is expected to be completed.

(vi) When an individual files a statement of disagreement, the system manager will clearly annotate the record so that the dispute is apparent to anyone who may subsequently grant access to use or disclose the record. The notation itself will be integral to the record. Where an accounting of disclosure has been made, the system manager will advise previous recipients that the record has been disputed and will provide a copy of the individual's statement.

(*a*) The individual's statement of disagreement need not be filed as an integral part of the record to which it pertains. It will, however, be maintained in such a manner as to permit ready retrieval whenever the disputed portion of the record is to be disclosed. When information which is the subject of a statement of disagreement, is subsequently disclosed, the system manager will note which information is disputed and provide a copy of the individual's statement.

(*b*) The system manager may include a brief summary of its reasons for not making an amendment when disclosing disputed information. Summaries normally will be limited to the reasons stated to the individual. The system manager's summary will be treated as part of the individual's record; however, it will not be subject to the amendment procedures.

(b) *Disclosure to others.* (1) Except as prescribed in paragraph (a) of this section, this Part 1286 does not require disclosure of records to anyone other than the individual to whom the records pertain.

(2) No record contained in a system of records maintained within DLA will be disclosed by any means of communication to any person, or to any agency outside DLA, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

(i) To those officials and employees of the Department of Defense who have a need for the record in the performance of their official duties and the use is compatible with the purpose for which the record is maintained. This includes, for example, transfer of information between components when civilians or military personnel assigned or affiliated with one component are processed by an activity of another component such as Armed Forces Examination and Entrance Stations (AFEES), Air Terminals, or Defense Investigative Service (DIS).

(ii) Required to be disclosed to a member of the public by DLAR 5400.14. Some examples of personal information pertaining to military personnel which normally are released without an unwarranted invasion of privacy are: name, rank, date of rank, salary, present and past duty assign-

ments, future assignments which have been finalized, office phone number, source of commission, military and civilian educational level, and promotion sequence number. Disclosure of personal information pertaining to civilian employees shall be made in accordance with the Federal Personnel Manual.

(iii) For a routine use as defined in § 1286.3 and described in section II H of Appendix A.

(iv) To the Bureau of the Census for purpose of planning or carrying out a census or survey or related activity authorized by law.

(v) To a recipient who has provided DLA with advance adequate written assurance that:

(*a*) The record will be used solely as a statistical research or reporting record.

(*b*) The record is to be transferred in a form that is not individually identifiable, (i.e., the identity of the individual cannot be determined by combining various statistical records).

(*c*) The record will not be used to make any decisions about the rights, benefits, or entitlements of an individual.

(vi) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services, or his designee to determine whether the record has such value. A record transferred to a Federal records center for safekeeping or storage does not fall within this category since Federal records center personnel act on behalf of DLA in this instance and the records remain under the control of DLA. No disclosure accounting record of the transfer of records to Federal records centers need be maintained.

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the Head of the agency or instrumentality has made a written request to a DLA element which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought. Blanket requests for all records pertaining to an individual will not be accepted. A record may also be disclosed to a law enforcement agency at the initiative of a DLA element which maintains the record when criminal conduct is suspected, provided that such disclosure has been established in advance as a "routine use".

(viii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of the individual to whom the record pertains.

(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee. This does not authorize the disclosure of any record subject to this Part 1286 to members of Congress acting in their individual capacities or on behalf of their constituents.

(x) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office.

(xi) Pursuant to the order of a court of competent jurisdiction.

(*a*) When a record is disclosed under compulsory legal process and when the issuance of that order or subpoena is made public by the court which issued it, reasonable efforts will be made to notify the individual to whom the record pertains. This may be accomplished by notifying the individual by mail at his most recent address as contained in DLA records.

(*b*) Upon being served with an order to disclose a record, the system manager will endeavor to determine whether the issuance of the order is a matter of public record and, if it is not, seek to be advised when it becomes public. An accounting of the disclosure will be made at the time the system manager complies with the order or subpoena.

(3) Each system manager, with respect to each system of records under his control will:

(i) For all disclosures under paragraph (b)(2) of this section, except

those under paragraphs (b)(2) (i) and (ii) of this section, keep an accurate accounting of the following:

(*a*) The date of the disclosure.

(*b*) The nature of the disclosure; that is what was disclosed and how; for example, oral disclosure by telephone of home address. Other examples of disclosure include visual review of the record, written, transfer of data through telecommunications network, etc.

(c) The purpose of the disclosure. Describe the condition of the disclosure as listed in paragraphs (b)(2) (iii) through (xi) of this section. If disclosure is for a routine use published in a records systems notice, briefly describe the specific routine use.

(*d*) The name and address of the person or agency to whom the disclosure is made. A system manager need not make a notation on a single document of every particular record, provided he can construct from the system for the required accounting information.

(ii) Retain the accounting made under paragraph (b)(3)(i) of this section for at least 5 years after the last disclosure or the life of the record, whichever is longer. No record of the disclosure of this accounting need be maintained.

(iii) Upon request of the individual to whom the record pertains, make available to that individual all information in the accounting of disclosures except that pertaining to disclosures for law enforcement purposes pursuant to paragraph (b)(2)(vii) of this section, and systems that have been determined to be exempt from these provisions under subsections (j) and (k) of the Act.

(4) Names and Addresses. An individual's name and address may not be sold or rented by DLA unless such action is specifically authorized by law. Requests for home addresses may be referred to the last known address of the individual for reply at his discretion and the requester will be notified accordingly. This provision will not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(c) *Collection of personal information from individuals*—(1) *Collection Directly from Individuals.* Personal information shall be collected to the greatest extent practicable directly from the individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The collection of information from third parties should be minimized. Exceptions to this policy may be made under certain circumstances, such as the following:

(i) There is need to ensure accuracy of information supplied by an individual by verifying with a third party, such as in the case of verifying information for a security clearance.

(ii) The nature of the information is such that it can only be obtained from a third party, such as an evaluation of employee's performance in a previous job or assignment.

(iii) Obtaining the information from the individual would present exceptional practical difficulties or would result in unreasonable costs.

(2) *Informing Individuals From Whom Information is Requested.* Each individual who is asked to supply personal information must be told of:

(i) The authority (statute or Executive Order) which authorizes its solicitation.

(ii) The principal purpose or purpose for which it is to be used.

(iii) The routine uses, to be made of it.

(iv) Whether furnishing such information is mandatory or voluntary and the effects on him, if any, of not providing it. This notice to the individual will be made on a separate form which can be retained by the individual. This advice must be given on all media used in requesting information whether it is a "form" in the usual sense (i.e., a preprinted document with a control number and an edition date) or a format, questionnaire, survey sheet, or report rendered on a blank sheet. Supplying personal information is when individuals personally complete the fill-in information about themselves on the form or when the individuals furnish the information about themselves verbally as in an interview or question and answer type of arrangement.

(3) *Collection Documents in Use Prior to 27 Sep 75.* These documents in use before 27 Sep 75 and which are to be used on and after that date, must meet the notice requirements by use of a separate statement to go along with each such document subject to the provisions of the Act. The statement will be assigned the identifying form number/RCS/OMB Appeal Number/Form Letter Number used in collecting the information and the suffix "Privacy Act Statement", as follows:

(i) For forms in regularly-issued, numbered series, the Privacy Act Statement will bear the same number and edition date as the form to which it pertains, except as provided in paragraph 2 of Appendix B. Example: For DD Form 398, Statement of Personal History, the applicable notice to each individual asked to complete the form will be identified as "DD Form 398—Privacy Act Statement" in the lower left-hand corner.

(ii) For unnumbered formats, questionnaires, surveys, and reports which are not in the regularly-issued form number series, the Privacy Act Statement will bear the report control symbol or OMB Approval Number under the authority for which the information is collected, if applicable.

Example: For the Air Force Junior ROTC Survey for AFJRDTC Cadets (Format A), the applicable notice to each individual asked to complete the questionnaire will be identified as "OMB Approval No. 21-RO268—Privacy Act Statement". Same reports are assigned Reports Control Symbol (RCS) numbers or OMB Approval Numbers. If these reports are controlled in a regular numbered form series, then the Privacy Act Statement will bear the form number reference in lieu of the RCS or OMB Number.

(4) *Preparation of Privacy Act statements.* (i) The proponent (i.e., the initiator) has the final responsibility for determining whether a form, format, questionnaire, survey, or report requires a Privacy Act Statement. The proponent must consult his counsel, particularly for validation of the authority for asking for the information. Statements must be sufficiently complete and specific but, at the same time be concise and couched in easily understood language.

(ii) Forms and information management officers at all echelons must assure that Privacy Act Statements are available for issuance with new forms, when required.

(iii) No Department of Defense component may deny any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his SSN, unless such disclosure is:

(*a*) Required by Federal statute.

(*b*) To any component maintaining a system of records in existence and operating before 1 Jan 75, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual. Executive Order No. 9397, 22 Nov 43, authorizes components to use SSN as a system of numerical identification of individuals.

(iv) Any component which requests an individual to disclose his SSN must inform that individual:

(*a*) Whether that disclosure is mandatory or voluntary.

(*b*) By what statutory or other authority such number is solicited.

(*c*) What uses will be made of it.

(v) If disclosure of the SSN is not required by Federal statute or is not for a system of records in existence and operating prior to 1 Jan 75, proponents are nevertheless not precluded from requesting it from individuals concerned. However, the separate Privacy Act Statement for the SSN alone, or a merged Privacy Act Statement, covering not only the SSN but also other items of personal information, must make clear that the disclosure of the SSN is voluntary. If, in such instances, the individual refuses to disclose it, the proponent concerned must be prepared to identify him by alternate means.

(d) *Exemptions.* The Director, DLA will designate the DLA records which are to be exempted from certain provisions of the Act, and DLA-XA will publish in the FEDERAL REGISTER, information specifying the name of each designated system, the specific provisions of the Act from which each system is to be exempted, and the reasons for each exemption of the record system.

(1) *General Exemptions.* To qualify for a general exemption, as defined in the Act, the system of records must be maintained by a system manager who performs as his principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities. Such system of records must consist of:

(i) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and containing only identifying data and notations or arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole, and probation status.

(ii) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual.

(iii) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

(2) *Specific Exemption.* To qualify for a specific exemption, as defined by the Act the systems of records must be:

(i) Specifically authorized under criteria established by an Executive Order to be kept classified in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

(ii) Investigatory material compiled for law enforcement purposes other than material covered under a general exemption. However, an individual will not be denied access to information which has been used to deny him a right or privilege unless disclosure would reveal a source who furnished information to the Government under a promise that the identity of the source would be held in confidence. For investigations made after 27 Sep 75, the identity of the source may be treated as confidential only if based on the expressed guarantee that the identity would not be revealed.

(iii) Maintained in connection with providing protective services to the President of the United States or other individuals protected pursuant to 18 U.S.C. S3056.

(iv) Used only to generate aggregate statistical data or for other similarly evaluative or analytic purposes, and which are not used to make decisions on the rights, benefits, or entitlements of individuals except for the disclosure of a census record permitted by 13 U.S.C. S8.

(v) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Military Service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the source would be held in confidence, or prior to 27 Sep 75, under an implied promise that the identity of the source would be held in confidence.

(vi) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing of elimination process.

(vii) Evaluation material used to determine potential for promotion in the Armed Services, but only the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or prior to 27 Sep 75, under an implied promise that the identity of the source would be held in confidence. System managers will specify those categories of individuals for whom pledges of confidentiality may be made when obtaining information on an individual's suitability for promotion.

(e) *System of Records*—(1) *Content.*

(i) System managers will maintain in their records systems only such information as is relevant and necessary to accomplish a purpose or mission required by statute or Executive Order of the President.

(ii) The proponent of each system of records will identify the specific provi-

sion of law, or Executive Order, which provides authority for the maintenance of information in each system of records.

(iii) Authority to establish and maintain a system of records does not convey unlimited authority to collect and maintain all information which may be useful or convenient to have. The proponent of each system of records will evaluate each category of information in a system for both necessity and relevance. In performing this evaluation the following points will be considered:

(*a*) Relationship of each item of information to the statutory or regulatory purpose for which the system is maintained.

(*b*) Specific adverse consequence of not collecting each category of information.

(*c*) Possibility of meeting the information requirement through use of information not individually identifiable or through sampling techniques.

(*d*) Length of time that the information is needed and, where appropriate, techniques for purging parts of the record.

(*e*) Financial cost of information maintenance compared to risk or adverse consequence of not maintaining it.

(*f*) Necessity and relevance of this information to all individuals included in the system.

(iv) Collection will be discontinued for each category or item of information which, after the above evaluation, does not appear to be fully justifiable. Moreover, such information will be withdrawn and destroyed, provided it can be economically segregated from necessary and relevant information.

(v) The evaluation prescribed above will be performed by each proponent of a system of records:

(*a*) During the design phase of a new system of records or a change in an existing system of records.

(*b*) Annually, prior to the republication of all system notices in the FEDERAL REGISTER.

(2) *Publication of record system notices*—(i) *General.* A notice of the existence of each system of records, as defined in § 1286.3(d) must be published in the FEDERAL REGISTER.

(ii) *Record System Notices.* System managers proposing new systems will prepare system notices according to Appendix A at least 60 days before the proposed system change may be legally implemented. Initial system notices will be submitted to DLA-XA.

(iii) *Change to Existing Systems Requiring Advanced Public Notice.* (*a*) The following proposed changes to an existing system must be published in the FEDERAL REGISTER for public comment at least 30 days before the changes are implemented:

(*1*) Those which expand the categories of individuals on whom records are maintained.

(*2*) Those which add new categories of records to the system.

(*3*) Those which add new categories of sources.

(*4*) New or changed routine uses which involve disclosure to a new category of recipient.

(*5*) Changes in procedures governing access.

(*b*) Notices of proposed changes to existing systems will be submitted to DLA-XA, in accordance with Appendix A.

(iv) *Changes to Existing Systems Not Requiring Advanced Public Notice.* Changes in records systems not stated in paragraph (e)(2)(iii) of this section do not require advance publication, but must be submitted for inclusion in the annual consolidated listing of records systems. Accordingly, each system manager will ensure that all such changes are forwarded to DLA-XA by 15 March of each year for annual publication in the FEDERAL REGISTER.

(v) *Reports Concerning New and Changed Systems.* Concurrently with paragraph (e)(2) (ii) and (iii) of this section, DLA-XA will provide OASD (C) advanced notice of proposals to establish new systems or to change routine uses of existing systems.

(vi) *DLA Issuances.* DLA-XA will ensure that information contained in each system notice, as published in the FEDERAL REGISTER, is incorporated and published in DLAR 5400.22, Privacy Act System of Records Notices, to ensure uniform system use and maintenance. All DLA activities will take immediate action to discontinue any

80-109 O—81——13

system of records not contained in DLAR 5400.22.

(3) *Standards of accuracy.* (i) Records used by system managers in making determinations about an individual will be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in any determination.

(ii) Prior to disseminating any record about an individual to any person other than a Federal agency, unless the dissemination is made pursuant to DLAR 5400.14, reasonable efforts will be made to ensure that such records are accurate, complete, timely, and relevant for DLA purposes.

(4) *Restriction on maintenance of certain records.* Maintenance of records describing how individuals exercise rights guaranteed by the First Amendment are prohibited unless expressly authorized by Federal statute or by the individual concerned, unless pertinent to and within the scope of an authorized law enforcement activity. The exercise of these rights includes, but is not limited to, religious and political beliefs, freedom of speech and the press, and the right of assembly, and to petition.

(5) *Rules of conduct.* Heads of HQ DLA PSEs and Heads of PLFAs will assure that persons including Government contractors or their employees, involved in the design, development, operation, or maintenance of any system of records, as defined in § 1286.3, are informed of all requirements to protect the privacy of the individuals who are subjects of the records. The following sanctions will be emphasized to personnel:

(i) There are criminal penalties for knowingly and willfully disclosing a record about an individual without the written consent or the written request of that individual, or unless disclosure is for one of the reasons listed in paragraph (d) of this section.

(ii) DLA may be subject to civil suit due to failure to comply with the Act.

(6) *Safeguarding personal information in records systems.* (i) System managers will establish administrative and physical safeguards to protect information from unauthorized or unintentional access, disclosure, modification, or destruction. These safeguards will apply to systems of records, in whatever medium in which personal information is processed or stored. Such safeguards will be tailored to the requirements of each system of records. Where a greater degree of protection is not prescribed by other regulations, as a minimum, all records will be afforded the same degree of protection as "For Official Use Only" documents.

(ii) Access to personal information will be restricted to those persons whose official duties require access and the individual concerned in accordance with paragraph (b) of this section.

(iii) System managers will ensure that all persons whose official duties require access to or processing and maintenance of personal information are trained in the proper safeguarding and use of such information.

(iv) Personal records and documents will be stored so as to reasonably preclude unauthorized disclosure.

(v) Disposal of records containing personal information which are no longer required will be accomplished in such a manner that will prevent the contents from being disclosed (e.g., tearing or shredding the record into pieces or burial or in the case of magnetic tapes by degaussing).

§ 1286.6 Forms and reports.

(a) An annual report will be prepared by DLA-XA for the preceding calendar year on its implementation of the Privacy Act of 1974 as follows:

(1) *Summary.* A brief management summary of the status of actions taken to comply with the Act, the results of these efforts, any problems encountered and recommendations for any changes in legislation, policies, or procedures.

(2) *Accomplishments.* A summary of major accomplishments; i.e., improvements in agency information practices and safeguards.

(3) *Plans.* A summary of major plans for activities in the upcoming year, e.g., area of emphasis, additional securing of facilities planned.

(4) *Exemptions.* A list of systems which are exempted during this year

from any of the operative provisions of this law permitted under the terms of subsections (j) and (k) of the Act, whether or not the exemption was obtained during the year, the number of records in each system exempted from each specific provision and reasons for invoking the exemption.

(5) *Number of systems.* A brief summary of changes to the total inventory of personal data systems subject to the provisions of the Act, including reasons for major changes; e.g., the extent to which review of the relevance of and necessity for records has resulted in elimination of all or portions of systems of records or any reduction in the number of individuals on whom records are maintained.

(6) *Operational experiences.* A general description of operational experiences including estimates of the number of individuals (in relation to the total number of records in the system) requesting information on the existence of records pertaining to them, refusing to provide information, requesting access to their records, appealing initial refusals to amend records, and seeking redress through the courts.

(7) *Any available data, or estimates, of the cost of administering the Act.*

(8) *Six copies of the annual report* will be furnished to the Assistant Secretary of Defense (Comptroller) on or before 31 March of each year for transmittal to the Office of Management and Budget.

(b) An annual feeder report on the actions of the preceding year will be prepared by Heads of PLFAs and Heads of HQ DLA PSEs for submission in duplicate to DLA-XA on or before 10 March of each year. The report will contain:

(1) *Summary.* A brief management summary of the status of actions taken to comply with the Act, the results of these efforts, any problems encountered and recommendations for any changes in legislation, policies or procedures.

(2) *Accomplishments.* A summary of major accomplishment; i.e., improvements in agency information practices and safeguards.

(3) *Plans.* A summary of major plans for activities in the upcoming year, e.g., area of emphasis, additional securing of facilities planned.

(4) *Exemptions.* A list of systems which are exempted during the year from any of the operative provisions of this law permitted under the terms of subsection (j) and (k) of the Act, whether or not the exemptions were obtained during the year, the number of records in each system exempted from each specific provision and reason for invoking the exemption.

(5) *Number of systems.* A brief summary of changes to the total inventory of personal data systems subject to the provisions of the Act, including reasons for major changes; e.g., the extent to which review of the relevance of and necessity for records has resulted in elimination of all or portions of systems of records or any reduction in the number of individuals on whom records are maintained.

(6) *Operational experiences.* A general description of operational experiences including estimates of the number of individuals (in relation to the total number of records in the system) requesting information on the existence of records pertaining to them, refusing to provide information, requesting access to their records, appealing initial refusals to amend records, and seeking redress through the courts.

(7) *Any available data, or estimates, of the cost of administering the Act.*

(c) Each PLFA will submit to HQ DLA, ATTN: DLA-XA during the last week in January, April, July, and October each year, a consolidated listing of those locally controlled and subordinate echelon forms affected by the Act. The listing will contain the form designation and number in numeric sequence, the edition date, and the complete title. Each group of forms will be identified by activity name. To provide the input for this consolidated listing, the forms management officer at all levels must prepare and maintain current, a listing of those forms for which they control and which are within the purview of the Act.

(d) The Reports Control Symbol for these reports will be RCS DD(A) 1379.

APPENDIX A

INSTRUCTIONS FOR PREPARATION OF RECORD SYSTEM NOTICES

SECTION I. GENERAL INSTRUCTIONS

A. For each system of records submit information in the sequence as shown in section II below. Show in this sequence even though an entry may not be required for all items.

B. Use keywords shown below (i.e., SYSNAME, RECORD-CATEGORY, *etc.*). Explanations of keywords are shown in parentheses, but do not use.

C. Do not use paragraph or subparagraph numbers or letters.

D. Do not underline any part of the text.

E. Do not use hyphenation at the end of a line or subdivide a word at the end of a line.

G. Each system of records notice will be typed double-spaced on a separate sheet(s) of paper, with the originating office symbol entered in the upper right corner.

H. Do not use military or Government terminology which may not be understood by the public. Authorized abbreviations may be used, provided they are first spelled out in each system notice, e.g., Defense Logistics Agency (DLA).

I. Refer to section III below for systems which may qualify for exemption.

J. Number the pages separately for each draft system notice.

K. New and revised system notices shall be prepared in accordance with instructions contained herein. All notices are to be submitted in full (i.e., no partial system notice shall be accepted).

L. For the purpose of identifying record systems and preparing system of records notices, there are five distinguished categories of record systems subject to the Act:

1. *Category 1.* Automated (ADP) systems of records identified by distinctive number and title and normally maintained according to ADP manuals. As a general rule, these systems are not individually or specifically identified by DLAM 5015.1, Files Maintenance and Disposition, although their output may be functionally identifiable through the manual. For preparation of systems notices, there are three recognizable types of ADP systems:

a. Class A and B systems managed by HQ DLA. Most of these systems are identified in the DoD Automated Data Systems Catalog LSPC 3-70-1.

b. Class C Systems. Individually designed, established, and maintained by DLA field activities.

c. DLA field activities systems which are not yet approved are classified as Class C systems, i.e., unauthorized systems.

2. *Category 2.* Exclusive of ADP Systems, those systems of records established and maintained pursuant to and specifically prescribed by statute, executive order, or DLAR.

3. *Category 3.* Exclusive of ADP Systems, those systems of records established under a function authorized by statute, Executive Order or DLAR rather than specifically prescribed by the statute, Executive Order or DSAR, that are accumulated DLA-wide by offices with similar or identical functions. Normally, decentralized segments of such systems vary only in scope and volume and not in content, for example, name files which are established in processing requests under the Freedom of Information Act. In most instances, these systems are identified in DLAM 5015.1.

4. *Category 4.* Exclusive of ADP Systems, those systems of records established and maintained entirely in response to local needs. Although often difficult to describe, these systems have certain common characteristics which can be used in identifying them for preparation of systems notices:

a. Normally, they are unique to the accumulating office.

b. They are not accumulated DLA-wide in other elements or activities which perform like functions.

c. They are seldom specifically identified in DLAM 5015.1.

5. *Category 5.* Those in the custody of DLA temporarily, which "belong" to other Federal agencies. For example, official civilian personnel files on DLA civilian employees belong to the U.S. Civil Service Commission. Most such systems are identified by DLAM 5015.1.

M. Responsibility for preparation of system of records notices.

1. For Category 1 (ADP) Systems of Records:

a. Managers of Class A and B systems of records are responsible for preparing system of record notices applicable to their automated data systems (ADS).

b. Proponents of Categories 2, 3, 4, and 5 (manual) systems of records are responsible for including in their systems of record notices all Class C and unauthorized ADP systems of records which, in effect, are automated segments of their systems of records.

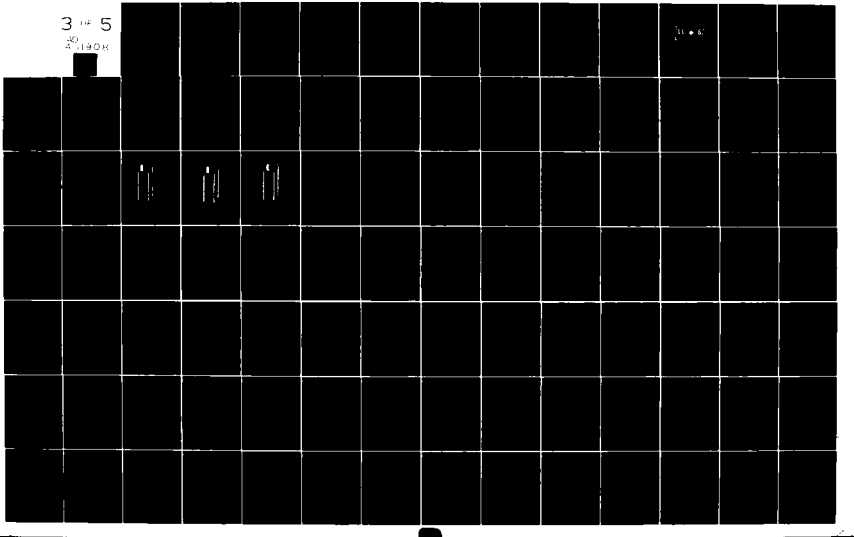
c. Managers are responsible for preparation and submission of system of record notices applicable to those Class C and unauthorized ADP system of records which are not automated segments of a manual system of records.

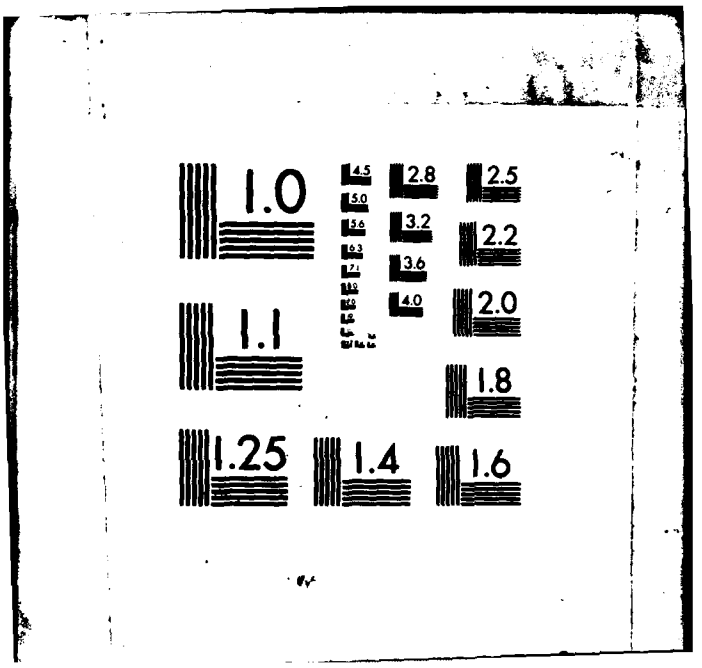
2. For Category 2 and 3 system or records, the office having DLA-wide staff responsibility for the function or process involved is considered to be the system of records proponent. Such proponents are responsible for including in their system of record notices coverage of all decentralized segments of the particular system of records.

AD-A111 908 NATIONAL ARCHIVES AND RECORDS SERVICE WASHINGTON DC O--ETC F/G 5/4
CODE OF FEDERAL REGULATIONS 32. PARTS 1000 TO END.(U)
JUL 81

UNCLASSIFIED NL

3 OF 5




1.0
1.1
1.25
1.4
1.6
1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0
4.5
5.0
5.6
6.3
7.1

3. Proponents of Category 4 (local) systems of records are responsible for preparation and submission of system notices applicable to their systems.

4. For Category 5, the proponent is the Federal agency to which a system of records belongs. It is responsible for system of records notices applicable to its records that are temporarily in DLA custody. For example, the CSC will publish system of records notices applicable to all systems of records prescribed by the Federal Personnel Manual. CSC will not, however, be responsible for any modifications or additions to a CSC system of record. The DLA proponent of such modifications or additions is therefore responsible for preparing a system of records notice for the portion added by him. DSA proponents should contact the appropriate Federal agency for other systems of records temporarily in DLA custody to determine and fix responsibility for preparing applicable system of records notices. In instances where a Federal agency to which the records belong declines to cover a system of records temporarily in DLA custody, the DSA proponent will be responsible for preparing the applicable system of records notice.

SECTION II. SEQUENCE OF SUBMISSIONS AND INSTRUCTIONS

A. *Manual or Automated.* Indicate whether the system is manual or automated. An automated system would include records processed, maintained, or both, in a machine readable processing tapes and cards, etc. A manual system would include records processed, maintained, or both, in a human readable or vertical file cards, microfiche, roll microfilm, photographs, etc. A mechanized file which requires substantial human intervention for processing or maintenance is considered to be manual, rather than automated.

B. *Sysname (System Name).* Whenever applicable, identify the system by number and title prescribed in your files or records disposition manual. Use locally originated titles for files which are not described specifically and adequately in the manual or which are otherwise unique to the reporting office. If more than one system is covered by a file description, identify each system. If several files, separately described in DLAM 5015.1, are a part of a single system, identify the system only (see paragraph F of this appendix for identification of separate files which form a system). Provide system and file title in unclassified form. Do not use abbreviations, nicknames, or acronyms unless spelled out the first time used. Place acronyms in parentheses immediately following the title.

C. *Security.* Specify the Defense or other security classification for the system of records if classified pursuant to the provisions of DoD 5200.1-R, Information Security Program Regulation, DSAM 5205.1, Safeguarding of Classified Information, and implementing directives. Do not cite as a security classification FOR OFFICIAL USE ONLY, INTERNAL WORKING PAPER, EYES ONLY, or similar marking used for internal control or other handling purposes. If unclassified, including FOUO, state unclassified.

D. *Location.* If the system is maintained in a single location, provide the exact name of the office, organization, and correspondence or routing symbol. On the other hand, if it is geographically or organizationally decentralized, specify each type of organization or element that maintains a segment of the system. For example, if the system was comprised of clinical records, then medical centers and hospitals, and the National Personnel Records Center would be listed as locations. Where automated data systems encompass a central computer facility, with input/output terminals at several geographical locations, list by category, each location under this heading. In all instances where multiple locations are referred to by type of organization, state that official mailing addresses are in the Department of Defense directory in the appendix to the DLA system of record notices. However, in all cases, give the official mailing address if the office maintaining the system is not listed in the FEDERAL REGISTER. If the address is classified, so state. Be sure to list each type of organization maintaining a segment or duplicate of the system, since maintenance by a type of organization not reported herein will constitute a violation of the Act. When indicating domestic addresses, use the United States Postal Service two-letter state abbreviation and the Zip Code.

E. *Individual-Category (Categories of Individuals Covered by the System).* The purpose of this requirement is to permit an individual to determine whether or not information on him might be in the system of records. Categories of individuals, therefore, should be stated in easily understood, nontechnical terms and include all categories of individuals on whom records are maintained. Avoid using broad general descriptions, such as "all civilian personnel", unless the system applies to all civilian personnel. For example, Civilian Individual Pay Record applies to all civilian employees of DLA, while a system of records of Individual Retirement Records would apply only to civilian employees covered by the Civil Service Retirement program. All categories of individuals included in the system must be listed, regardless of the frequency of inclusion or the number of records involved. All future changes to the system, which broaden or increase the categories of individuals

covered, will require preparation and publication of a revised record system notice in the FEDERAL REGISTER.

F. *Record Category (Categories of Records in the System).* Briefly describe in nontechnical terms all types of records in the system. For example, under the Automatic Payroll Cost and Personnel System (APCAPS), the types would include, but not be limited to individual pay record, substantiating documents, such as certificates for deductions and retained leave and earning statements, records of travel payments, personnel actions, and time and attendance cards. For automated systems, do not list source documents unless they are retained and filed by name, SSN, or other individual identifier. Instead, list the categories of information stored in the system. Be sure to include all types of records in the system, regardless of their frequency or volume of accumulation, since future additions of new types of records will require preparations and publication of revised public notices in the FEDERAL REGISTER.

G. *Authority (Authority for Maintenance of the System).* Cite the specific provision of a Federal statute or Executive Order of the President, including the title thereof, which authorizes, or provides a legal basis for, maintenance of the system. Do not cite regulations. In this connection, authority for a system may be derived from a statute or Executive Order which:

1. Explicitly authorizes or directs the agency to maintain a system of records.

2. Authorizes or directs DLA to perform a function, the discharge or which requires maintenance of the system of records. (NOTE: Check with the appropriate Counsel for assistance in determining the statutory or regulatory basis for the system).

H. *Routine Uses (Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses).*

1. Essentially, this requirement calls for the following information in nontechnical terms:

a. The purpose(s) for which information in the system is collected.

b. Each category of user.

c. The specific use(s) made of the information by each user.

2. Each category of user and each use must be reported. Any proposed new use or category of user, or change in an existing use, which has the effect of expanding the availability of the information in the system, will require publication of a revised notice in the FEDERAL REGISTER. Any such proposed change in a routine use must also be described in an advanced notice in the FEDERAL REGISTER to permit 30 days for public comment before it is implemented.

3. As defined by 5 U.S.C. 522a, the term "routine use" means with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

4. "Uses" can be distinguished from "purposes" in that "purposes" describe the objectives for collecting or maintaining information. "Uses" are the specific ways or processes in which the information is employed, including the persons or organizations to whom the record may be disclosed. For example, the purposes for collecting information may be to evaluate an application for a veteran's benefit and to issue checks. "Uses" might include verification of certain information with the appropriate Military Service and release of check data to the Department of the Treasury. List under routine uses if contractors are engaged to perform a service, such as key punch, optical scan, or telecommunications in connection with the operation of an automated data system. List also Federal agencies to which personal-type information is disclosed, including automated system interfaces, and the purposes for which the disclosures are made.

5. Each proponent of a system (i.e., that office or organization proposing, directing, or otherwise responsible for the system) must prescribe the "routine" uses of the records. Routine use does not merely encompass the common and ordinary uses to which records are put, but also includes all of the proper and necessary uses regardless of frequency. For example, individual income tax returns are routinely used by the Internal Revenue Service to audit the amount of tax due and for assistance on collection of such tax by civil proceedings. They are used less often, however, for referral to the Department of Justice for possible criminal prosecution of fraud or tax evasion. Therefore, the "routine" use of such records would include referrals to the Department of Justice. In addition, description of "routine use" shall include the fact that any individual records in a system of records might be transferred to any component of the Department of Defense. It should be expected normally that "routine use" would include disclosure to law enforcement or investigatory authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

I. *Policy-practice (Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System).* Describe how records in the system are managed during their life-cycle. When feasible, extract pertinent information from your files or DLAM 5015.1.

1. *Storage.* In describing records storage, specify the medium in which they are maintained, such as paper records in file folders, visible or vertical file cards, computer magnetic tapes, or disks, computer paper prin-

touts, aperture cards, microfiche, roll microfilm, photographs, video-tape, etc.

2. *Retrievability.* Specify how information is accessed and retrieved, such as by name, SSN, Military Service number, or other identification number, classification or personal characteristics, such as fingerprint classification, voice print identifier, etc. Indicate further whether conventional or computerized indices are required to retrieve individual records from the system.

3. *Safeguards.* Describe what measures are taken to prevent unauthorized disclosure of the records and state the categories of individuals authorized access to the records. Specify system safeguards, such as safes, vaults, locked cabinets or rooms, guards, personnel screening, visitor registers, computer "fail-safe" systems software, etc. (NOTE: Do not describe security safeguards in such detail as to increase the risk of unauthorized access to the records.)

4. *Retention (Retention and Disposal).* State rules on how long the records are to be maintained; if and when they are moved to Federal Records Centers, or to the National Archives or other designated depository; and if, when and how they are destroyed, or otherwise disposed of. Changes in this item will not normally require immediate publication of a revised public notice unless they reflect an expansion in the availability of or access to the system of records.

J. *Sysmanager (Title and Duty Address of the Agency Officials Responsible for the System).* In all cases, enter the title of the official who is responsible for policies and procedures governing the system; i.e., Staff Director, Civilian Personnel, HQ DLA. If the title of the official is unknown or unknowable (such as for locally evolved systems), specify the Commander or the Head of the Office as the responsible official. In addition, for geographically or organizationally decentralized systems, where individuals may deal directly with agency officials at each location to exercise their rights under the Act, give the position or duty title of each category of official responsible for the system, or a segment thereof. For example, in the case of individual accident case report records, the entries should be: Staff Director, Civilian Personnel, HQ DLA, and Safety Officers of PLFAs. Do not include the duty address if already listed in organizational directories mentioned in paragraph D above.

K. *Notification (Procedure Whereby Individuals Can be Notified at Their Request if the System Contains Records Pertaining to Them)*

1. Indicate whether or not requests from individuals should be addressed to the above SYSMANAGER as in paragraph J above. If requests are to be addressed to any other officials, list them by duty or position titles.

2. Specify what information will be required from the requesting individual to determine whether or not the system contains a record about him, such as full name, military status, SSN or service number, resident or nonresident, etc.

3. List by specific name, or categories, those offices which the requester may visit to obtain information on whether the system contains records pertaining to him or her.

4. For personal visits, specify what data the requester must present as proof of identity, such as a combination of full name, date and place of birth, parent's name, driver's license, or medicare card, etc. Do not require verification of identity for records which are disclosable under the Freedom of Information Act.

L. *Access (Procedures Whereby an Individual Can be Notified at His Request How He Can Gain Access to Any Record Pertaining to Himself contained in the system of records).* Include the title or category of officials who can provide assistance, if those officials are other than the SYSMANAGER above. If the mailing addresses are listed in the organizational directory, state that official mailing addresses are in the Department of Defense directory in the appendix to the DLA systems notice. Specific locations and telephone numbers of offices may be indicated for unique or centralized systems.

M. *Contest (Rules For Access and Contesting Contents of Records).* To comply with this requirement, merely, state: "The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER".

N. *Source (Categories of Sources of Records in the System).* List by t[illegible] source of information in the syst[illegible] previous employers, financial institutio[illegible] educational institutions, trade associations, automated system interfaces, etc. Specific individuals or institutions need not be identified by name. Again, be sure to include all types, since collection of information from types of sources other than listed will require publication of a revised public notice in the FEDERAL REGISTER before any information is collected from those sources.

SECTION III. SYSTEMS QUALIFIED AND PROPOSED FOR EXEMPTION

Generally, the following records may be exempted from the provisions of K, L, and N of section II of this appendix (subsection (e) (4) (G), (H), and (I) of the Act):

1. Records maintained by the Central Intelligence Agency.

2. Records compiled to ensure protection of the President or other officials, classified records, records required by statute to be

maintained and used solely as statistical records.

3. Investigatory records, compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Military Service, Federal contracts, or access to classified information, but only to the extent as outlined in subsection (k) (5) of the Act.

4. Certain testing and examination material.

5. Certain material used to evaluate potential for promotion in the Armed Services. (All items in section II, of this appendix will be completed for systems proposed for exemption, except for K, L, M, and N). Cite the system name and specific provisions of the Act, from which the system is to be exempted and the reasons therefor. Consult with Counsel for detailed guidance for systems which may be eligible for exemption. Proponents of systems dealing with the above types of records should contact the appropriate records management staff for additional guidelines, if necessary, for preparing exemption notices for publication in the FEDERAL REGISTER. (NOTE: No system of records is exempted from the public notice requirements of the Act). Failure to publish a notice constitutes a criminal violation.

APPENDIX B

DETAILED INSTRUCTIONS FOR FORMS AND INFORMATION REQUIREMENTS SUBJECT TO THE PRIVACY ACT OF 1974

1. Fill-in information on the preprinted blank Privacy Act Statement format will be completed by the *functional element* responsible for the form. It will be completed by typewriter, for use as a camera copy to reproduce and distribute to users of the form to which the statement applies.

2. The forms management office will assign an edition date in the block provided, and when revised, a new edition date will be assigned. Edition dates assigned the Privacy Act Statements may differ from the date of the form described in the Statement since each may be revised without revision to the other. The same edition dates will be assigned to both form and related statement when processed simultaneously as new or revised actions. When Privacy Act Statements are revised, previous editions will always be obsoleted. A supersession notice obsoleting the previous edition will be shown in the bottom border of the statement in the same manner as shown on forms when superseding a previous edition. No form number is assigned to the blank Privacy Act Statement format since it may be confused with the applicable form number entered in the space provided in the lower left hand corner.

3. When referencing a specific approved Privacy Act Statement, it will be referred to by the related form number followed by the words "Privacy Act Statement". For example, if DLA Form 0000 is entered in the lower left corner of the Statement, the Statement will thereafter be referred to as DLA Form 0000-Privacy Act Statement. This will facilitate the requisitioning of supplies of the filled-in printed Statement and for making references in correspondence.

4. Strict attention is invited to item number 1 on the Statement, "Authority". This item, when completed, *must* be coordinated with Counsel for validation. The entry in the "Authority block must be a "Statute" or "Executive Order". When a SSN is requested, in addition to other items of personal information, the authority for requesting the SSN, if different from the authority for the other items, will also be shown in this block. When a SSN is the only personal information requested, *only* item numbers 1, 3, and 4 of the Privacy Act Statement apply.

5. A supply of *blank* "Privacy Act Statements" will be maintained by the local forms management office for issuance on request from functional staff elements. PLFAs will locally reproduce future needs of the blank statement. HQ DLA and DASC staff elements will obtain additional supplies from DLA-XA.

6. *Completed* and officially approved statements applicable to DD, DLA, DLAH, and DSC forms will be processed for initial distribution in accordance with information contained in block 9 of DLA Form 1424, Request for Processing Privacy Act Statement. HQ DLA and DASC staff elements can obtain additional copies from DASC-PD. Completed statements applicable to DD and DLA forms will be initially distributed to PLFAs, who will redistribute needs to subordinate echelons. PLFAs will locally reproduce additional needs. PLFAs will develop local procedures for printing and distributing supplies of completed and approved Privacy Act Statements applicable to locally designated and controlled forms.

7. DLA Form 1424, will be prepared by functional elements responsible for each statement. It will serve as a source document for preparing a requisition for reproduction and distribution of the approved *completed* statement to all users of the form to which it is applicable. The forms management office will be the source of supply for blank copies of DLA Form 1424.

8. HQ DLA and PLFA forms management offices will maintain a file on each approved Privacy Act Statement along with a copy of the supporting DLA Form 1424, DD Form 843, Requisition for Printing and Binding Service, and DD Form 844, Requisition for Local Duplicating Service. The method of

filing is left to the discretion of local forms management officers.

Appendix C

Exempted Record Systems

All systems of records maintained by the Defense Logistics Agency shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 11652, and which is required by the Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain isolated items of information which have been properly classified.

A. *ID:* S150.20 DLA-T (Specific Exemption)

Sys name:
Security Violation Files.

Exemption:
This system of records is exempted from the following provisions of title 5, United States Code, section 552a: (c) (3); (d); and (e)(1).

Authority:
5 U.S.C. 553a(k)(2).

Reasons:
Granting individuals access to information relating to law enforcement could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and jeopardize the safety and well being of informants, witnesses and their families and investigative personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component and could result in the invasion of privacy of individuals only incidentally related to an investigation. Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975 under an implied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources who would be otherwise unwilling to provide information to the Government. The exemption of the individual's right of access to his records and the reasons therefor necessitate the exemptions of this system of records from the requirements of the other cited provisions.

B. *ID:* § 153.01 DLA-T (Specific Exemption)

Sys Name:
Personnel Security Files.

Exemption:
This system of records is exempt from the following provisions of title 5, United States Code, section 552a subsection (d).

Authority:
5 U.S.C. 552a(k) (2) and (5).

Reasons:
Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975 under an implied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources who would be otherwise unwilling to provide information to the Government.

C. *ID* S160.50 DLA-T (Specific Exemption)

Sys name:
Criminal Incident/Investigations File.

Exemption:
This system of records is exempted from the following provisions of the title 5, United States Code, section 552a: (c) (3); (d); and (e) (1).

Authority:
5 U.S.C. 552a (k) (2).

Reasons:
Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction or fabrication of evudence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975 under an im-

plied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources who would be otherwise unwilling to provide information to the Government. The exemption of the individual's right to access to his records and the reason therefor necessitate the exemption of this system of records from the requirements of the other cited provisions.

D. *ID:* S155.53 DLA-NS (Specific Exemption)

Sys name:
Industrial Personnel Security Clearance File.

Exemption:
This system of records is exempt from the following provisions of title 5, United States Code, Section 552a; subsection (d).

Authority:
5 U.S.C. 552a(k) (5).

Reasons:
Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975 under an implied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources who would be otherwise unwilling to provide information to the Government.

PART 1287—DLA CONSUMER REPRESENTATION PROGRAM

Sec.
1287.1 Purpose and scope.
1287.2 Policy.
1287.3 Background.
1287.4 Responsibilities.

APPENDIX A—DLA ACTIVITIES WHICH IMPACT ON CONSUMERS

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125, 133; DoD Directive 5105.22, January 5, 1977.

SOURCE: 42 FR 37204, July 20, 1977, unless otherwise noted.

§ 1287.1 Purpose and scope.

To establish policy guidance, assign organizational responsibilities, and provide procedures for carrying out a DLA Consumer Representation Program, hereinafter referred to as the program, and to implement DoD Directive 5030.56, DoD Consumer Representation Program. This Part 1287 is applicable to HQ DLA and all DLA primary level field activities.

§ 1287.2 Policy.

DLA consumer representation techniques shall reflect the needs of consumers and be designed to encourage consumer advice and participation.

§ 1287.3 Background.

(a) The program will ensure that persons who are affected by consumer oriented DLA-sponsored legislation, regulation, policy decisions, or program action, have the opportunity to comment on the subject before a decision is reached, and that their views are duly considered in the decision-making process. The program is intended to make it easier for consumers, planners, and managers to focus their attention on issues of special and general consumer concern in DLA.

(b) The mission of DLA consists of three major areas: logistics support, contract administration, and technical and logistics services. The primary customers of DLA are the Military Services. Other direct contact is with defense contractors as producers of material for the Military Services. As such, DLA functions are not generally oriented to the private sector/consumer. Contact with the private sector/consumer, when it does occur, is an integral and routine aspect of operational programs. Those programs outlined in Appendix A are the DLA programs which provide a practical opportunity for consumer representation and as such constitute and serve as the program.

§ 1287.4 Responsibilities.

(a) HQ DLA. The Assistant Director, Plans, Programs and Systems, DLA (DLA-L) will:

(1) Serve as point of contact for all matters pertaining to the program.

(2) Monitor effectiveness of the program.

(b) The Heads of HQ DLA Principal Staff Elements and Primary Level Field Activities will:

(1) Ensure that all instructions for which they are responsible are consistent with this Part 1287.

(2) Actively solicit consumer opinion and ensure that appropriate feedback is provided on consumer oriented legislation, regulation, policy decision, or program action.

APPENDIX A—DLA ACTIVITIES WHICH IMPACT ON CONSUMERS

1. *Consumer Product Information Program (DLAR 5030.7).* DLA policy is to make available consumer product information through the Central Consumer Product Information Coordinating Center in the General Services Administration. Product information is defined as documents that would be potentially useful to the public consumer in making informed judgments about products in the marketplace.

2. *Economic Adjustment Assistance to Defense Impacted Communities (DLAR 5410.2).* This regulation establishes policy guidance for an economic adjustment program to minimize economic impact on communities resulting from changes in Defense programs. When there is a serious economic impact, the resources of the Federal Government will be brought to bear on the problem, and every practical consideration will be given to implementing action in a manner to minimize local economic impact. Assistance is directed toward helping communities to help themselves. The program emphasizes identification of a responsible community leadership group to work with the Economic Adjustment Council (EAC). An onsite community survey by an EAC is made to assist community leaders in evaluating community needs and resources, and to help formulate a development strategy and a community economic adjustment program to achieve desired objectives. In support of these local objectives, DLA field activities shall cooperate with and assist local leaders in efforts to identify activity property that the community could beneficially utilize. Complete details of the program can be found in DLAR 5410.2.

3. *Inspector General.* (a) The Inspector General (IG), DLA will forward consumer complaints received to the appropriate HQ DLA PSE and copies of PSE responses will be furnished to the IG, DLA, for management visibility purposes.

(b) Military Service Commissaries supported by DLA will be visited by the IG, DLA, with a view toward recognizing consumer problems and proposing corrective actions. Close interface is maintained with the Military Services to promote cognizance of problems observed in order to improve service to customers. In addition, the IG, DLA will visit Military Service mess halls to determine consumer satisfaction with DLA supplied subsistence.

4. *Civil Defense Preparedness.* DLA support of the Defense Civil Preparedness Agency (DCPA) Programs is outlined in DLAR 3025.1. The DCPA is responsible for preparing plans and programs for the Civil Defense of the United States. DLA plans, directs, schedules, and participates in logistics and technical meetings with representatives from various Government organizations and municipal agencies. The objective is to make citizens in the community better prepared to protect life and property in the event of a threatened or actual attack.

5. *Property Disposal.* To increase customer confidence, DoD 4160.21-M requires the surplus property sale descriptions be complete and accurate. As part of this obligation, sales of hazardous material should include special conditions based on all available information advising purchasers that the property requires additional precautions. Moreover, with respect to arms, ammunition, and implements of war and other military type items, DoD 4160.21-M-1 requires demilitarization to the extent necessary to preclude unauthorized use, destroy inherent military advantages, render dangerous property innocuous, protect national interest, and preclude compromise of security requirements. Surplus property sales contracts also include appropriate environmental, safety, and health provisions. In addition, most sales contracts include a Guaranteed Descriptions Articles providing for refund of the purchase price if items are determined to be misdescribed. DoD 4160.21-M contains details regarding the rights of surplus property over purchasers.

6. *Solicitation and Sale of Insurance on DoD Installations (DLAR 1344.1).* Governs the solicitation and sale of all types of insurance including life, health, and motor vehicle liability on DoD installations to ensure protection of consumers. Consumer feedback in the form of reports regarding the quality of goods, services, and commodities are used to extend or revoke solicitation privileges.

PART 1288—REGISTRATION OF PRIVATELY OWNED MOTOR VEHICLES

Sec.

1288.1 Purpose and scope.
1288.2 Policy.
1288.3 Definitions.
1288.4 Responsibilities.
1288.5 Procedures.
1288.6 Forms and reports.

APPENDIX A—DECAL SPECIFICATIONS
APPENDIX B—STANDARD DLA PRIVATE VEHICLE IDENTIFICATION DEVICE

AUTHORITY: 5 U.S.C. 301; DOD Directive 5105.22, June 8, 1978.

SOURCE: 43 FR 40806, Sept. 13, 1978, unless otherwise noted.

§ 1288.1 Purpose and scope.

To prescribe policy and procedures for the registration, inspection, and marking of privately owned vehicles (POV) on Defense Logistics Agency (DLA) activities. This regulation is applicable to individuals serving in or employed by the Defense Logistics Agency, and to all other individuals subject to motor vehicle registration requirements set forth in this Part 1288 and DLAR 5720.1/AR 190-5/OPNAVINST 11200.5B/AFR 125-14/MCO 5110.1B, Military Police Motor Vehicle Traffic Supervision.

§ 1288.2 Policy.

(a) The operation of a POV on a DLA activity constitutes a conditional privilege extended by the Head of the activity. The Heads of DLA primary level field activities (PLFA's) have the authority to supplement this regulation to implement additional controls and restraints warranted by existing conditions at a PLFA. For example, commanders of depots and supply centers may impose searches of vehicles as warranted to reduce pilferage, and protect Government interests.

(b) POV's permanently registered for operation on a DLA activity will be identified by use of one of the decals prescribed in this Part 1288 (Appendices A and B).

(c) The DLA vehicle decal will be valid for a period of 3 years from the year and month of issue.

(d) Activities will use DLA Form 1454, Vehicle Registration/Driver Record, as the basic vehicle registration and driver record.

(e) DLA tenant activities will comply with host installation policies and procedures for registering POV's.

§ 1288.3 Definitions.

Terms used in this Part 1288 are contained in DLAR 5720.1.

§ 1288.4 Responsibilities.

(a) *HQ DLA*—(1) The command security officer, DLA (DLA-T) will provide staff supervision and assistance to DLA activities on matters concerning this Part 1288.

(2) The inspector general, DLA (DLA-I) will procure, issue, and control inspector general (IG) vehicle decals in accordance with § 1288.6 below with the exception of the 3-year validation requirement. (Vehicles bearing such decals will be permitted entry to all DLA activities.)

(b) The heads of DLA primary level field activities will:

(1) Insure that personnel adhere to the provisions of this Part 1288 when implemented.

(2) Procure, issue, and control vehicle decals in accordance with this DLAR.

(3) Periodically inform personnel of the requirements of this DLAR, DLAR 5720.1, and local requirements concerning the motor vehicle registration program.

(4) Activity/tenant employees are not considered visitors and will not be issued visitor passes. Employees operating loaner/rental vehicles may be temporarily registered in accordance with DLAR 5720.1, paragraph 3-2c.

§ 1288.5 Procedures.

(a) *Issuance of DLA POV decal and 3-year validation sticker.* (1) One decal will be affixed to the left front bumper (operator's side) of a four-wheel vehicle. An additional decal may be placed on the rear bumper of the vehicle. For vehicles not equipped with bumpers and two-wheeled vehicles, the placement of decals will be determined locally.

(2) A 3-year validation sticker indicating the decal expiration will be issued at the same time the DLA decal is issued. Every 3 years, or following a significant change, registrants will be required to update their registration information. Evidence of compliance will be documented by the issuance and display of a new 3-year validation sticker.

(3) The validation sticker will be placed next to the DLA decal affixed to the front bumper of the vehicle. This sticker will reflect the month and year of the decal expiration, e.g., vehicles registered during the month of June 1978 will have affixed a validation sticker with the numbers "6-81", indicating expiration of the decal at

the end of June 1981. The specifications for the validation sticker will be determined locally.

(4) Decals or other media used to identify vehicles of temporary registrants or visitors will be locally prescribed.

(5) Decals will be removed from POV's by the registrant when activity registration is terminated. See DLAR 5720.1, chapter 3, for information on termination of registration.

(6) Vehicle decals will be purchased with appropriated funds for issuance at no cost to authorized users.

(b) *Proof of insurance.* (1) Individuals registering vehicles will certify possession of insurance per DLAR 5720.1, paragraph 3-3c.

(2) The certification contained on DLA form 1454 will, as indicated thereon, be witnessed and manifested by a signature.

(c) *Vehicle inspection.* (1) DLA activities located in States or jurisdictions having mandatory vehicle safety inspections will reflect the provisions of DLAR 5720.1, paragraph 3-3d, in the supplementation of this DLAR.

(2) Vehicle safety inspections are not mandatory for DLA activities located in areas not requiring such inspections.

(d) *Registrant.* Registrant must inform the vehicle registration office within 72 hours as information on DLA form 1454 becomes invalid.

§ 1288.6 Forms and reports.

(a) DLA form 1454 will be prepared at the time of initial registration of the vehicle and will remain valid for as long as the registrant retains ownership of the vehicle and complies with registration requirements. A Privacy Act statement for use in conjunction with DLA form 1454 will be made available to the individual supplying data on the form.

(b) Data blocks 3, 4, and 14 on DLA form 1454 will be entered in ink; remaining entries will be in pencil.

(c) One copy of DLA form 1454 will also serve as the driver record of the registrant.

(d) Upon permanent change of station of the military service registrant, activity clearance procedures will provide for DLA form 1454 to be included in the registrant's military personnel folder for transmittal to the gaining activity. DLA forms 1454 for transferring civilian personnel will be forwarded to the security officer of the gaining activity.

(e) The DLA form 1454 for military personnel being discharged or separated will be forwarded to the appropriate personnel office for inclusion in the records folder for subsequent retirement.

APPENDIX A—DECAL SPECIFICATIONS

A. The design format of the standard DLA decal to be used for identifying POV's permanently registered for operation on DLA activities is shown in enclosure 2. The IG decal will be of the same design and color as that prescribed for the standard DLA decal except that the registration letter/number scheme will consist of the letters "IG" followed by a number. Standard DLA decals may be procured from the U.S. Disciplinary Barracks, USDB, Fort Leavenworth, Kans. 66027, which is an approved Federal printing plant. Existing stocks of decals with "DSA" inscribed will be used until exhausted.

B. The following specifications apply to the separate elements of the decal:

1. *Basic construction.* Decal will meet Federal Specification L-5300A, 7 Jan 70, type I, class 4, reflectivity 1.

2. *Colors:*

a. Background—Silver.

b. DLA emblem, field activity name, and scroll, the letters DLA, and year/date—Black.

c. Registration letters/numbers:

(1) Mandatory categories:

(a) Officer personnel—Blue.

(b) Enlisted personnel—Red.

(c) Civilian employees—Green.

(2) The following additional colors will be used to categorize registration further:

(a) Noncommissioned officer personnel—Brown.

(b) Civilian employees (nonappropriated fund), Red Cross, concessionaires, contractors, and other similar categories—Black.

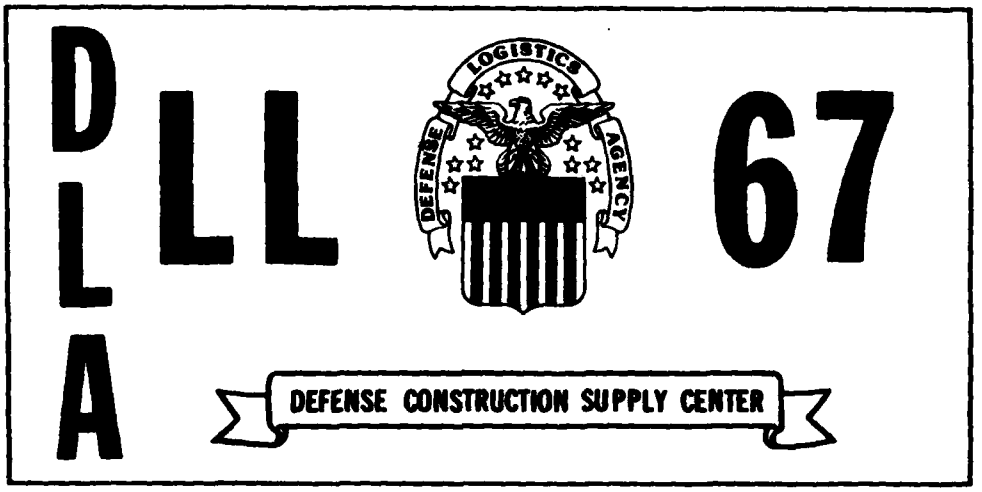
3. *Registration letters/numbers.* For each registration category a combination of letters and number(s) separated by the DLA emblem will be used. The number-letter system will progress from AA-1 to AA-2, and so on, to AA-99, from AB-1 to AB-99, eventually from AZ-1 to AZ-99, and so on from ZZ-1 to ZZ-99.

4. *Dimensions:*

a. Maximum size: 3 inches by 6 inches. For economy a reduced size decal may be used on POV's to include those with less than four wheels.

b. Registration letters and numerals: 1¼ to 1½ inches in height.
c. DLA emblem letters: 1½ inches to 1¾ inches in height.
d. DLA letters: ½ inch to ¾ inch in height.
e. Activity designation scroll and lettering: See appendix B.

STANDARD DLA PRIVATE VEHICLE IDENTIFICATION DEVICE



PART 1289—STANDARDS OF CONDUCT

Sec.
1289.1 References.[1]
1289.2 Purpose and scope.
1289.3 Policy.
1289.4 Definitions.
1289.5 Significant changes.
1289.6 Responsibilities.
1289.7 Procedures.

APPENDIX A—REQUIREMENTS FOR SUBMISSION OF DD FORM 1555 STATEMENTS
APPENDIX B—NOTICE OF DISQUALIFICATION
APPENDIX C—DIGEST OF LAWS

AUTHORITY: Executive Order 11222, May 8, 1965, as amended by Executive Order 12107, December 28, 1978; DoD Directive 5500.7, January 15, 1977.

SOURCE: 44 FR 38461, July 2, 1979, unless otherwise noted.

[1]Referenced publications may be purchased from the Defense Logistic Agency, DASC-IP, Cameron Station, Alexander, Va. 22314.

§ 1289.1 References.

(a) DLAR 1005.1, Decorations and Gifts from Foreign Governments.
(b) DLAR 5030.8, DLA Community Services Program.
(c) DLAR 5400.13, Clearance of Information for Public Release.
(d) DLAR 5500.4, Policies Governing Participation of DLA and Its Personnel in Activities of Private Associations.
(e) DLAR 7700.3, Reporting Procedures on Defense Related Employment.

§ 1289.2 Purpose and scope.

(a) All DLA personnel, regardless of assignment, are to conduct themselves, both on and off the job, in such a manner as to preclude not only the existence, but even the appearance, of an actual or potential conflict of interests between their official responsibilities and their outside activities. This Part

1289 prescribes the standards of conduct relating to possible conflicts between private interests and official duties. Close adherence to these standards will ensure compliance with the high ethical standards demanded of all public servants. Appendix C is a brief reference to statutes generally applicable to all Federal employees and specifically applicable to military or civilian employees of the Department of Defense. Violations of these statutes or regulations carry the full range of statutory and administrative sanctions for all civilian and military personnel. This Part 1289 implements DoD Directive 5000.7, Standards of Conduct.

(b) This Part 1289 is applicable to HQ DLA and all DLA field activities.

§ 1289.3 Policy.

(a) *Proper Conduct of Official Activities.* (1) DLA personnel shall become familiar with the standards governing their personal conduct. The statutory requirements are outlined at Appendix C. The regulatory requirements are set forth herein and in the regulations cited in § 1289.7. In addition, DLA personnel shall become familiar with the scope and limitations of their authority and shall act in accordance therewith in the performance of their responsibilities.

(2) DLA personnel shall not take or recommend any action or make or recommend any expenditure of funds known or believed to be in violation of U.S. laws, executive orders, or applicable directives, instructions, or regulations.

(3) In cases of doubt as to the propriety of a proposed action or decision in terms of regulation or law, DLA personnel shall consult the Standards of Conduct Counselor or Deputy Counselor to ensure the proper and lawful conduct of DLA programs and activities.

(b) *Equal Opportunity.* DLA personnel shall scrupulously adhere to the DLA program of equal opportunity regardless or race, color, religion, sex, age, national origin, or handicap.

(c) *Conduct Prejudicial to the Government.* DLA personnel shall avoid any action, whether or not specifically prohibited by this Part 1289, which might result in, or reasonably be expected to create the appearance of:

(1) Using public office for private gain.

(2) Giving preferential treatment to any person or entity.

(3) Impeding Government efficiency or economy.

(4) Losing complete independence or impartiality.

(5) Making a Government decision outside official channels.

(6) Affecting adversely the confidence of the public in the integrity of the Government.

(d) *Conflicts of Interests (1) Affiliations and Financial Interests.* DLA personnel shall not engage in any personal, business, or professional activity, or receive or retain any direct or indirect financial interest which places them in a position of conflict between their private interests and the public interests of the United States related to the duties or responsibilities of their DLA positions. For the purpose of this prohibition, the private interests of a spouse, minor child, and any household members are treated as private interests of the DLA personnel.

(2) *Using Inside Information.* DLA personnel shall not use, directly or indirectly, inside information to further a private gain for themselves or others if that information is not generally available to the public and was obtained by reason of their DLA positions.

(3) *Using DLA Position.* DLA personnel are prohibited from using their positions to induce, coerce, or in any manner influence any person, including subordinates, to provide any benefit, financial or otherwise, to themselves or others.

(4) *Membership in Associations.* Membership or activities of DLA personnel in non-Governmental associations or organizations must be such as not to be incompatible with their official Government positions (see DLAR 5500.4).

(5) *Commercial Soliciting by DLA Personnel.* To eliminate the appearance of coercion intimidation, or pressure from rank, grade, or position, full time DLA personnel, except special Government employees, are prohibited from making personal commercial

solicitations or sales to DLA personnel who are junior in rank or grade, at any time, on or off duty.

(i) This limitation includes, but is not limited to, the solicitation and sale of insurance, stocks, mutual funds, real estate, and any other commodities, goods, or services.

(ii) This prohibition is not applicable to the one-time sale by individuals of their own personal property or privately owned dwelling or to the off-duty employment of DLA personnel as employees in retail stores or other situations not including solicited sales.

(iii) For civilian personnel, the limitation applies only to personnel under their supervision at any level.

(6) *Charitable Solicitations by DLA Personnel.* Charitable solicitations are governed by DLAR 5035.1, Fund Raising Within the Defense Logistics Agency.

(7) *Dealing with Present and Former Military and Civilian Personnel.* DLA personnel shall not knowingly deal on behalf of the Government with present or former Government personnel, military or civilian, whose participation in the transaction would be in violation of a statute, regulation, or policy set forth in this Part 1289.

(8) *Assignment of Reserves for Training.* DLA personnel who are responsible for assigning Reserves for training shall not assign them to duties in which they will obtain information that could be used by them or their private sector employers to gain unfair advantage over civilian competitors.

(9) *Prohibited Selling by Retired Officers.* There are legal limitations on sales by retired regular military officers to any component of the Department of Defense, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service (see Appendix C).

(10) *Bribery and Graft.* In general, DLA personnel may be subject to criminal penalties if they solicit, accept, or agree to accept anything of value in return for performing or refraining from performing an official act.

(11) *Disqualification or Divestiture Requirements.* Unless otherwise expressly authorized by law, all DLA personnel who have affiliations or financial interests which create conflicts or appearances of conflicts of interests with their official duties must disqualify themselves from any official activities that are related to those affiliations or interests of the entities involved. A formal disqualification must be sent to an individual's supervisor and immediate subordinates whenever it appears possible that official functions may affect those affiliations, interests, or entities. The disqualification statement must identify the parent, subsidiaries and affiliates, if any, of the entities involved. If the individual cannot adequately perform assigned official duties after such disqualification, divestiture will be required or the individual must be removed from that position. DLA personnel need not disqualify themselves for holding shares of a widely-held, diversified mutual fund or regulated investment company. Such holdings are exempted as being too remote or inconsequential to affect the integrity of the services of DLA personnel.

(e) *Gratuities.* (1) *Policy Basis.* The acceptance of gratuities by DLA personnel or their immediate families, no matter how innocently tendered and received, from those who have or seek business with the Department of Defense and from those whose business interests are affected by Department functions may be a source of embarrassment to the Department, may affect the objective judgment of the DLA personnel involved, and may impair public confidence in the integrity of the Government.

(2) *General Prohibition.* Except as provided in paragraph (e)(3) of this section, DLA personnel and their immediate families shall not solicit, accept, or agree to accept any gratuity for themselves, members of their immediate families, or others, either directly or indirectly from or on behalf of any source that:

(i) Is engaged in or seeks business or financial relations of any sort with any DoD Component.

(ii) Conducts operations or activities that are either regulated by a DoD Component or significantly affected by DoD decisions.

(iii) Has interests that may be substantially affected by the performance

or nonperformance of the official duties of DLA personnel.

(3) *Limited Exceptions.* The general prohibition in paragraph (e)(2) of this section does not apply to the following:

(i) The continued participation in employee welfare or benefit plans of a former employer when permitted by law and approved by the Standards of Conduct Counselor.

(ii) The acceptance of unsolicited advertising or promotional items that are less than $5 in retail value.

(iii) The acceptance of trophies, entertainment, prizes, or awards for public service or achievement or given in games or contests which are clearly open to the public generally.

(iv) The acceptance of things available to the public, such as university scholarships and free exhibitions by Defense contractors at public trade fairs.

(v) The acceptance of discounts or concessions extended DLA-wide and realistically available to all personnel in DLA.

(vi) Participation by DLA personnel in civic and community activities when any relationship with Defense contractors is remote; for example, participation in a Little League or Combined Federal Campaign luncheon which is subsidized by a Defense contractor.

(vii) Social activities engaged in by DLA personnel with local civic leaders as part of community relations programs of DLA in accordance with DLAR 5030.8.

(viii) The participation of DLA personnel in widely attended gatherings of mutual interest to Government and industry, sponsored or hosted by industrial, technical, and professional associations (not by individual contractors), provided that they have been approved by the Office of the Assistant Secretary of Defense (Public Affairs).

(ix) Situations in which participation by DLA personnel at public ceremonial activities of mutual interest to industry, local communities, and DLA serves the interest of the Government, and acceptance of the invitation is approved by the Head of the primary level field activity (PLFA) or principal staff element (PSE).

(x) Contractor-provided transportation, meals, or overnight accommodations in connection with official business when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable. In any such case, individuals shall report, in writing, the circumstances to their supervisors as soon as possible.

(xi) Attendance at promotional vendor training sessions when the vendor's products or systems are provided under contract to DoD and the training is to facilitate the utilization of those products or systems by DLA personnel.

(xii) Attendance or participation of DLA personnel in gatherings, including social events such as receptions, which are hosted by foreign governments or international organizations, provided that the acceptance of the invitation is approved by the Head of the PLFA or PSE.

(xiii) Situations in which, in the sound judgment of the individuals concerned or their immediate supervisors, the Government's interest will be served by DLA personnel participating in activities otherwise prohibited. In any such case, a written report of the circumstances shall be made in advance or, when an advance report is not possible, within 48 hours, by the individuals or the immediate supervisor to the appropriate Standards of Conduct Counselor or designated Deputy Counselor.

(xiv) Customary exchanges of gratuities between DLA personnel and their friends and relatives and the friends and relatives of their spouse, minor children and members of their household, where the circumstances make it clear that it is that relationship, rather than the business of the persons concerned, which is the motivating factor for the gratuity and where it is clear that the gratuity is not paid for by any source described in paragraph (e)(2) of this section.

(4) *Reimbursements*—(i) The acceptance of accommodations, subsistence, or services, furnished in kind, in connection with official travel from sources other than those indicated in paragraph (e)(2) of this section, is authorized only when the individual is to

80-109 O—81——14

be a speaker, panelist, project officer, or other bona fide participant in the activity attended, and when such attendance and acceptance are authorized by the order-issuing authority as being in the overall Government interest.

(ii) Where an employee is summoned to testify in an official capacity on behalf of a private party at a judicial proceeding, appearance will be on official time and travel expenses may be accepted from the court, authority, or party who caused the person to be summoned. In accordance with 5 U.S.C. 5751, the funds may be turned over to the agency and Government travel orders issued or the employee may use the funds to defray costs directly. Any excess funds must be returned to the party or paid into the U.S. Treasury as miscellaneous receipts. Any employee appearing on behalf of a private party not in an official capacity must use leave to do so and may retain any fees or expenses.

(iii) Except as indicated in paragraphs (e)(4) (i) and (ii) of this section, DLA personnel may not accept personal reimbursement from any source for expenses incident to official travel, unless authorized by their supervisor consistent with guidance provided by the appropriate Standards of Conduct Counselor or Deputy Counselor pursuant to 5 U.S.C. 4111 or other statutory authority. Rather, reimbursement must be made to the Government by check payable to DLA. Personnel will be reimbursed by the Government in accordance with regulations relating to reimbursement.

(iv) In no case shall DLA personnel accept, either in kind or for cash reimbursement, benefits which are extravagant or excessive in nature.

(v) When accommodations, subsistence, or services in kind are furnished to DLA personnel by non-U.S. Government sources, consistent with this paragraph, appropriate deductions shall be reported and made in the travel, per diem, or other allowances payable.

(5) DLA personnel who receive gratuities, or have gratuities received on their behalf, in circumstances not in conformance with the standards of this DLAR shall promptly report the circumstances to their immediate supervisor for disposition determination and, if further action is required, to the appropriate Standards of Conduct Counselor or Deputy Counselor.

(f) *Procedures with Respect to Gifts from Foreign Governments are set forth in DLAR 1005.1.*

(g) *Prohibition of Contributions or Presents to Superiors.* DLA personnel shall not solicit a contribution from other DLA personnel for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from other DLA personnel subordinate to themselves. However, this paragraph does not prohibit voluntary gifts or contributions of nominal value on special occasions such as marriage, illness, transfer, or retirement, provided any gifts acquired with such contributions will be reasonable in value.

(h) *Use of Government Facilities, Property and Manpower.* DLA personnel shall not directly or indirectly use, take, dispose of, or allow the use, taking or disposing of, Government property or facilities of any kind, including property leased to the Government, for other than officially approved purposes. Government facilities, property, and manpower (such as telephones, stationery, stenographic and typing assistance, mimeograph and chauffeur services) shall be used only for official Government business. DLA personnel have a positive duty to protect and conserve Government property. These provisions do not preclude the use of Government facilities for approved activities in furtherance of DLA community relations, provided they do not interfere with military missions or Government business.

(i) *Use of Civilian and Military Titles or Positions in Connection with Commercial Enterprises*—(1) All DLA personnel, excluding special Government employees, are prohibited from using their titles or positions in connection with the promotion of any commercial enterprise or in endorsing any commercial product. This does not preclude author identification for materials published in accordance with DLAR 5400.13.

(2) All retired military personnel and all members of reserve components not on active duty are permitted to use their military titles in connection

with commercial enterprises provided that they indicate their inactive, reserve or retired status. However, if such use of military titles in any way casts discredit on the Military Departments or DoD or gives the appearance of sponsorship, sanction, endorsement, or approval by the Military Departments or DoD, it is prohibited. In addition, the Military Departments may further restrict the use of titles including use by retired military personnel and members of reserve components, not on active duty, in overseas areas.

(j) *Outside Employment of DLA Personnel*—(1) DLA personnel shall not engage in outside employment or other outside activity, with or without compensation, that:

(i) Interferes with, or is not compatible with, the performance of their Government duties.

(ii) May reasonably be expected to bring discredit on the Government.

(iii) Is otherwise inconsistent with the requirements of this Part 1289, including the requirements to avoid actions and situations which reasonably can be expected to create the appearance of conflicts of interests.

(2) Enlisted military personnel on active duty may not be ordered or authorized to leave their post to engage in a civilian pursuit, business, or professional activity if it interferes with the customary or regular employment of local civilians in their art, trade, or profession.

(3) Off-duty employment of military personnel by an entity involved in a strike is permissible if the person was on the payroll of the entity prior to the commencement of the strike and if the employment is otherwise in conformance with the provisions of this Part 1289. After a strike begins and while it continues, no military personnel may accept employment by that involved entity at the strike location.

(4) DLA personnel are encouraged to engage in teaching, lecturing, and writing, except that:

(i) DLA personnel shall not, either for or without compensation, engage in activities that are dependent on information obtained as a result of their Government employment, except when the information has been published or is generally available to the public, or it will be made generally available to the public and the Director, DLA, gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(ii) Employment by a DoD contractor is prohibited unless the circumstances are presented to and approval is obtained from the Standards of Conduct Counselor or Deputy Counselor stating that such employment does not constitute either a conflict or the appearance of a conflict of interest between the employee's duties and the outside employment.

(k) *Gambling, Betting, and Lotteries.* While on Government-owned, leased, or controlled property, or otherwise while on duty for the Government, DLA personnel shall not participate in any gambling activity, including a lottery or pool, a game for money or property, and the sale or purchase of a number slip or ticket. The only exceptions are:

(i) Vending stands licensed in accordance with 20 U.S.C. 107a(a)(5) to sell chances for any lottery authorized by state law and conducted by an agency of a state.

(ii) Activities which have been specifically approved by the Director, DLA.

(l) *Indebtedness.* DLA personnel shall pay their just financial obligations in a timely manner, particularly those imposed by law, such as Federal, state, and local taxes. DLA activities are not required to determine the validity or amount of disputed debts.

§ 1289.4 Definitions.

(a) *Deputy Standards of Conduct Counselor.* The Counsel of each DLA PLFA is designated Deputy Standards of Conduct Counselor.

(b) *DLA Personnel.* All civilian officers and employees, including special Government employees, of DLA and all active duty officers (commissioned and warrant) and enlisted members of the Army, Navy, Air Force, and Marine Corps, assigned to DLA.

(c) *Financial Interest.* Any wages, salaries, interest, dividends or any other form of income or benefit received by virtue of the relationship; in-

cludes potential benefit, such as preemployment contacts with a potential future employer.

(d) *Gratuity.* Any gift, favor, entertainment, hospitality, transportation, loan, or any other tangible item, and any intangible benefits, for example, discounts, passes, and promotional vendor training, given or extended to or on behalf of DLA personnel, their immediate families or households for which fair market value is not paid by the recipient or the U.S. Government.

(e) *Special Government Employee.* A person who is retained, designated, appointed, or employed to perform with or without compensation, not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. The term also includes a reserve officer while on active duty solely for training for any length of time, one who is serving on active duty involuntarily for any length of time, and one who is serving voluntarily on extended active duty for 130 days or less. It does not include enlisted personnel.

(f) *Standards of Conduct Counselor.* The Counsel, DLA, is designated the DLA Standards of Conduct Counselor.

§ 1289.5 Significant changes.

This Part 1289 has been revised to make general refinements of existing policy and functional responsibilities. This Part 1289 amends the categories of employees required to file DD Forms 1555, Confidential Statement of Affiliations and Financial Interests, Department of Defense Personnel; expands the information required to be submitted on a disqualification notice; alters the reporting requirements for suspected violations of the standards of conduct statutes and regulations; and provides for advice to military personnel leaving active military service and civilians leaving federal employment.

§ 1289.6 Responsibilities.

(a) *DLA Wide.*

(1) *All DLA Employees* will:

(i) Adhere to the highest standards of honesty and integrity.

(ii) Bring suspected violations of a statute or standards of conduct imposed by this DLAR to the attention of the Standards of Conduct Counselor or Deputy Counselor.

(iii) Report to their immediate supervisor the acceptance of gratuities under the exceptions provisions of § 1289.3(e)(3) (x) and (xiii). Failure to submit these reports will be a basis for disciplinary action.

(iv) Call the appropriate provisions of Appendix C to the attention of any retired or former officer or employee with whom they deal, and advise that any apparent violations will have to be referred to the Department of Justice.

(2) *All DLA Supervisors* will:

(i) Review position descriptions annually to identify those positions which require submission of DD Forms 1555 by the incumbents. (See Appendix A, Paragraph II.)

(ii) Review DD Forms 1555 filed by their immediate subordinates to identify any conflict between the employee's private financial interest and official responsibilities, and complete the supervisor's statement contained therein. (See Appendix A, paragraph IV K.)

(b) *HQ DLA.*

(1) *The Heads of HQ DLA Principal Staff Elements* will:

(i) Remind all personnel in their Directorate/Office at least semiannually of their duty to comply with the required standards of conduct and advise employees that they may obtain clarification of this Part 1289 from the Office of Counsel, DLA (DLA-G).

(ii) Report promptly all violations of this Part 1289 and statutes cited herein to the Counsel, DLA.

(iii) Review and evaluate the DD Forms 1555 filed by their deputies prior to forwarding them to the Counsel, DLA.

(iv) Assure that required DD Forms 1555 are filed by officers and employees of their element and forwarded to the Counsel, DLA, in accordance with this Part 1289.

(2) *The Staff Director, Military Personnel, DLA* will:

(i) Assure that all military personnel, upon assignment to duty with DLA in the Metropolitan Washington area, are informed of the standards of conduct specified in and furnished a copy of this Part 1289.

(ii) By 15 October of each year submit a list to DLA-G of all military personnel within the activities furnished personnel services by DLA-M who are required, as of 30 September of that year, to submit a DD Form 1555.

(iii) Assure that all military officers furnished personnel services by DLA-M, upon separation or retirement from active duty when assigned to DLA, are informed of the standards of conduct governing former or retired military officers, and furnished copies of available information and guidance relating to service with DLA.

(3) *The Commander, DLA Administrative Support Center (DASC)* will:

(i) Assure that all civilian personnel, upon employment in any DLA activity furnished personnel services by DASC, are informed of the standards of conduct specified in and furnished a copy of this Part 1289.

(ii) By 15 October of each year, submit a list to DLA-G of all civilian employees in DLA activities furnished personnel services by DASC whose positions have been identified by their supervisors as requiring them, as of 30 September of that year, to submit DD Forms 1555.

(iii) Assure that all civilian employees furnished personnel services by DASC, upon their separation from Federal service, are informed of the standards of conduct governing former or retired civilian employees and furnished copies of available information and guidance.

(4) *The Counsel, DLA, is designated the DLA Standards of Conduct Counselor* and will:

(i) Provide additional clarification of standards of conduct and related laws, rules and regulations, and advice and assistance on all matters relating to conflict of interests.

(ii) Coordinate proper and final disposition of all problems that are not resolved by the supervisor or Deputy Counselor relating to conflict of interests.

(iii) Approve and retain DD Forms 1555 required to be submitted to Counsel after review by supervisors and in accordance with Appendix A, paragraph IV K, to this Part 1289.

(iv) Receive reports of any favor, gratuity, or entertainment accepted by DLA personnel as being in the Government's interest, when required to be submitted to the Standards of Conduct Counselor under § 1289.3(e)(3)(xiii), and initiate or recommend action as appropriate.

(v) Review reports of violations of the standards of conduct statutes or regulations required to be submitted under paragraph (c)(2) (ii) and (iii) of this section and assure proper action has been taken.

(vi) No later than 31 December of each year, notify the Office of the Secretary of Defense Standards of Conduct Counselor that all required DD Forms 1555 have been filed, reviewed, and any problems appropriately resolved, or explain the details of the outstanding cases.

(c) *Field Activities.*

(1) *Commanders* will:

(i) Assure that all military and civilian personnel of their activities are informed upon employment or entry on duty of the standards of conduct specified in this Part 1289, are furnished a copy of this Part 1289, and thereafter are reminded at least semiannually of their duty to comply with the required standards of conduct.

(ii) Assure that all employees, military and civilian, upon their separation from military or Federal service, are informed of the standards of conduct governing former or retired military or civilian employees and furnished copies of available information and guidance.

(iii) Take action to advise employees that they may obtain clarification of this DLAR from the PLFA Office of Counsel.

(iv) Review and evaluate the DD Forms 1555 submitted by their deputies prior to forwarding them to the Counsel, DLA.

(v) Assure that required DD Forms 1555 are filed by officers and employees of their activity, and forwarded to the appropriate Counselor or Deputy Counselor, in accordance with this Part 1289.

(2) *The Counsel for each DLA PLFA is Designated Deputy Standards of Conduct Counselor* and will:

(i) Provide advice and assistance on matters relating to standards of conduct and conflict of interests and related laws, rules and regulations arising at the activity.

(ii) Forward to DLA-G a report of each suspected violation of the standards of conduct statutes or regulations as required under § 1289.7(b) of this Part 1289.

(iii) Provide a summary of all reports of violations and the status of each investigation or other action taken to HQ DLA, ATTN: DLA-G. Such reports shall be furnished semiannually, as of 31 March and 30 September each year, and shall be forwarded to reach HQ DLA no later than 10 calendar days after the reporting date. RCS DLA(SA)2217(G) applies.

(iv) Review, approve, and retain DD Forms 1555 for personnel of the activity and all subordinate DLA activities after review by the supervisor.

(v) Establish a procedure to identify employees within the activity and subordinate activities who are required by this DLAR to file DD Forms 1555.

(vi) By 10 December of each year, notify DLA-G that all employees of the activity required to file DD Forms 1555 as of 30 September of that year have filed the form, and of any apparent conflicts of interest identified on the forms that have not been resolved.

(3) The responsibilities assigned PLFA Counsel may be delegated to the Counsel of a subordinate activity.

§ 1289.7 Procedures.

(a) *Information to Personnel.* Each DLA employee will be given a copy of this DLAR or implementing PLFA regulation and an oral standards of conduct briefing preceding employment or assumption of duties. Each individual receiving such briefing shall attest in writing to attending the briefing, reading the standards of conduct regulation, and comprehension of the requirements imposed. All DLA employees shall be reminded at least semiannually of their duty to comply with required standards of conduct.

(b) *Reporting Suspected Violations.* DLA personnel who have information which causes them to believe that a violation of the standards of conduct statutes or regulations has occurred shall report the matter promptly to the Standards of Conduct Counselor or Deputy Counselor, who shall:

(1) Evaluate the report and obtain such additional information as may be necessary.

(2) Refer the matter for investigation or other actions as appropriate, or advise the reporter that no further action will be taken.

(3) Forward a report of the matter and any action taken to the Counsel, DLA within 30 days.

(c) *Resolving Violations.* The resolution of real or potential conflicts of interest and standards of conduct violations shall be accomplished promptly by one or more measures, such as divestiture of conflicting interests, disqualification for particular assignments, changes in assigned duties, termination or other appropriate action, as provided by statute or administrative procedures. Disciplinary actions shall be in accordance with established personnel procedures.

(d) *Statements of Affiliations and Financial Interests (DD Form 1555).* The following DLA personnel are required to submit initial and annual Statements of Affiliations and Financial Interests, DD Form 1555, unless they are expressly exempted. (See Appendix A for details on applicability and requirements.)

(1) All civilian DLA personnel not in the Senior Executive Service or classified as a GS-16 or above, who are paid at a rate equal to or in excess of the minimum rate prescribed for employees holding the grade of GS-16.

(2) Commanders, Deputy Commanders, and Counsel of PLFAs and Heads and Deputy Heads of PSEs, except those required to file SF 278s.

(3) DLA personnel, civilian or military, regardless of grade or rank, whose official responsibilities require the exercise of judgment in making a Government decision or in taking Government action in regard to activities in which the final decision or action may have a significant economic impact on the interests of any non-Federal entity, including individuals and their supervisors who:

(i) Determine requirements or descriptions of supplies or services to be purchased.

(ii) Determine technical requirements or specifications and pertinent drawings.

(iii) Determine Government estimates of cost.

(iv) Select or solicit sources of supply.

(v) Conduct preaward surveys, or evaluate, appraise, select, or approve contractors, subcontractors, or contractor and subcontractor facilities.

(vi) Determine reasonableness of prices.

(vii) Issue service orders, task orders, purchase orders, delivery orders, calls against blanket purchase agreements or indefinite delivery type contracts; orders using imprest funds; or modifications to contracts.

(viii) Purchase, rent, lease, or otherwise obtain supplies or services from, or dispose of or sell supplies to, non-Government entities.

(ix) Award or approve the award of contracts or grants.

(x) Administer contracts or grants.

(xi) Determine, as part of quality control or quality assurance functions, to accept or reject contractors' systems, products, or services.

(4) A decision under paragraph (3) of this section to require an individual below the grade of GS-13 or O-5 to file a DD Form 1555 is subject to the approval of the PLFA Commander or PSE Head and the concurrence of the Standards of Conduct Counselor or Deputy Counselor.

(5) Special Government employees (except those exempted in Appendix A).

(e) Additional clarification of the standards of conduct set forth in this DLAR and related statutes, rules, and regulations may be obtained from the Standards of Conduct Counselor and Deputy Counselors designated in this Part 1289.

(f) Preemployment and postemployment reporting requirements concerning Defense related employment are covered in DLAR 7700.3.

Appendix A—Requirements for Submission of DD Form 1555 Statements

I. *DLA PERSONNEL REQUIRED TO SUBMIT STATEMENTS.* DLA personnel required to file Statements of Affiliations and Financial Interests (DD Form 1555) are those indicated in § 1289.7(d) of the basic Part 1289.

II. *REVIEW OF POSITIONS.* Immediate supervisors shall review each civilian and military position under their supervision at the time of the incumbent's annual performance rating, determine whether the position requires the incumbent to file a DD Form 1555, and will notify each employee of the determination. The position description of each position so reviewed shall include a statement advising whether or not the incumbent must file a DD Form 1555.

III. *EXCLUSION OF POSITIONS.* Heads of PLFAs and PSEs may determine that the submission of a DD Form 1555 is not necessary for certain positions otherwise included in § 1289.7(d) because of the remoteness of any impairment of the integrity of the Government and the degree of supervision and review of the incumbents' work. In such cases the position description will include a statement of the determination and that the incumbent need not file a DD Form 1555.

IV. *FORM AND MANNER OF SUBMISSION OF DD FORMS 1555.* A. *Form of Submission.* DD Form 1555 will be used by all DLA personnel required by § 1289.7 of this Part 1289 to submit Statements of Affiliations and Financial Interests. If the officer or employee makes an entry other than "None" in blocks 5 thru 10 of DD Form 1555, a signed statement by the officer or employee that none of the interests listed constitutes a conflict of interest in the performance of duties in the present position will be attached to the form when forwarded to the supervisor for review. If this statement cannot be made, the apparent conflict of interest will be resolved by the supervisor (see paragraph IV K of this appendix).

B. *Time of Submission.* 1. Employees will file a DD Form 1555 for review and approval by the appropriate Standards of Conduct Counselor or Deputy Counselor prior to the assumption of a new position or duties that require filing a DD Form 1555.

2. DD Forms 1555 shall be filed by 31 October each year for all affiliations and financial interests as of 30 September of that year. Even though no changes occur, a new and complete DD Form 1555 is required to be filed each year.

3. *Excusable Delay.* When required by reason of duty assignment or infirmity, a supervisor may grant an extension of time with the concurrence of the Standards of Conduct Counselor or Deputy Counselor. Any extension in excess of 30 days requires the concurrence of the Counsel, DLA. Any late DD Forms 1555 shall include appropriate notation of any extension of time granted hereunder.

C. *To Whom Submitted*

1. *HQ DLA, DASC, and PLFAs without Assigned DLA Counsel.* a. Heads of PSEs required to file DD Forms 1555 will submit them through the Counsel, DLA to the Director, DLA.

b. Deputy Heads of PSEs required to file DD Form 1555 will submit them to the Head of the PSE for review and evaluation. After resolution of any conflict, the DD Forms 1555 will be forwarded to the Counsel, DLA.

c. Other officers and employees of HQ DLA, DASC, DDC, and PLFAs without assigned DLA Counsel, and their subordinate activities, will submit DD Forms 1555 to their immediate supervisor for review and evaluation. Upon completion of their review and resolution of any conflicts, supervisors will forward the DD Forms 1555 to the Counsel, DLA.

2. *Field Activities with Assigned DLA Counsel.* a. Heads of PLFAs required to file DD Forms 1555 will submit them through the Counsel, DLA to the Director, DLA.

b. Deputy Heads of PLFAs required to file DD Forms 1555 will submit them to the Head of the PLFA for review and evaluation. After resolution of any conflict, the forms will be submitted to the Counsel, DLA.

c. Other officers and employees of PLFAs or subordinate activities required to file DD Forms 1555 will submit them to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be forwarded to the appropriate Deputy Standards of Conduct Counselor.

d. Counsel for PLFAs will submit DD Forms 1555 to the PLFA Commander for review and evaluation. After resolution of any conflict, the forms will be forwarded to the Counsel, DLA.

e. Heads of DLA activities subordinate to PLFAs, when required to file a DD Form 1555, will submit the form to the Commander of the PLFA who will review and evaluate, and forward it to the PLFA Deputy Counselor after resolution of any conflict.

f. Counsel for DLA activities subordinate to a PLFA will submit DD Forms 1555 to the activity Commander for review, evaluation and resolution of any conflict. The forms will then be forwarded to the Counsel of the PLFA.

3. *Detailed Employees.* Agreements with other DoD components and Government agencies shall contain a requirement that the other component agency shall, within 60 days, forward to the DLA Standards of Conduct Counselor a copy of the detailed individual's DD Form 1555, if required, and notice concerning the disposition of any conflict or apparent conflict of interests indicated.

D. *Information Required.* Each reporting officer or employee is required to report on DD Form 1555 in the same manner as an interest of the individual, information with respect to financial and employment interests of the individual's spouse or minor child, or any member of the individual's household. For the purpose of this Part 1289, connection with or interest in educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are to be included in a person's DD Form 1555.

E. *Information Not Required to be Submitted.* DLA personnel are not required to submit on a DD Form 1555 any information relating to their connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business for profit. Ownership of personal savings or checking accounts in financial institutions, shares in credit unions or savings and loan associations, and life or property insurance policies and shares in widely held, diversified mutual funds or regulated investment companies need not be reported.

F. *Information Not Known by DLA Personnel.* DLA personnel shall request submission on their behalf of required information known only to other persons, for example, holdings of a spouse or other member of the household, executor of any estate, or trustee. The submissions may be made with a request for confidentiality that will be honored even if it includes a limitation on disclosure to the DLA employee concerned.

G. *Confidentiality of DD Forms 1555 of DLA Personnel.* Each DD Form 1555 shall be held in confidence. Information from a DD Form 1555 may not be disclosed except as the Director, DLA, or the Office of Personnel Management may determine for good cause. "Good cause" includes a determination that the record or any part of the record must be released under the Freeedom of Information Act. Persons designated to review the DD Forms 1555 are responsible for maintaining the statements in confidence and shall not allow access to or disclosure from the DD Forms 1555 except to carry out the purpose of this Part 1289.

H. *Effect of Statements on Other Requirements.* The DD Form 1555 required of DLA personnel is in addition to, and not in substitution for, any similar requirement imposed by statute, executive order, or regulation. Submission of DD Form 1555 does not permit DLA personnel to participate in matters in which their participation is prohibited by statute, executive order, or regulation.

I. *Special Government Employees (as defined in § 1289.4(e) of this Part 1289)*

1. Each special government employee shall, prior to appointment, file a DD Form 1555.

2. The following are exempted categories of special Government employees who are not required to file DD Forms 1555 unless specifically requested to do so:

a. Physicians, dentists, and allied medical specialists engaged only in providing service to patients.

Veterinarians providing veterinary services relating to animal husbandry or treatment only.

c. Lecturers participating in educational activities.

d. Chaplains performing only religious services.

e. Individuals in the motion picture and television fields who are utilized only as narrators or actors in DLA productions.

f. Members of selection panels for NROTC candidates.

g. A special Government employee who is not a "consultant" or "expert" as those terms are defined in the Federal Personnel Manual, chapter 304.

J. Individuals, other than those identified in § 1289.7(d) of Part 1289, may be required to submit such statements if it is believed essential to protect the integrity of the Government and avoid employee involvement in a possible conflict of interests situation.

K. *Review of DD Form 1555* 1. The immediate supervisor initially reviews DD Form 1555 to assure that there is no conflict or apparent conflict between the employee's private financial interests and official responsibilities. Heads of PSEs and PLFAs will perform the initial review of their deputies' DD Form 1555 before forwarding them to the Counsel, DLA. After review and completion of the supervisor's statement, the DD Form 1555 should be forwarded to the appropriate Standards of Conduct Counselor or Deputy Counselor for final review and filing. A section on the DD Form 1555 is provided for this purpose.

2. Whenever the supervisor's review of a DD Form 1555 discloses a conflict or an apparent conflict of interest, the employee concerned will be given an opportunity to explain the conflict or apparent conflict to the immediate supervisor. Resolution of a conflict will be made under § 1289.7(c) of this Part 1289. A notice of disqualification must identify not only the company in which there is a financial interest, but also the parent, subsidiaries and affiliates, if any, and their addresses. The format for the notice is attached as enclosure 2. If the conflict cannot be resolved by the supervisor, it will be forwarded along with a copy of the employee's current position description to the appropriate Standards of Conduct Counselor or Deputy Counselor for resolution.

3. If the conflict is still not resolved after review and consideration of the employee's explanation, all relevant information concerning the matter will be submitted to DLA, ATTN: DLA-G, for review by the Counsel, DLA, and submission to the Director, DLA, for resolution, if necessary.

Appendix B—Notice of Disqualification

Subject: Disqualification

By reason of financial interests in the companies listed below, I am disqualified from taking any action which might have an impact upon them, their subsidiaries or affiliates. I have listed in each case, to the best of my knowledge and belief, all subsidiaries and affiliates. In the event any matter arises which would ordinarily be referred to me, which may have an impact upon the interests of any of these companies, their subsidiaries, or affiliates, it should be brought directly to the attention of

List of companies, subsidiaries and affiliates:

Parent: Tenneco Inc.: 1010 Milam, Houston, Texas 77001

Subs'y: Tenneco Corporation (Subsidiary of Tenneco Inc.) 1010 Milam, Houston, Texas 77001

Tenneco Oil Company (Subsidiary of Tenneco Corporation), 1010 Milam, Houston, Texas 77001

Tenneco Chemicals Inc.: (Subsidiary of Tenneco Corporation) Park 80 One, Saddle Brook, New Jersey 07662

Tenneco West Inc.: (Subsidiary of Tenneco Corporation) 201 New Stine Road, Bakersfield, California 93302

East Tennessee Natural Gas Company, Knoxville, Tennesee

Midwestern Gas Transmission Company

Monroe Auto Equipment Company, Monroe, Michigan

Newport News Ship & Drydock Company, Newport News, Virginia

Packaging Corporation of America, Evanston, Illinois

Kern County Land Company, Houston, Texas

J. I. Case Company, Racine, Wisconsin

Petro-Tex Chemical Corporation, Houston, Texas

Case Construction Equipment Company, Philadelphia, Pennsylvania

Lydex Automotive Exhaust Systems, Denmark

Walker Mfg Company Racine, Wisconsin

Parent: Sears Roebuck & Company, Sears Tower, Chicago, Illinois 60684

Subs'y: Sears Roebuck Acceptance Corporation (Subsidiary of Sears) One Customs House Square, Wilmington, Delaware 19899

Allstate Insurance Company (Subsidiary of Sears) Northbrook, Illinois

Homart Development Company, Florence, Kentucky

APPENDIX C—DIGEST OF LAWS

Conflict of Interest Laws

I. *18 U.S.C. 203.* Subsection (a) prohibitions are encompassed by prohibitions in 18 U.S.C. 205 below. Subsection (b) makes it unlawful to offer or pay compensation, the solicitation or receipt of which is barred by subsection (a).

II. *18 U.S.C. 205* A. This section prohibits Government personnel from acting as agent or attorney for anyone else before a department, agency, or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

B. The following exemptions are allowed:

1. Section 205 does not prevent Government personnel from giving testimony under oath, or making statements required to be made under penalty of perjury or contempt, or from representing another person, without compensation, in a disciplinary, loyalty, or other personnel matter.

2. Section 205 also authorizes a limited waiver of its restrictions and those of section 203 for the benefit of officers or employees, including special Government employees, who represent their own parents, spouse, or child, or a person or estate they serve as a fiduciary. The waiver is available only if approved by the official making appointments to the position. In no event does the waiver extend to representation of any such person in matters in which the employee has participated personally and substantially or which, even in the absence of such participation, are the subject of the employee's official responsibility.

3. Finally, section 205 gives the Head of a department or agency the authority to allow special Government employees to represent their regular employers or other outside organizations in the performance of work under a Government grant or contract, if the department or agency head certifies and publishes in the FEDERAL REGISTER that the national interest requires such representation.

III. *18 U.S.C. 208* A. Subsection (a) requires executive branch personnel to refrain from participating as Government personnel in any matter in which they, their spouses, minor children, or partners have financial interests or in which businesses or nonprofit organizations with which such personnel are connected or are seeking employment have financial interests. A "particular matter" may be less concrete than an actual contract, but is something more specific than rule making or abstract scientific principles. The test is whether the individuals might reasonably anticipate that their Government action, or the decisions in which they participate or with respect to which they advise, will have a direct and predictable effect upon such financial interests.

B. Subsection (b) permits agencies to grant an ad hoc exemption from subsection (a) if the outside financial interest is deemed not substantial enough to affect the integrity of Government services. Categories of financial interests may also be made nondisqualifying by a general regulation published in the FEDERAL REGISTER.

IV. *18 U.S.C. 209.* Subsection (a) prevents executive branch personnel from receiving, and anyone from paying them, any salary or supplementation of salary from a private source as compensation for their Government service. Subsection (b) permits participation in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer. Subsection (c) exempts special Government employees and anyone serving the Government without compensation. Subsection (d) exempts contributions, awards, or other expenses under the Government Employees Training Act (5 U.S.C. 4101, et seq.).

V. *37 U.S.C. 801 (a), APPLICABLE TO REGULAR NAVY AND MARINE CORPS OFFICERS.* A Regular Navy or Regular Marine Corps Officer on active duty may not be employed by anyone furnishing naval supplies or war materials to the United States. If such an officer is so employed, he is not entitled to any payment from the United States during that employment.

VI. *18 U.S.C. 207, APPLICABLE TO FORMER DOD PERSONNEL*

A. Subsection (a) does two things: It bars a former DoD employee from acting as agent, attorney, or representative for anyone in any formal or informal appearance before the Government in any particular matter involving specific parties, if the employee was personally and substantially involved in the particular matter while at DoD. It also bars a former DoD employee from making any oral or written communication to the Government on behalf of anyone else if there is an intent to influence the Government in such a particular matter. Furnishing scientific and technological information to the Government is exempted from this restriction. The restriction covers all former DoD regular personnel, military or civilian, regardless of grade and all special Government employees. See 5 CFR 737.5 (44 FR 19978, April 3, 1979).

B. Subsection (b)(1) is a 2-year bar against certain activities. This restriction has the same two basic patterns as the lifetime bar except that it applies to matters that were under a former employee's "official responsibility" while at DoD. That is, for 2 years after leaving DoD, a former employee may not act as agent, attorney, or representative for anyone in a formal or informal appear-

ance before the Government or make any oral or written communication with the intent to influence the Government if the subject matter is something that was actually pending under that employee's official responsibility, within a period of 1 year prior to the termination of such responsibility. Furnishing scientific and technological information to the Government is exempted from this restriction. This restriction covers all former DoD regular personnel, military or civilian, regardless of grade and all special Government employees. See 5 CFR 737.7 (44 FR 19981, April 3, 1979).

C. Subsection (b)(ii) bars a former DoD employee from aiding or assisting in any representational activities that are prohibited under the 2-year bar on representing discussed above. If an employee would be barred from actually doing the representing (under the bar on representing), he or she is also barred from helping someone else (who is not under that bar on representing) do that kind of work. Furnishing scientific and technological information to the Government is exempted from this restriction. This restriction is effective 1 July 1979 and applies only to Executive Schedule appointees and military officers at pay grades O–7 and above. Effective 1 October 1979 this restriction may be extended by the Office of Government Ethics to specific GS–17 and 18 positions. In addition, the restriction could also be applied to selected positions below the GS–17 level if the Office of Government Ethics finds they are substantially similar. See 5 CFR 737.9 (44 FR 19981, April 3, 1979).

NOTE: Amendments are currently pending before Congress that would change the scope and coverage of this provision.

D. Subsection (c) bars a former DoD employee from making any personal, oral, or written contact to influence DoD for 1 year after he or she leaves the department. This provision operates *regardless* of the former employee's prior involvement in the subject matter of the contact, except that furnishing scientific and technological information to the Government is exempted from this restriction. It is known as the 1-year "cooling-off" period. This restriction is effective on 1 July 1979 to Executive Schedule appointees and military officers at grades O–7 and above. Effective 1 October 1979, the restriction may be extended by the Office of Government Ethics to anyone paid at a GS–17 level, except a special Government employee serving less than 60 days a year. In addition, the restriction could also be applied to positions below the GS–17 level by the Office of Government Ethics. See 5 CFR 737.11 (44 FR 19983, April 3, 1979).

NOTE: Amendments pending in Congress would modify the coverage of this provision.

E. Partners of officers and employees are also prohibited from acting as agent or attorney for anyone other than the United States before any Federal agency or court in connection with any matter in which the United States is a party or has a direct and substantial interest and in which the officer or employee participated personally and substantially or which is the subject of the officer's or employee's official responsibility.

F. The prohibition in subsection (c) does not apply to appearances or communications on matters of a personal or individual nature or to making a statement or giving testimony in an area based on the former officer's or employee's special expertise.

G. In the event of a potential violation, the head of the department or agency is required to provide notice and an opportunity for a hearing. Any disciplinary action taken as a result is subject to review in an appropriate United States district court.

VII. *SUMMARY OF LAWS PARTICULARLY APPLICABLE TO RETIRED REGULAR OFFICERS*

A. *Prohibited Activities* 1. *Claims.* A retired Regular officer of the Armed Forces may not, within 2 years of his retirement, act as agent or attorney for prosecuting any claim against the Government, or assist in the prosecution of such a claim, or receive any gratuity or any share of or interest in such a claim, in consideration for having assisted in the prosecution of such a claim, if such claim involves the Military Department in whose service he holds a retired status. Nor may a retired Regular officer at any time act as an agent or attorney for prosecuting any claim against the Government, or assist in prosecution of such claim, or receive any gratuity or any share of or interest in such claim, in consideration for having assisted in the prosecution of such claim, if such claim involves any subject matter with which he was directly connected while on active duty (see 18 U.S.C. 283).

2. *Selling* a. A retired Regular officer is prohibited, at all times, from representing any person in the sale of anything to the Government through the Military Department in whose service he holds a retired status (see 18 U.S.C. 281).

b. "Payment may not be made from any appropriation, for a period of three years after his name is placed on that list, to an officer on a retired list of the Regular Army, the Regular Navy, the Regular Air Force, the Regular Marine Corps, the Regular Coast Guard, the Environmental Science Services Administration, or the Public Health Service, who is engaged for himself or others in selling, or contracting, or negotiating to sell, supplies or war materials to an agency of the Department of Defense, the Coast Guard, the Environmental Science Services Administration, or the Public Health Service." (Sec. 37 U.S.C. 801(c) as

amended October 9, 1962, Pub. L. 87-777, formerly 5 U.S.C. 59(c)). (NOTE: The Environmental Science Services Administration was abolished on October 3, 1970, and its functions were transferred to the National Oceanic and Atmospheric Administration.)

c. For the purpose of this statute, "selling" means:

(1) Signing a bid, proposal, or contract.

(2) Negotiating a contract.

(3) Contacting an officer or employee of any of the foregoing departments or agencies for the purpose of:

(a) Obtaining or negotiating contracts.

(b) Negotiating or discussing changes in specifications, price, cost allowances, or other terms of a contract.

(c) Settling disputes concerning performance of a contract.

(4) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefor is subsequently negotiated by another person.

3. Neither these statutes nor this directive preclude a retired Regular officer from accepting employment with private industry solely because his employer is a contractor with the Government.

B. *Exemptions from Law Applying to Officers on Active Duty.* A retired Regular officer continues to be an "officer" of the United States for purposes of many statutes. However, the laws applying to DoD personnel listed above do not normally apply to retired officers not on active duty who are not otherwise officers or employees of the United States.

VIII. *LAWS APPLICABLE TO DOD PERSONNEL.* There are legal prohibitions concerning the following activities which may subject present and former DoD personnel to criminal or other penalties:

A. Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (see 18 U.S.C. 201).

B. Concealing or failing to report to proper authorities the commission of a felony under any criminal statute if such personnel knew of the actual commission of the crime (see 18 U.S.C. 4).

C. Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to effect the object of the conspiracy (see 18 U.S.C. 371).

D. Lobbying with appropriated funds (see 18 U.S.C. 1913).

E. Disloyalty and striking (see 5 U.S.C. 7311, 18 U.S.C. 1918).

F. Disclosure of classified information (see 18 U.S.C. 798, 50 U.S.C. 783); and disclosure of confidential information (see 18 U.S.C. 1905).

G. Habitual use of intoxicants to excess (see 5 U.S.C. 7352).

H. Misuse of a Government vehicle (see 31 U.S.C. 638 (c)(2)).

I. Misuse of the franking privilege (see 18 U.S.C. 1719).

J. Deceit in an examination or personnel action in connection with Government employment (see 18 U.S.C. 1917).

K. Committing fraud or making false statements in a Government matter (see 18 U.S.C. 1001).

L. Mutilating or destroying a public record (see 18 U.S.C. 2071).

M. Counterfeiting and forging transportation requests (see 18 U.S.C. 508).

N. Embezzlement of Government money or property (see 18 U.S.C. 641); failing to account for public money (see 18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his Government employment (see 18 U.S.C. 654).

O. Unathorized use of documents relating to claims from or by the Government (see 18 U.S.C. 285).

P. Certain political activities (see 5 U.S.C. 7321-7327 and 18 U.S.C. 602, 603 and 607). These statutes apply to civilian employees; regulations govern military personnel.

Q. Any person who is required to register under the Foreign Agents Registration Act of 1938 (see 18 U.S.C. 219) may not serve the Government as an officer or employee. The section does not apply to Reserves who are not on active duty or who are on active duty for training, or a special Government employee in any case in which the department head certifies to the Attorney General that his employment by the United States Government is in the national interest.

R. Soliciting contributions for gifts, giving gifts to superiors, or accepting gifts from subordinates (see 5 U.S.C. 7351).

S. Acceptance of excessive honorariums (see 2 U.S.C. 441(i)).

T. Acceptance, without statutory authority, of any office or title, of any kind whatever, from any king, prince, or foreign state by any person holding any office of profit in or trust of the Federal Government, including all retired military personnel. (U.S. Constitution, Art. I, Sec. 9.; Pub. L. 95-105, title U S 509(a)-(c), 17 Aug. 1977).

U. Failure to file DD Form 1787, Report of DoD and Defense Related Employment, required of certain present and former personnel paid at a rate equal to or greater than the minimum rate paid for a GS-13 who, within 3 years preceding employment with DLA or 3 years subsequent to employment with DLA, were or are employed by a defense contractor. (Pub. L. 91-121, section 410, as amended by Pub. L. 94-273, Section 4(4); Dod Dir. 7700.15, DLAR 7700.3).

PART 1290—PREPARING AND PROCESSING MINOR OFFENSES AND VIOLATION NOTICES REFERRED TO U.S. DISTRICT COURTS

Sec.

1290.1 References.[1]
1290.2 Purpose and scope.
1290.3 Policy.
1290.4 Definitions.
1290.5 Background.
1290.6 Significant Changes.
1290.7 Responsibilities.
1290.8 Procedures.
1290.9 Forms and reports.

APPENDIX A—PREPARATION GUIDE FOR DD FORM 1805, VIOLATION NOTICE
APPENDIX B—TICKET SAMPLE—A PARKING VIOLATION
APPENDIX C—TICKET SAMPLE—A MOVING VIOLATION
APPENDIX D—TICKET SAMPLE—A NONTRAFFIC VIOLATION

AUTHORITY: Department of Defense Instruction 6055.4; 18 U.S.C. 13, 3401, and 3402.

Source: 44 FR 55859, Sept. 28, 1979, unless otherwise noted.

§ 1290.1 References.

(a) DLAR 5720.1/AR 190-5/OPNAVINST 11200.5B/AFR 125-14/MCO 5110.1B, Motor Vehicle Traffic Supervision.

(b) DLAR 5710.1, Authority of Military Commanders To Issue Security Orders and Regulations for the Protection of Property or Places Under Their Command.

(c) Sections 1, 3401 and 3402, Title 18, U.S.Code (USC).

(d) Rules of procedures for the Trial of Minor Offenses before United States Magistrates.

(e) Section 13, Title 18, U.S. Code, Assimilative Crimes Act.

§ 1290.2 Purpose and scope.

(a) This Part 1290 implements DoD Instruction 6055.4, Department of Defense Traffic Safety Program, and sets forth basic objectives and procedures applicable to implementation of the Federal Magistrate System by DLA. This Part 1290 is applicable to HQ DLA, Defense Supply Centers (DSC's), less Defense Fuel Supply Center and Defense Industrial Supply Center, and to Defense Depots, less Defense Depot Mechanicsburg. DLA activities/personnel tenant on other DoD activities will abide by the requirements of the host.

(b) This Part 1290 provides Heads of DLA primary level field activities (PLFAs) with a means of exercising effective control over violators who are not otherwise under their jurisdiction.

§ 1290.3 Policy.

(a) It is the policy of HQ DLA that the Heads of DLA PLFAs will take such steps as are necessary to prevent offenses. Emphasis will be placed on prevention rather than apprehension and prosecution of offenders.

(b) The procedures outlined in this Part 1290 may, at the discretion of the Head of the activity concerned, be invoked in lieu of the provisions of the Uniform Code of Military Justice (UCMJ) to deal with minor offenses of a civil nature, other than violations of state traffic laws, committed by military personnel. These procedures may also be invoked to deal with nontraffic minor offenses committed by civilian personnel.

§ 1290.4 Definitions.

For the purpose of this Part 1290 the following definitions apply:

This Part 1290 supersedes Part 1290 April 26, 1972.

(a) *Law Enforcement Personnel.* Persons authorized by the Head of the PLFA to direct, regulate, control traffic; to make apprehensions or arrests for violations of traffic regulations; or to issue citations or tickets. Personnel so designated will include the Command Security Officer and all other personnel in 080, 083, 085, or 1800 series positions.

(b) *Minor Federal Offenses.* Those offenses for which the authorized penalty does not exceed imprisonment for a period of 1 year, or a fine of not more than $1000, or both (18 U.S.C. 3401f).

(c) *Petty Federal Offenses.* Those offenses for which the authorized penalty does not exceed imprisonment for a period of 6 months or a fine of not more than $500, or both (18 U.S.C. 1(3)).

[1] Reference (a) may be purchased from the Commander, U.S. Army AG Publications Center, 2800 Eastern Blvd., 21220; reference (b) from the Defense Logistics Agency (DASC-IP), Cameron Station, Alexandria, Va. 22314; references (c), (d), and (e) from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

NOTE: A petty offense is a type of minor offense.

(d) *Violation Notice.* DD Form 1805, Violation Notice, which will be used to refer all petty offenses to the U.S. Magistrate/District Courts for disposition.

NOTE: A complaint, made under oath on forms provided by the magistrate, is the prescribed form for charging minor offenses other than petty offenses.

§ 1290.5 Background.

(a) DoD Instruction 6055.4 requires that all traffic violations occurring on DoD installations be referred to the appropriate United States Magistrate, or State or local system magistrate, in the interest of impartial judicial determination and effective law enforcement. Exceptions will be made only for those rare violations in which military discipline is the paramount consideration, or where the Federal court system having jurisdiction has notified the PLFA commander it will not accept certain offenses for disposition.

(b) Generally, the Federal Magistrate System applies state traffic laws and appropriate Federal laws to all personnel while on Federal property (Section 13, Title 18, U.S. Code, Assimilative Crimes Act).

§ 1290.6 Significant changes.

This revision incorporates the DoD requirement for referral of traffic violations occurring on military installations to the Federal or local magistrate.

§ 1290.7 Responsibilities.

(a) HQ DLA.

(1) *The Command Security Officer, DLA (DLA-T)* will:

(i) Exercise staff supervision over the Magistrate system within DLA.

(ii) Provide guidance and assistance to DLA activities concerning administrative and procedural aspects of this Part 1290.

(2) *The Counsel, DLA (DLA-G)* will provide guidance and assistance to DLA activities concerning legal aspects of this Part 1290.

(b) *The Heads of DLA Primary Level Field Activities* will:

(1) Develop and put into effect the necessary regulatory and supervisory procedures to implement this Part 1290.

(2) Ensure implementing directives authorize law enforcement/security force (080, 083, 085 and 1800 series) personnel to issue DD Form 1805.

(3) Periodically publish in the PLFA Daily or Weekly Bulletin, a listing of offenses for which mail-in procedures apply, with the amount of the fine for each, and a listing of offenses requiring mandatory appearance of the violator before the U.S. Magistrate. The listings will indicate that they are not necessarily all inclusive and that they are subject to change. A copy of the listings will be provided to the local Union representatives.

§ 1290.8 Procedures.

(a) *The U.S. Magistrate Court Provides DLA* with:

(1) The means to process and dispose of certain categories of minor offenses by mail. Under this system, U.S. Magistrate and District Courts will, by local court rule, preset fines for the bulk of petty violations (Federal or Assimilated) and permit persons charged with such violations, who do not contest the charge nor wish to have a court hearing, to pay their fines by using mail-in, preaddressed, postage paid envelopes furnished to them with the violation notice.

(2) Efficient, minimal commitment of judicial and clerical time by using uniform procedures which centralize the collection of fines, the scheduling of mandatory hearings or hearings where violators request them, and the keeping of violator records.

(3) A simple but sure method of accounting for fines collected and tickets issued.

(4) Impartial enforcement of minor offense laws.

(b) *Court Appearances.*

(1) Mandatory Appearances.

(i) As required by the Administrative Office of the United States Courts, each District Court will determine, by local court rule, those offenses requiring mandatory appearance of violators. PLFA Counsels will coordinate with local magistrates or district courts and secure a court approved list of offenses requiring mandatory appearance of violators before the local U.S. Magistrate.

(ii) Mandatory appearance offense categories normally include:

(A) Indictable offenses.

(B) Offenses resulting in accidents.

(C) Operation of motor vehicle while under the influence of intoxicating alcohol or a narcotic or habit producing or other mind altering drug, or permitting another person who is under the influence of intoxicating alcohol, or a narcotic or habit producing or mind altering drug to operate a motor vehicle owned by the defendant or in his/her custody or control.

(D) Reckless driving or speeding.

(2) Voluntary Appearances

(i) Requested by violators at the time DD Form 1805 is issued.

(A) Personnel issuing DD Form 1805 will refer violator for hearings before U.S. Magistrates in each instance where a hearing is requested by the violator.

(B) Command security officers will provide security force personnel with necessary information to facilitate scheduling violators to appear before U.S. Magistrates. Box B of the DD Form 1805 will be marked by the issuing official for each violator requesting a hearing. Additionally procedures set forth in Appendix A will be accomplished by the official issuing violation notice.

(ii) Requested by violators by mail.

(A) Voluntary appearance procedures are also available for violators who are not present at the time a DD Form 1805 is issued (i.e., parking violations) or who subsequently decide to voluntarily appear before a U.S. Magistrate rather than pay the fine indicated in the DD Form 1805.

(B) Violators who use the mail-in procedure to voluntarily appear before a U.S. Magistrate must follow the instructions in Box B of the DD Form 1805 (violator copy). The violator will be notified by the clerk of the District Court of the time and place to appear for the scheduled hearing.

§ 1290.9 Forms and reports.

(a) General information on preparation and issue of DD Form 1805:

(1) The U.S. Magistrate system is based on use of a four-ply ticket designed to provide legal notice to violators and records required by the court, law enforcement authorities, and, if appropriate, the state motor vehicle departments. The DD Form 1805 is printed on chemically carbonized paper and prenumbered in series for accounting control. Heads of DLA primary level field activities are responsible for maintaining accountability for each ticket issued and stocks on hand.

(2) DLA field activity Counsels will coordinate with the U.S. Magistrate of the judicial district in which the activity is located and maintain the information listed below:

(i) List of petty offenses for which mail-in procedure is authorized and the amount of the fine for each specific offense. The District Court address will be prestamped on the violator's copy of the DD Form 1805 by the applicable issuing authority.

(ii) List of minor offenses requiring mandatory appearance of the violator before the magistrate. The name and location of the magistrate before whom violators will appear. Schedule will be coordinated with nearest Military Service activity and appearance will be conducted jointly whenever possible.

(b) Issue procedures for DD Form 1805:

(1) Information entered on the DD Form 1805 is dependent upon two considerations:

(i) The type of violation, i.e., parking, (such as blocking a fire lane) moving traffic violation, or nontraffic offenses.

(ii) Whether the offense cited requires the mandatory appearance of the violator before a U.S. Magistrate.

(2) Preparation and disposition of DD Form 1805:

(i) See illustration in Appendix B for petty offenses where the mail-in fine procedures are authorized.

(A) The amount of the fine for a specific offense must be recorded in the lower right corner of the DD Form 1805. This amount will always be predetermined by the U.S. Magistrate and provided to on duty enforcement personnel by the activity security officer or equivalent authority. When violation notices are issued for an offense (e.g., parking violation) and the offender is absent, all entries concerning the violator will be left blank.

(B) Disposition of DD Form 1805 will be as follows:

(*1*) The fourth copy (envelope) will be issued to the violator or placed on the vehicle of the violator.

(*2*) Copies one (white copy), two (yellow copy), and three (pink copy) will be returned to the Security Officer's office. The Security Officer will forward copies one and two, by letter of transmittal, to the appropriate U.S. District Court.

(*3*) Copy three will be filed at the Security Office or equivalent issuing authority. DLA Form 1454, Vehicle Registration/Driver Record, will be annotated with each traffic offense.

(ii) When DD Form 1805 is used to cite personnel for mail-in type violations, the appropriate supervisor will be provided an information copy of DLA Form 635, Security/Criminal Incident Report, denoting the date, time, place, and type of violation, and the amount of fine assessed.

(iii) Heads of DLA primary level field activities or their representative will not accept or otherwise collect any fines or keep records of fines paid or not paid. They also will take no action concerning nonpayment delinquencies except where warrants are subsequently issued for the violator concerned by the appropriate court authorities.

(iv) See illustrations in Appendices C and D for minor offenses requiring the mandatory appearance of violators before the U.S. Magistrate:

(A) Mail-in fine procedures will not apply in mandatory appearance cases. The law enforcement authority issuing a violation notice for an offense requiring mandatory appearance of the violator, will place a check mark in "Box A", DD Form 1805. The name and location of the U.S. Magistrate before whom the violator must appear will be inserted on the line below "United States District Court" as shown in Appendix C. The date and time of the initial appearance will be entered in the space provided in "Box A". It is the violator's responsibility to verify the date, time, and place of required court appearances.

(B) Disposition of DD Form 1805 will be as follows:

(*1*) The fourth copy (envelope) will be issued to the violator.

(*2*) Copies one (white copy), two (yellow copy), and three (pink copy) will be returned to the Security Officer's office. The Security Officer will forward copies one and two, by transmittal as soon as possible, to the magistrate before whom the violator is scheduled to appear.

(*3*) Copy three will be filed in the office of the Security Officer or equivalent issuing authority.

(C) When DD Form 1805 is used to cite personnel for mandatory appearance type offenses, the individual's supervisor will be provided an information copy of DLA Form 635, denoting the date, time, place, and type of violation, and the date the violator is scheduled to appear before the U.S. Magistrate.

(v) Additional information governing preparation of DD Form 1805 is provided as Appendix A.

Appendix A—Preparation Guide for DD Form 1805, Violation Notice

All violations will require:

Last four digits of the Social Security Number of the Issuing guard/police officer (placed in space marked "Officer No."). Date of notice (is also violation date unless otherwise shown) and time. Description of violation, including place noted. Violation code number and issuing location code number (as determined by local Magistrate/District Court). Examples are shown at Appendices B, C, and D.

In addition to above items

Parking offenses require: Vehicle description (make, color, body type), licensing state, auto license number; and, if violator is present: Driver permit number, driver address, driver's name (all of above items and); moving traffic offenses require: Birth date and sex, race (if it appears on driver's permit), height and weight.

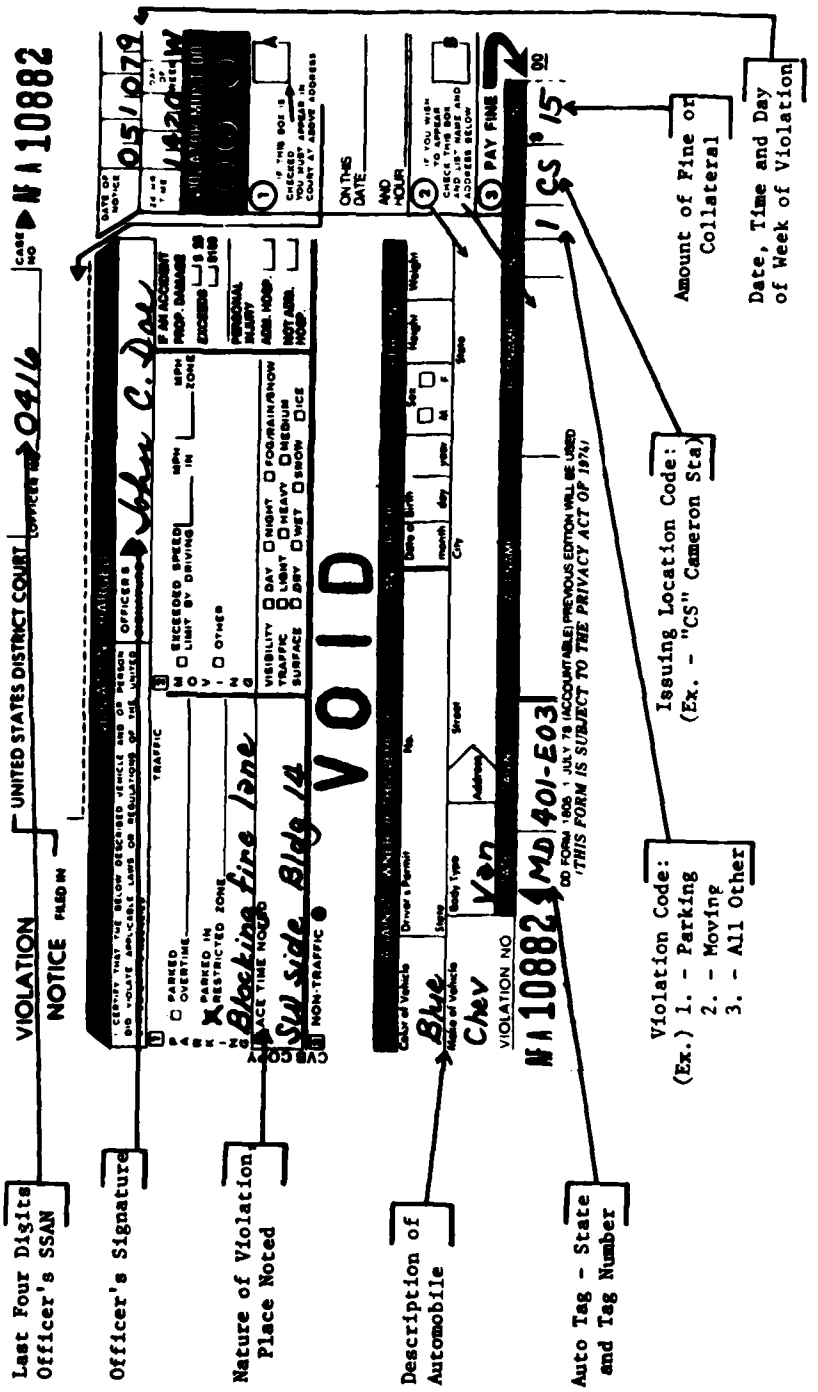
Nontraffic offenses require: Statute violated, person's name, person's address, birth date, and sex; and, if applicable: Race, height, and weight.

All mailable disposition offenses—amount of fine (collateral).

All mandatory court offenses—Above data, as appropriate, and the place of court (i.e., Magistrate Court Address), the date and time of appearance (if known by officer), and check mark in Box "A".

APPENDIX B

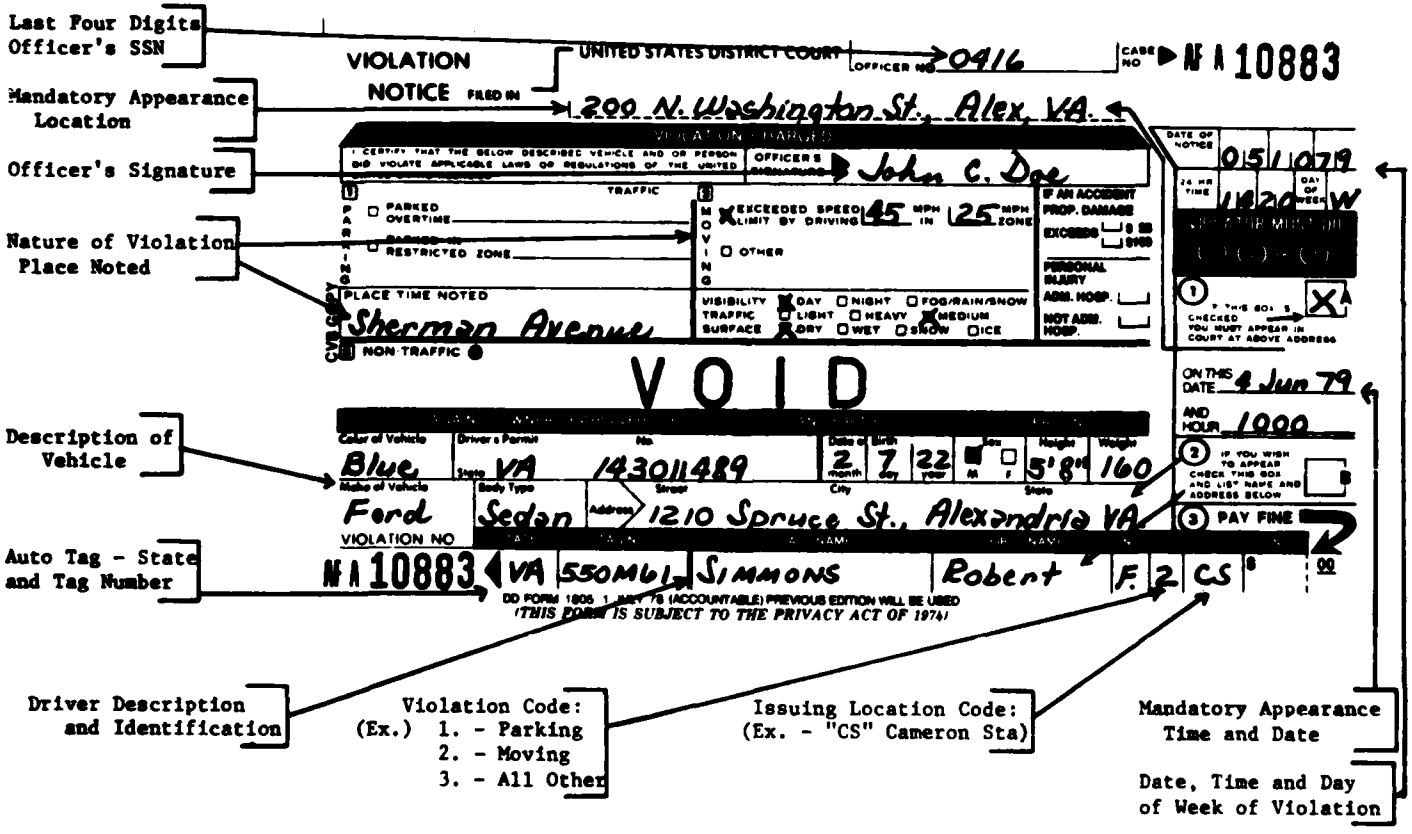
TICKET SAMPLE - A PARKING VIOLATION



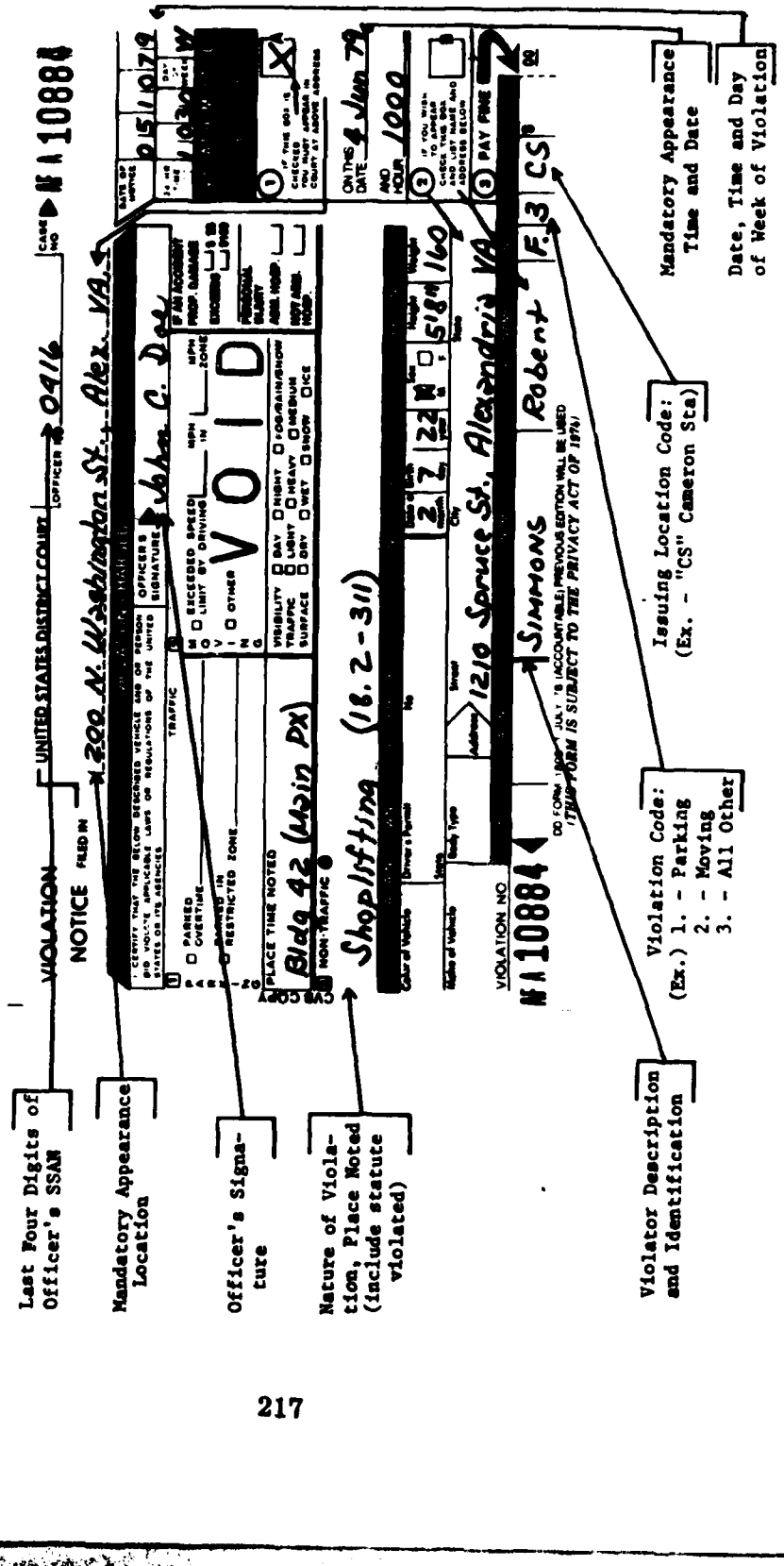
80-109 O—81——15

APPENDIX C

TICKET SAMPLE - A MOVING VIOLATION
(In Mandatory Appearance Category)



APPENDIX D
TICKET SAMPLE - A NONTRAFFIC VIOLATION
(In Mandatory Appearance Category)



PART 1291—[Reserved]

PART 1292—SECURITY OF DLA ACTIVITIES AND RESOURCES

Sec.
1292.1 Purpose and scope.
1292.2 Policy.
1292.3 Background.
1292.4 Responsibilities.
1292.5 Procedures.

APPENDIX A—SECTION 21 OF THE INTERNAL SECURITY ACT OF 1950

AUTHORITY: DoD Directive 5200.8 and in accordance with Sec. 21 of the Internal Security Act of 1950, 50 U.S.C. 797.

SOURCE: 46 FR 13216, Feb. 20, 1981, unless otherwise noted.

§ 1292.1 Purpose and scope.

"To establish policy, assign responsibilities, and prescribe procedures for the issuance of security regulations and orders by Heads of DLA activities. This Part 1292 implements DoD Directive 5200.8, Security of Military Installations and Resources, and is applicable to HQ DLA, DLA field activities and property/places subject to the jurisdiction or administration of the Defense Logistics Agency.

§ 1292.2 Policy.

(a) Military Heads of DLA field activities are authorized to issue or approve necessary security regulations and orders for the protection of property and places under their jurisdiction/administration. Regulations and orders for the protection of property and personnel of subordinate activities headed by civilians shall be promulgated by the military commander in the chain of command immediately above such subordinate activity.

(b) Regulations and orders for the protection of property and personnel of primary level field activities (PLFAs) headed by civilians, and subordinate activities of such PLFAs which likewise are headed by civilians, shall be promulgated by the Director, DLA/Deputy Director/Deputy Director, CAS.

(c) Heads of DLA field activities that are tenants on a military reservation, post, camp, station, installation, base, or Government-owned or leased facility administered by another command or agency are responsible for protection of property and places under their command and may issue security regulations and orders in fulfillment of their responsibility to protect property and places under their jurisdiction and administration. However, separate security regulations and orders should not be issued when the host has issued security regulations and orders that afford protection to the DLA activity.

(d) Detailed physical security and emergency plans developed in conjunction with these security regulations and orders will be as prescribed by DLAM 5710.1, Physical Security Manual, and DLA War and Emergency Support Plan (WESP), Part II, Annex A.

§ 1292.3 Background.

Section 21 of the Internal Security Act of 1950 (Appendix A) authorizes the Secretary of Defense to designate military commanders to promulgate or approve regulations and orders for the protection of property and places under their command. DoD Directive 5200.8 designates military commanders of Army, Navy, Air Force, and Defense Agency activities as having authority to promulgate regulations and orders pursuant to the Internal Security Act of 1950.

§ 1292.4 Responsibilities.

(a) HQ DLA.

(1) The Director, DLA/Deputy Director/Deputy Director, CAS will issue necessary security regulations and orders for PLFAs headed by civilians.

(2) The Command Security Officer, DLA (DLA-T) will:

(i) Provide technical staff guidance on the issuance of security regulations and orders.

(ii) Keep the Director, DLA informed of violations of regulations/orders as reported.

(b) Field Activities.

(1) The Heads of Primary Level Field Activities will:

(i) Publish a physical security plan which provides proper and economical use of personnel and equipment to prevent or minimize loss or damage from theft, espionage, sabotage, and other criminal or disruptive activities.

(ii) Report violations of security regulations and orders to HQ DLA,

ATTN: DLA-T, in accordance with DLAR 5705.1, Reporting of Security and Criminal Violations.

(2) The Military Heads of DLA field activities will issue security regulations and orders as necessary for the protection of places and property under their jurisdiction pursuant to the provisions of this Part 1292 and other pertinent directives.

§ 1292.5 Procedures.

(a) Security regulations and orders will be promulgated by any of the following means:

(1) Written directives of the activity Head.

(2) Signs and similar media.

(3) Orally, when required by a contingency/emergency.

(b) Written directives and orders will contain so much of the following statement as is pertinent: "This order (directive, bulletin, etc.) is issued pursuant to Section 21, Internal Security Act of 1950, 50 U.S.C. 797, DoD Directive 5200.8, DLAR 5710.1, (directive issued by the Head of a DLA field activity subordinate to HQ DLA)."

(c) Signs used as the sole vehicle for issuing a security regulation or order must contain a recitation of the authority under which issued and the title of the authorized official who issued the regulation or order. DLAM 5710.1, chapter 3, contains instructions on the exact wording of such signs.

(d) Oral orders will include a statement which clearly indicates the authority for issuance similar to the provisions of paragraph (b) of this section.

(e) Written security orders and regulations will be posted in conspicuous and appropriate places to ensure widest dissemination. The posting of a general security regulation/order, or a listing of applicable directives, will suffice provided it cites the authority to issue such directive. The posting of voluminous, individual security regulations and orders will be avoided.

APPENDIX A—SECTION 21 OF THE INTERNAL SECURITY ACT OF 1950

"797. Security regulations and orders; penalty for violation

"(a) Whoever willfully shall violate any such regulation or order as, pursuant to lawful authority, shall be or has been promulgated or approved by the Secretary of Defense, or by any military commander designated by the Secretary of Defense, or by the Director of the National Advisory Committee for Aeronautics, for the protection or security of military or naval aircraft, airports, airport facilities, vessels, harbors, ports, piers, waterfront facilities, bases, forts, posts, laboratories, stations, vehicles, equipment, explosives, or other property or places subject to the jurisdiction, administration, or in the custody of the Department of Defense, any Department or agency of which said Department consists, or any officer or employeee of said Department or agency, or of the National Advisory Committee for Aeronautics or any officer or employee thereof, relating to fire hazards, fire protection, lighting, machinery, guard service, disrepair, disuse or other unsatisfactory conditions thereon, or the ingress thereto or egress or removal of persons therefrom, or otherwise providing for safeguarding the same against destruction, loss, or injury by accident or by enemy action, sabotage or other subversive actions, shall be guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not to exceed $5,000 or to imprisonment for not more than one year or both.

"(b) Every such regulation or order shall be posted in conspicuous and appropriate places. Sept. 23, 1950, c. 1024, Title I, Par. 21, 64 Stat. 1005."

PARTS 1293–1399—[RESERVED]

CHAPTER XIV—THE RENEGOTIATION BOARD

EDITORIAL NOTE: The activities and funding of the Renegotiation Board were terminated effective March 31, 1979, under Title V of Pub. L. 95-431 (92 Stat. 1043). Therefore, Title 32, Chapter XIV is deleted from the CODE OF FEDERAL REGULATIONS. 44 FR 32681, June 7, 1979)

There were two amendments to this chapter published in the FEDERAL REGISTER during the period July 1, 1978 to June 30, 1979, as follows: (1) § 1453.3(d)(2)(i) was amended (44 FR 6716, Feb. 2, 1979); (2) §§ 1466.1(c)(1) and 1466.2 were amended (43 FR 35280, Aug. 9, 1978).

For FEDERAL REGISTER citations to regulations issued by the Renegotiation Board since its establishment in 1951 see the List of Sections Affected for 32 CFR Chapter XIV at the back of this volume and the separate publication entitled "List of Sections Affected 1949-1963 and 1964-1972" published in three separate volumes.

PRECEDING PAGE BLANK-NOT FILMED

CHAPTER XVI—SELECTIVE SERVICE SYSTEM

Part		*Page*
1600-1601	[Reserved]	
1602	Definitions	224
1603	Selective Service personnel in general	225
1604	Selective Service officers	226
1608	Public information	233
1609	Claims	238
1615	Administration of registration	239
1621	Preparation for classification	240
1622	Classification rules and principles	240
1623	Classification procedure	249
1624	Personal appearance before local board	251
1625	Reopening and considering a new registrant's classification	253
1626	Appeal to appeal board	255
1627	Appeal to the President	257
1628	Examination of registrants	260
1630	Volunteers	261
1631	Allocation of inductions	262
1632	Delivery and induction	265
1641	Duty of registrants	266
1655	Registration of United States citizens outside of the United States and classification of such registrants	268
1660	Alternate service	269
1661	Classification of conscientious objectors	273
1680	Medical, dental, or allied specialist categories (class 1-AM)	277

CROSS REFERENCES: Regulation governing standards for discharge under the Selective Service Act of 1948: See Part 41 of this title.

INTENTIONALLY PAGE BLANK-NOT FILMED

PARTS 1600–1601—[RESERVED]

PART 1602—DEFINITIONS

Sec.

1602.1 Definitions to govern.
1602.2 Aliens.
1602.3 County.
1602.5 Governor.
1602.7 Induction station.
1602.8 Military service.
1602.9 Registrant.
1602.10 Selective service law.
1602.11 State.
1602.12 Singular and plural.
1602.13 Continental United States.
1602.14 Numbers.
1602.15 Computation of time.

AUTHORITY: Sec. 10, 62 Stat. 618, as amended; 50 U.S.C. App. 460

SOURCE: E.O. 9979, 13 FR 4177, July 22, 1948. Redesignated at 14 FR 5021, Aug. 13, 1949, and amended by E.O. 11360, 32 FR 9787, July 4, 1967, unless otherwise noted.

CROSS REFERENCE: For regulations authorizing the Director of Selective Service to perform certain functions of the President under the Selective Service System, see § 1604.1 of this chapter.

§ 1602.1 Definitions to govern.

The definitions contained in section 16 of the Military Selective Service Act, and the definitions contained in this part shall govern in the interpretation of the regulations in this chapter.

[39 FR 44015, Dec. 20, 1974]

§ 1602.2 Aliens.

(a) The term "alien" means any person who is not a national of the United States.

(b) The term "national of the United States" means (1) a citizen of the United States or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

§ 1602.3 County.

The word "county" includes, where applicable, counties, independent cities, and similar subdivisions, such as the independent cities of Virginia, the parishes of Louisiana, and the towns of the New England States.

§ 1602.5 Governor.

The word "Governor" includes, where applicable, the Governor of each of the States of the United States, the Board of Commissioners of the District of Columbia, the Governor of Puerto Rico, the Governor of the Virgin Islands, the Governor of Guam, and the Governor of the Canal Zone.

[E.O. 10837, 24 FR 7506, Sept. 17, 1959]

§ 1602.7 Induction station.

The term "induction station" refers to any camp, post, ship, or station at which registrants who have been designated by a local board to fill a call are received by the military authorities and, if found acceptable, are inducted into military service.

§ 1602.8 Military service.

The term "military service" includes service in the Army, the Air Force, the Navy, the Marine Corps, and the Coast Guard.

[E.O. 10659, 21 FR 1103, Feb. 17, 1956]

§ 1602.9 Registrant.

Except as otherwise specifically provided, a "registrant" is a person registered under the selective service law.

§ 1602.10 Selective service law.

The term "selective service law" includes the Military Selective Service Act, and all rules and regulations issued thereunder.

[39 FR 44015, Dec. 20, 1974]

§ 1602.11 State.

The word "State" includes, where applicable, the several States of the United States, the City of New York, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Canal Zone.

[E.O. 10837, 24 FR 7506, Sept. 17, 1959]

§ 1602.12 Singular and plural.

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular, except where the context clearly indicates otherwise.

§ 1602.13 Continental United States.

The term "continental United States" means the District of Columbia and all of the several States of the United States except the States of Alaska and Hawaii.

[E.O. 10837, 24 FR 7506, Sept. 17, 1959]

§ 1602.14 Numbers.

Cardinal numbers may be expressed by Arabic or Roman symbols.

[36 FR 23374, Dec. 9, 1971]

§ 1602.15 Computation of time.

The period of days allowed a registrant or other person to perform any act or duty required of him shall be counted as beginning on the day following that on which the notice to him is posted or mailed.

[37 FR 17964, Sept. 2, 1972]

PART 1603—SELECTIVE SERVICE PERSONNEL IN GENERAL

Sec.
1603.1 Citizenship.
1603.2 Voluntary services.
1603.3 Uncompensated services.
1603.4 Oath of office and other forms.
1603.5 Termination of appointment.
1603.6 Removal.
1603.7 Suspension.
1603.8 Vacancies.

AUTHORITY: Sec. 10, 62 Stat. 618, as amended; 50 U.S.C. App.

SOURCE: E.O. 9979, 13 FR 4188, July 22, 1948, unless otherwise noted. Redesignated at 14 FR 5021, Aug. 13, 1949.

CROSS REFERENCE: For regulations authorizing the Director of Selective Service to perform certain functions of the President under the Selective Service System, see § 1604.1 of this chapter.

§ 1603.1 Citizenship.

No person shall be appointed to any position, either compensated or uncompensated, in the Selective Service System who is not a citizen of the United States.

§ 1603.2 Voluntary services.

Voluntary services in the administration of the selective service law may be accepted and should be encouraged.

§ 1603.3 Uncompensated services.

The services of registrars (except as the Director of Selective Service may otherwise provide), members of local boards, members of appeal boards, medical speciality advisors to the State Directors of Selective Service, advisors to registrants, and all other persons volunteering their services to assist in the administration of the selective service law shall be uncompensated, and no such person serving without compensation shall accept remuneration from any source for services rendered in connection with selective matters.

[39 FR 44015, Dec. 20, 1974]

§ 1603.4 Oath of office and other forms.

(a) Every person who undertakes to render voluntary uncompensated service in the administration of the selective service law shall, before he enters upon his duties, execute an Oath of Office and Waiver of Pay (SSS Form No. 400).

(b) Every person who undertakes to render compensated service in the administration of the selective service law shall execute an oath of office in the form prescribed by the United States Civil Service Commission, Standard Form No. 61.

(c) Compensated and uncompensated personnel appointed for duty in the Selective Service System shall execute such other forms as are required by law, Executive order of the President, the regulations of the United States Civil Service Commission, or the Director of Selective Service.

(d) When executed in the manner provided in paragraph (a) of this section, the Oath of Office and Waiver of Pay (SSS Form No. 400) and such other forms as may be required shall be filed in accordance with instructions issued by the Director of Selective Service.

§ 1603.5 Termination of appointment.

The appointment of any deputy, officer, agent, employee, or other person engaged in the administration of the selective service law, whether with or without compensation, may be terminated by resignation, death, or remov-

al, or, in appropriate cases, by transfer or retirement.

§ 1603.6 Removal.

(a) Any person, other than a compensated civilian officer or employee, engaged in the administration of the selective service law may be removed by the Director of Selective Service. The Governor may recommend to the Director of Selective Service the removal, for cause, of any person engaged in the administration of the selective service law in his State. The Director of Selective Service shall make such investigation of the Governor's recommendation as he deems necessary and upon completion thereof shall take such action thereon as he deems proper.

(b) Any compensated civilian officer or employee engaged in the administration of the selective service law may be removed in accordance with the rules and regulations of the United States Civil Service Commission.

§ 1603.7 Suspension.

The Director of Selective Service may suspend any deputy, officer, agent, employee, or other person engaged in the administration of the selective service law, pending his consideration of the advisability of removing any such person. Suspensions of persons entitled to veterans' preference under the Veterans' Preference Act of 1944, as amended, shall be in accordance with the regulations prescribed by the United States Civil Service Commission pursuant to that act. During the period that any such person is suspended, he shall be disqualified to act in his official capacity.

§ 1603.8 Vacancies.

Vacancies may be filed in accordance with instructions issued by the Director of Selective Service.

PART 1604—SELECTIVE SERVICE OFFICERS

NATIONAL ADMINISTRATION

Sec.
1604.1 Director of Selective Service.
1604.6 National Selective Service Appeal Board.

STATE ADMINISTRATION

Sec.
1604.11 Governor.
1604.12 State Director of Selective Service.
1604.13 State Director of Selective Service for New York City.
1604.14 Staff of State Headquarters for Selective Service.

APPEAL BOARDS

1604.21 Area.
1604.22 Composition and appointment of appeal boards.
1604.23 Designation.
1604.24 Jurisdiction.
1604.25 Disqualification.
1604.26 Organization and meeting.
1604.27 Minutes of meetings.
1604.28 Signing official papers.

MEDICAL ADVISORS TO THE STATE DIRECTORS OF SELECTIVE SERVICE

1604.31 Medical specialty advisors to the State Directors of Selective Service.

ADVISORS TO REGISTRANTS

1604.41 Advisors to registrants.

LOCAL BOARDS

1604.51 Areas of local boards.
1604.52 Composition of local boards.
1604.53 Designation.
1604.54 Jurisdiction.
1604.55 Disqualification.
1604.56 Organization and meetings.
1604.57 [Reserved]
1604.58 Minutes of meetings.
1604.59 Signing official papers.
1604.60 Transmission of orders and other official papers to registrants.

INTERPRETERS

1604.81 Interpreters.

AUTHORITY: Sec. 10, 62 Stat. 618, as amended; 50 U.S.C. App., unless otherwise noted.

NATIONAL ADMINISTRATION

§ 1604.1 Director of Selective Service.

The Director of Selective Service shall be responsible directly to the President. The Director of Selective Service is hereby authorized and directed:

(a) To prescribe such rules and regulations as he shall deem necessary for the administration of the Selective Service System, the conduct of its officers and employees, the distribution and performance of its business, and

the custody, use, and preservation of its records, papers, and property.

(b) To issue such public notices, orders, and instructions as shall be necessary for carrying out the functions of the Selective Service System.

(c) To obligate and authorize expenditures from funds appropriated or carrying out the functions of the Selective Service System.

(d) To appoint, and to fix, in accordance with the Classification Act of 1949, as amended, so far as applicable, the compensation of, such officers, agents, and employees as shall be necessary for carrying out the functions of the Selective Service System.

(e) To procure such space as he may deem necessary for carrying out the functions of the Selective Service System by lease pursuant to existing statutes except that the provisions of the act of June 30, 1932 (47 Stat. 412), as amended by section 15 of the act of March 3, 1933 (47 Stat. 1517; 40 U.S.C. 278a), shall not apply to any lease so entered into.

(f) To perform such other duties as shall be required of him under the selective service law or which may be delegated to him by the President.

(g) To delegate any of his authority to such officers, agents, or persons as he may designate, and to provide for the subdelegation of any such authority.

(h) To purchase such printing, binding, and blankbook work from public, commercial, or private printing establishments or binderies upon orders placed by the Public Printer or upon waivers issued in accordance with section 12 of the Printing Act approved January 12, 1895, as amended, and to obtain by purchase, loan, or gift such equipment and supplies for the Selective Service System, as he may deem necessary to carry out the functions of the Selective Service System, with or without advertising or formal contract.

[E.O. 9979, 13 FR 4188, July 22, 1948, as amended by E.O. 9992, 13 FR 5033, Aug. 31, 1948. Redesignated at 14 FR 5021, Aug. 13, 1949, as amended by E.O. 10202, 16 FR 391, Jan. 16, 1951]

§ 1604.6 National Selective Service Appeal Board.

(a) There is hereby created and established within the Selective Service System a civilian agency of appeal which shall be known as the National Selective Service Appeal Board, hereafter referred to as the National Board. The President shall appoint members of the National Board from among citizens of the United States who are not members of the Armed Forces, and he shall designate one member as Chairman of the National Board. The National Board may sit en banc or, upon the request of the Director of Selective Service or as determined by the Chairman of the National Board, in panels, each panel to consist of at least three members. The Chairman of the National Board shall designate the members of each panel, and he shall designate one member of each panel as chairman. A majority of the members of a panel shall constitute a quorum for the transaction of business, and a majority of the members present at any meeting at which a quorum is present shall decide any question. Each panel of the National Board shall have full authority to act on all cases assigned to it. The National Board, or a panel thereof, shall hold meetings in Washington, D.C., and, upon request of the Director of Selective Service or as determined by the Chairman of the National Board at any other place.

(b) The National Board or a panel thereof, is authorized and directed to perform all the functions and duties vested in the President by that sentence of section 10(b)(3) of the Military Selective Service Act, which reads as follows: "The President, upon appeal or upon his own motion, shall have power to determine all claims or questions with respect to inclusion for, or exemption or deferment from training and service under this title, and the determination of the President shall be final." The National Board, upon appeal to the President taken under Part 1627 of these regulations, shall classify each registrant, giving consideration to the various classifications which a local board might consider, and shall give effect to the pro-

visions of the Military Selective Service Act and the regulations promulgated thereunder, and the established policies of the Director of Selective Service.

(c) The National Board shall be in all respects independent of the Director of Selective Service except that the Director of Selective Service shall provide for the payment of the compensation and expenses of the members of the National Board, shall furnish that Board and its panels necessary personnel, suitable office space, necessary facilities and services. The Director of Selective Service shall establish the order, by category, in which appeals by registrants will be considered, but he shall not determine the sequence in which appeals within a given category shall be processed. The Director of Selective Service and the Chairman of the National Board shall furnish to each other such information, advice, and assistance as will further the attainment of the objectives of the Military Selective Service Act and promote the effective administration of the Act.

(d) Each member of the National Board shall: (1) Devote so much time to the affairs of the National Board as its responsibilities may require, (2) be compensated as provided in paragraph (e) of this section, and (3) while on the business of the National Board away from his home or regular place of business, receive actual traveling expenses and per diem in lieu of subsistence in accordance with rates established by Standardized Government Travel Regulations as amended.

(e) The compensation of each member of the National Board shall be governed by the following: (1) The member shall be compensated at an hourly rate for such time as is actually spent by him in the work of the National Board, or a panel thereof without limitation as to the number of hours compensable in any one day, (2) the member shall be compensated at an hourly rate for travel time away from his home or regular place of business while en route to or from any meeting of the National Board or while otherwise traveling on business of the National Board, but the compensable time for any trip to or from any such meeting or other business shall be limited to 8 hours, (3) duties performed on, and travel time occurring on a Saturday, Sunday, or holiday shall be compensable as if performed or occurring on any other day of the week, (4) the compensation shall be in accord with the provisions of section 5332 of title 5, United States Code, and (5) the compensable hours per week, Sunday through the following Saturday, shall not exceed 40 hours and the compensation in any pay period shall not exceed one twenty-sixth (1/26) of the governing annual rate of compensation.

[36 FR 23374, Dec. 9, 1971, as amended at 37 FR 5120, Mar. 10, 1972]

State Administration

§ 1604.11 Governor.

The Governor of each State is authorized to recommend a person to be appointed by the President as State Director of Selective Service for his State, who shall represent the Governor in all selective service matters.

[E.O. 9979, 13 FR 4188, July 22, 1948. Redesignated at 14 FR 5021, Aug. 13, 1949]

§ 1604.12 State Director of Selective Service.

Subject to the direction and control of the Director of Selective Service, the State Director of Selective Service for each State shall be in immediate charge of the State Headquarters for Selective Service and shall be responsible for carrying out the functions of the Selective Service System in his State. The State Headquarters for Selective Service shall be an office of record for selective service operations only, and no records other than selective service records shall be maintained in such office.

[E.O. 9979, 13 FR 4188, July 22, 1948. Redesignated at 14 FR 5021, Aug. 18, 1949]

§ 1604.13 State Director of Selective Service for New York City.

The Governor of the State of New York is authorized to recommend a person to be appointed by the President as State Director of Selective Service for New York City, who shall

represent the Governor in all selective service matters within the City of New York. Subject to the direction and control of the Director of Selective Service, the State Director of Selective Service for New York City shall be in immediate charge of the State Headquarters for Selective Service for New York City and shall be responsible for carrying out the functions of the Selective Service System within the City of New York. The State Director of Selective Service for the State of New York shall have no jurisdiction in selective service matters within the City of New York. The State Headquarters for Selective Service for New York City shall be an office of record for selective service operations only, and no records other than selective service records shall be maintained in such office.

[E.O. 10292, 16 FR 9862, Sept. 28, 1951]

§ 1604.14 Staff of State Headquarters for Selective Service.

(a) Subject to applicable law and within the limits of available funds the staff of each State Headquarters for Selective Service shall consist of as many officers, either military or civilian, as shall be authorized by the Director of Selective Service.

(b) In accordance with limitations imposed by the Director of Selective Service, the State Director of Selective Service is authorized to appoint such civilian personnel as he considers are required in the operation of the State Headquarters for Selective Service.

[E.O. 9979, 13 FR 4188, July 22, 1948. Redesignated at 14 FR 5021, Aug. 13, 1949]

Appeal Boards

§ 1604.21 Area.

In the Canal Zone, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, the State of Hawaii, the State of Idaho, the State of Montana, the State of Wyoming, and each State of the United States constituting one Federal judicial district, each State Director of Selective Service shall establish one appeal board area which shall comprise the entire State or possession. In each State which is divided into two or more Federal judicial districts, except the State of New York and the City of New York, each State Director of Selective Service shall establish for each such district an appeal board area which shall comprise the entire district. The State Director of Selective Service for the State of New York shall establish for each Federal judicial district or portion thereof in that State located outside of the City of New York an appeal board area which shall comprise the entire district or portion thereof. The State Director of Selective Service for New York City shall establish for each of the Federal judicial districts located partly within the City of New York an appeal board area which shall comprise the entire portion of such district located within the City of New York.

[E.O. 10837, 24 FR 7506, Sept. 17, 1959]

§ 1604.22 Composition and appointment of appeal boards.

The Director of Selective Service will prescribe the number of members for the appeal board and panels thereof for each appeal board area. The President, upon recommendation of the respective Governor, shall appoint members of appeal boards from among citizens of the United States who are residents of the area for which the respective boards have jurisdiction.

[36 FR 23374, Dec. 9, 1971]

§ 1604.23 Designation.

(a) When there is one appeal board in a State the board shall be called "Appeal Board for the State of ——" and, if the appeal board consists of more than one panel, each panel shall be given the designation "Appeal Board for the State of——, Panel No.——," in numerical order.

(b) Except in the State of New York and in the City of New York, when there are two or more appeal boards in a State, each board shall be called "Appeal Board for the Selective Service System in the —— Federal Judicial District of the State of ——" and, if an appeal board consists of more than one panel, each panel shall be given the designation "Appeal Board for the Selective Service System

in the ——— Federal Judicial District of the State of ———, Panel No. ———", in numerical order.

(c) In the State of New York each appeal board shall be called "New York State Appeal Board for the Selective Service System in the ——— Federal Judicial District" and, if an appeal board consists of more than one panel, each panel shall be given the designation "New York State Appeal Board for the Selective Service System in the ——— Federal Judicial District, Panel No. ———", in numerical order.

(d) In the City of New York each appeal board shall be called "New York City Appeal Board for the Selective Service System in the ——— Federal Judicial District" and, if an appeal board consists of more than one panel, each panel shall be given the designation "New York City Appeal Board for the Selective Service System in the ——— Federal Judicial District, Panel No. ———", in numerical order.

[Amdt. 24, 16 FR 9029, Sept. 6, 1951]

§ 1604.24 Jurisdiction.

The appeal board shall have jurisdiction to review and to affirm or change any decision appealed to it from any local board in its area or any decision appealed from any local board not in its area when such appeal is either transferred to it in the manner provided in these regulations, or is appealed to it by or on behalf of any registrant whose principal place of employment is located in its area or submitted to it in the manner required by law.

[E.O. 9979, 13 FR 4188, July 22, 1948. Redesignated at 14 FR 5021, Aug. 13, 1949]

§ 1604.25 Disqualification.

(a) No member of an appeal board shall act on the case of a registrant who is the member's first cousin or closer relation, either by blood, marriage, or adoption, or who is the member's employer, employee, or fellow employee, or stands in the relationship of superior or subordinate of the member in connection with any employment, or is a partner or close business associate of the member, or is a fellow member or employee of the appeal board.

(b) A member of an appeal board may disqualify himself in any matter in which he would be restricted for any reason in making an impartial decision.

(c) Whenever a quorum of the appeal board cannot act on the case of a registrant, and there is no panel of the appeal board to which the case may be transferred, the appeal board shall transmit such case to the State Director of Selective Service for transfer to another appeal board.

[39 FR 44018, Dec. 20, 1974]

§ 1604.26 Organization and meeting.

Each appeal board or panel shall elect a chairman and a secretary. A majority of the members of an appeal board or panel when present at any meeting shall constitute a quorum for the transaction of business. A majority of the members present at any meeting at which a quorum is present shall decide any question. Every member present, unless disqualified, shall vote on every question or classification. In case of a tie vote on a question or classification, the board shall postpone action until it can be decided by a majority vote. If any member is absent so long as to hamper the work of the board, the chairman, a member or employee of the board or panel concerned shall recommend to the State Director of Selective Service that such member be removed and a new member appointed. If, through death, resignation, or other cause, the membership of an appeal board or panel thereof, falls below the prescribed number of members, the board or panel shall continue to function, provided a quorum of the prescribed membership is present at each official meeting.

[39 FR 44018, Dec. 20, 1974]

§ 1604.27 Minutes of meetings.

Each appeal board or panel of an appeal board shall keep minutes of each of its meetings.

[13 FR 4420, July 31, 1948. Redesignated at 14 FR 5021, Aug. 13, 1949]

§ 1604.28 Signing official papers.

Official papers issued by an appeal board or panel may be signed by any member or compensated employee of the appeal board or panel or any compensated employee of the Selective Service System whose official duties require him to perform administrative duties at the appeal board or panel except when otherwise prescribed by the Director of Selective Service.

(50 App. U.S.C. 451 et seq.)

[38 FR 29219, Oct. 23, 1973]

MEDICAL ADVISORS TO THE STATE DIRECTORS OF SELECTIVE SERVICE

§ 1604.31 Medical specialty advisors to the State Directors of Selective Service.

The Director of Selective Service may appoint, upon the recommendation of the State Director of Selective Service, as a Medical Specialty Advisor to such State Director of Selective Service a licensed practitioner in the field of each of the medical specialities for which the Secretary of Defense places a call for the induction of men into the Armed Forces. It shall be the duty of each advisor to furnish advice regarding the deferment of registrants in his respective medical specialty at the request of the State Director of Selective Service.

[39 FR 44015, Dec. 20, 1974]

ADVISORS TO REGISTRANTS

§ 1604.41 Advisors to registrants.

Advisors to registrants may be appointed by the Director of Selective Service upon recommendation of the State Director of Selective Service to advise and assist registrants in the preparation of questionnaires and other selective service forms and to advise registrants on other matters relating to their rights and liabilities under the selective service law. The names and addresses of advisors to registrants within the local board area shall be conspicuously posted in the local board office.

[37 FR 5120, Mar. 10, 1972]

LOCAL BOARDS

§ 1604.51 Areas of local boards.

The State Director of Selective Service for each State shall divide his State into local board areas and establish local boards in accord with instructions of the Director of Selective Service. There shall be at least one local board in each county except where the Director of Selective Service approves the establishment of an intercounty local board. When more than one local board is established with the same geographical jurisdiction, registrants residing in that area will be assigned among the local boards as prescribed by the Director of Selective Service. The State Director of Selective Service may establish panels of local boards in accord with instructions of the Director of Selective Service.

[36 FR 23375, Dec. 9, 1971]

§ 1604.52 Composition of local boards.

The Director of Selective Service shall prescribe the number of members of local boards and intercounty local boards.

[36 FR 23375, Dec. 9, 1971]

§ 1604.53 Designation.

The State Director of Selective Service shall assign each local board and each intercounty local board within the State a specific identifying number by which it shall be known. Such identifying numbers shall be assigned in numerical sequence beginning with the numeral 1.

[13 FR 4420, July 31, 1948. Redesignated at 14 FR 5021, Aug. 13, 1949]

§ 1604.54 Jurisdiction.

The jurisdiction of each local board shall extend to all persons registered with or subject to registration with that local board. It shall have full authority to do and perform all acts within its jurisdiction authorized by law.

[36 FR 23375, Dec. 9, 1971]

80-109 O—81——16

§ 1604.55 Disqualification.

(a) No member of a local board shall act on the case of a registrant who is the member's first cousin or closer relation, either by blood, marriage, or adoption, or who is the member's employer, employee, or fellow employee, or stands in the relationship of superior or subordinate of the member in connection with any employment, or is a partner or close business associate of the member, or is a fellow member or employee of the local board.

(b) A member of the local board may disqualify himself in any matter in which he would be restricted, for any reason, in making an impartial decision.

(c) Whenever a quorum of a local board cannot act on the case of a registrant, the local board shall transmit such case to the State Director of Selective Service for transfer to another local board.

[39 FR 44019, Dec. 20, 1974]

§ 1604.56 Organization and meeting.

Each local board shall elect a chairman and a secretary. A majority of the membership of the local board shall constitute a quorum for the transaction of business. A majority of the members present at any meeting at which a quorum is present shall decide any question or classification. Every member present, unless disqualified, shall vote on every question or classification. In case of a tie vote on any question or classification, the board shall postpone action on the question or classification until it can be decided by a majority vote. If any member is absent so long as to hamper the work of the local board, the chairman, a member, or employee of the local board shall recommend to the State Director of Selective Service that such member be removed and a new member appointed. If through death, resignation or other cause, the membership of a local board falls below the prescribed number of members it shall continue to function provided a quorum of the prescribed membership is present at each official meeting.

[39 FR 44019, Dec. 20, 1974]

§ 1604.57 [Reserved]

§ 1604.58 Minutes of meetings.

Each local board shall keep a record of each meeting of the board on Local Board Actions and Minutes (SSS Form No. 112) which shall be filed by the local board as minutes of its meetings.

[13 FR 4421, July 31, 1948. Redesignated at 14 FR 5021, Aug. 13, 1949]

§ 1604.59 Signing official papers.

Official papers issued by a local board may be signed by any member or compensated employee of the local board, or any compensated employee of the Selected Service System whose official duties require him to perform administrative duties at the local board except when otherwise prescribed by the Director of Selective Service.

[38 FR 12742, May 15, 1973]

§ 1604.60 Transmission of orders and other official papers to registrants.

Personnel of the Selective Service System will transmit orders or other official papers addressed to a registrant by handing them to him personally or mailing them to him to the address last reported by him in writing to his local board.

[38 FR 34731, Dec. 18, 1973]

INTERPRETERS

§ 1604.81 Interpreters.

(a) The local board is authorized to use interpreters when necessary. An appeal board and the National Selective Service Appeal Board are authorized to use interpreters during the personal appearance of a registrant.

(b) The following oath shall be administered to an interpreter each time he is used:

You swear (or affirm) that you will truly interpret in the matter now in hearing. So help you God.

[37 FR 17968, Sept. 2, 1972]

PART 1608—PUBLIC INFORMATION

Sec.
1608.1 Public information policy.
1608.2 Definitions.
1608.3 General policy on disclosure of information.
1608.4 Available information.
1608.5 Places where information may be obtained.
1608.6 Rules governing the obtaining of information.
1608.7 Identification of information requested.
1608.8 Request for information not authorized to be disclosed.
1608.9 Review of denials of requests for information.

PROTECTION OF PRIVACY

1608.10 Protection of privacy procedure—purpose and scope.
1608.11 Procedure for requests pertaining to an individual record in a system.
1608.12 Times, place and requirements for identification of individuals making requests.
1608.13 Disclosure of requested information to the individual to whom it pertains.
1608.14 Special procedure—medical records [reserved].
1608.15 Request for correction or amendment to record.
1608.16 Agency review of request for correction or amendment of record.
1608.17 Appeal of initial adverse agency determination on correction or amendment.
1608.18 Disclosure of record to persons other than the individual to whom it pertains.
1608.19 Waiver of confidential nature of information on registrants files.
1608.20 Subpoena of records.
1608.21 Demands of courts or other authorities for records or information protected by these regulations.
1608.22 Fees.

AUTHORITY: Military Selective Service Act (50 U.S.C. App. sec. 451 et seq.), 32 CFR 1604.1.

SOURCE: 40 FR 44496, Sept. 26, 1975, unless otherwise noted.

§ 1608.1 Public information policy.

The Selective Service System has a positive public information policy under which information is brought to the attention of the public. The Selective Service System brings to the public, through news releases, pamphlets, educational material for distribution to high schools, and other documents, information concerning important events, and the functions of the Selective Service System.

§ 1608.2 Definitions.

When used in this part, the following words shall have the meaning ascribed to them as follows:

(a) "Disclose" shall mean an oral or written statement concerning any such record or information.

(b) "Furnish" shall mean providing in substance or verbatim a copy of any such record or information.

(c) "Examine" shall mean a visual inspection and examination of any such record or information at the office of the local board or appeal board as the case may be.

(d) "Information" shall mean all the data in a record or records including those items on standard forms left blank, marked "Not Applicable" or the equivalent.

§ 1608.3 General policy on disclosure of information.

(a) It is the general policy of the Selective Service System to make information available to the public unless the disclosure thereof is prohibited by law.

(b) Technical instructions pertaining to automatic data processing, memoranda, correspondence, opinions, data, staff studies, information received in confidence, and similar documentary material prepared for the purpose of internal communication within the Selective Service System or between the Selective Service System and other organizations or persons generally are not information available to the public.

(c) Lists of registrants may be furnished only in accordance with written instructions from the Director of Selective Service.

§ 1608.4 Available information.

(a) Upon request, current documents specifically identified as being printed for free distribution to the general public will be furnished without charge. Each individual requesting such documents shall be entitled to only one copy of each document.

(b) The Registrants Processing Manual is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Selective Service Regulations appear in Chapter XVI of title 32, Code of Federal Regulations.

(c) The Registrants Processing Manual may be inspected at any office of the Selective Service System including the National Headquarters.

(d) Each local board maintains a Classification Record (SSS Form 102) which contains the name, selective service number, and the current and past classifications for each person registered with that board. Information in this record may be inspected at the local board at which it is maintained.

(e) Any compensated employee of the Selective Service System may disclose to the former employer of a registrant who is serving in or who has been discharged from the Armed Forces whether the registrant has or has not been discharged and, if discharged, the date thereof, upon reasonable proof that the registrant left a position in the employ of the person requesting such information in order to serve in the Armed Forces.

(f) The names, position titles, grades, salaries, and duty stations of employees of the Selective Service System are public information.

(g) The names of local board members and the names and addresses of advisors to registrants will be posted in an area available to the public at each board office to which such personnel are assigned.

(h) Personal data concerning board members that relate to their legal qualifications for appointment and/or continuation in office are a matter of official record. Upon request, the executive secretary or clerk of a local board or appeal board will verify that a member of that board was legally qualified for appointment and for continuation in office without disclosing the personal data pertaining to such member without the member's consent.

(i) Whenever an office referred to in this section is closed, the request for information that otherwise would be submitted to it should be submitted to the National Headquarters, Selective Service System, 600 E Street NW., Washington, D.C. 20435.

[40 FR 44496, Sept. 26, 1975, as amended at 41 40 FR 44169, Oct. 7, 1976]

§ 1608.5 Places where information may be obtained.

(a) Requests for information concerning a registrant should be directed to the local board where he is registered.

(b) Requests for information concerning the national administration of the Military Selective Service Act should be directed to the National Headquarters, Selective Service System, 600 E Street NW., Washington, D.C. 20435.

(c) Requests for information concerning the administration of the Military Selective Service Act within a particular State should be directed to the State Director of Selective Service of that state.

(d) Whenever an office referred to in this section is closed, the request for information that otherwise would be submitted to it should be submitted to the National Headquarters, Selective Service System, 600 E Street NW., Washington, D.C. 20435.

[40 FR 44496, Sept. 26, 1975, as amended at 41 FR 44169, Oct. 7, 1976]

§ 1608.6 Rules governing the obtaining of information.

(a) A request for information under this part should be made orally or in writing during business hours at the appropriate selective service office. When information to be furnished is not readily available, the employee responsible for obtaining the information shall advise the requester how and where it may be obtained.

(b) Although the time period allowed for inspection of documents must be sufficient to allow hand copying, the activity should not interfere with the daily business activities of the selective service office. Accordingly, the selective service employee handling the request for information or inspection should arrange for inspection of files and documents during specified hours of the business week.

(c) Any person entitled under the provisions of this part to examine any record or information shall be permitted to copy it by hand, to photograph it or to copy it by using portable copying equipment so long as the use of such equipment does not disrupt the normal operations of the office.

§ 1608.7 Identification of information requested.

(a) Any person who requests information under these regulations shall provide a reasonably specific description of the information sought so that it may be located without undue search or inquiry. Information that is not identified by a reasonably specific description is not an identifiable record, and the request for that information may be declined.

(b) If the description is insufficient, the employee processing the request will notify the requester and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist a requester in the identification and location of the record or records sought. Records will not be withheld merely because it is difficult to find them.

(c) When a request is received at an office not having charge of the records, it shall promptly forward the request to the proper office and notify the requester of the action taken.

§ 1608.8 Request for information not authorized to be disclosed.

Whenever an employee receives a request for information or documents the disclosure of which is not clearly authorized by the provisions of this part that request will be immediately reported by telephone to the General Counsel, Selective Service System, for instruction as to its disposition.

§ 1608.9 Review of denials of requests for information.

(a) Complaints concerning possible abuse of discretion granted Selective Service employees under this part or failure to respond to inquiries shall be directed to the state director in the case of state headquarters or local board employees and to the Director in the case of National Headquarters employees.

(b) A requester whose request for information or documents has not been satisfied may appeal to the Director of Selective Service, 1600 E Street NW., Washington, D.C. 20435.

[40 FR 44496, Sept. 26, 1975, as amended at 41 FR 44170, Oct. 7, 1976]

Protection of Privacy

§ 1608.10 Protection of privacy procedure—Purpose and scope.

(a) The purpose of this subpart is to provide that records of the Selective Service System are maintained as required by the provisions of the Privacy Act of 1974 (Pub. L. 93-579). The provisions hereof extend to records and systems of records defined in that Act as being subject thereto.

(b) The Selective Service System will not disclose any record in a system of records pertaining to an individual maintained by the Selective Service System except (1) pursuant to the provisions of the Privacy Act of 1974 (Pub. L. 93-579), 5 U.S.C. 552a, and (2) the provisions of this subpart.

§ 1608.11 Procedure for requests pertaining to an individual record in a system.

A request by an individual that he be informed if a system of records named by him contains a record pertaining to him should be directed to the Selective Service System office responsible for maintaining such system of records. If the request is not directed to the proper office, it will be referred by the office which receives such request to the proper office of the Selective Service System. Such office will promptly ascertain if the system of records named by the individual making the request contains a record pertaining to such individual and, thereafter, promptly inform the requester in writing of the existence or nonexistence of such record.

§ 1608.12 Times, place and requirements for identification of individuals making requests.

An individual requesting a record or information pertaining to him must make such request orally or in writing during business hours at the Selective Service System office where such

record is maintained. The requester shall submit appropriate evidence to the employee responsible for maintaining such record sufficient to identify the requester as the individual to whom the requested record or information pertains. If the requester is a registrant, he should provide his Selective Service Number or date and place of registration if such number is for some reason unavailable.

§ 1608.13 Disclosure of requested information to the individual to whom it pertains.

(a) Information contained in records maintained on a specific individual and the records pertaining to such individual will be disclosed to or may be examined by the individual to whom it pertains without charge. Copies of such records will be provided to the individual to whom the records pertain upon payment of the fee prescribed in § 1608.22.

[41 FR 44170, Oct. 7, 1976]

§ 1608.14 Special procedure–medical records. [Reserved]

§ 1608.15 Request for correction or amendment to record.

An individual shall be permitted to request amendment of a record pertaining to him and such record shall be amended as hereinafter provided. A request for amendment of a record shall be made in writing to the employee responsible for maintaining such record or information. Receipt of such request will be acknowledged in writing to the requester not later than 10 days (excluding Saturdays, Sundays and legal public holidays) after the date of the receipt of such request. Unless it is determined that the request for amendment should be refused, the responsible employee will promptly accomplish the amendment of the record or information by placing in the file the documentation submitted to support the amendment requested and taking appropriate action for the corresponding amendment of all records derived from such file. The requester will be notified of the action for amendment of his record. Notification of the amendment will be made to any known agency or person who had been furnished information from the record prior to its amendment.

§ 1608.16 Agency review of request for correction or amendment of record.

If for any reason it is determined that a request for amendment of a record or records must be refused, the individual making the request will be notified of the refusal, of the reason for such refusal, and the procedures established for the individual to request a review of the refusal by the officer designated by the Director of Selective Service for such review and the name and business address of that officer.

§ 1608.17 Appeal of initial adverse agency determination on correction or amendment.

(a) An initial determination to refuse to amend a local board or state record may be appealed in writing by the individual making the request for amendment to the State Director of Selective Service having supervision over the employee who made such determination. An initial determination to refuse to amend a National Headquarters record may be appealed in writing to the National Headquarters Division Manager having responsibility for supervision of such records.

(b) If after review the State Director or National Headquarters Division Manager concerned also refuses to amend the record, the individual making the request will be permitted to file a concise statement setting forth the reasons for his disagreement with the refusal. After such statement has been filed, the request and all relevant documentation will be forwarded promptly for final review to the Director of Selective Service whose decision will be the final action of the Selective Service System.

§ 1608.18 Disclosure of record to persons other than the individual to whom it pertains.

(a) Information contained in records in a registrant's file and records pertaining to a specific individual may be disclosed or furnished to, or examined by, the following in addition to the individual to whom they pertain:

(1) His legal representative duly appointed by a court of competent jurisdiction because of his demise or incompetence.

(2) Any person upon submission to the employee responsible for the system of records of the written consent of the individual to whom the record pertains. The authorization must bear a date not earlier than six months prior to the day of its submission to the Selective Service System and the signature of the individual concerned.

(3) All personnel of the Selective Service System engaged in carrying out the functions of the Selective Service System who have a need for the record in performance of their duties.

(4) A U.S. Attorney and his duly authorized representative, including agents of the Federal Bureau of Investigation, whenever a registrant has been reported to the U.S. Attorney for prosecution for violating the Military Selective Service Act or the rules, regulations, or directions made pursuant thereto.

(b) No information shall be disclosed or furnished to, or examined by, any person under the provisions of this section, until such person has been properly identified as entitled to obtain such information.

[41 FR 44170, Oct. 7, 1976]

§ 1608.19 Waiver of confidential nature of information on registrants files.

The making or filing by or on behalf of a registrant of a claim or action for damages against the Government or any person, based on acts in the performance of which the record of a registrant or any part thereof was compiled, or the institution of any action against the Government or any representative thereof by or on behalf of a registrant involving his classification, selection, or induction, shall constitute a waiver of the confidential nature of all Selective Service records of such registrant, and, in addition, all such records shall be produced in response to the subpoena or summons of the tribunal in which such claim or action is pending.

§ 1608.20 Subpoena of records.

(a) In the prosecution of a registrant or any other person for a violation of the Military Selective Service Act, the Selective Service Regulations, any orders or directions made pursuant to such act or regulations, or for perjury, all records of the registrant shall be produced in response to the subpoena or summons of the court in which such production or proceeding is pending. Any officer or employee of the Selective Service System who produces the records of a registrant in court shall be considered the custodian of such records for the purpose of this section.

(b) Except as provided in paragraph (a) of this section, no officer or employee of the Selective Service System shall produce a registrant's file, or any part thereof, or testify regarding any confidential information contained therein, in response to the subpoena or summons of any court without the consent, in writing, of the registrant concerned or of the Director of Selective Service.

(c) Whenever, under the provisions of this section, a registrant's file, or any part thereof, is produced as evidence in the proceedings of any court, such file shall remain in the personal custody of an official of the Selective Service System, and permission of the court be asked, after tender of the original file, to substitute a copy of the file with the court.

§ 1608.21 Demands of courts or other authorities for records or information protected by these regulations.

No officer or employee of the Selective Service System will comply with a request, demand or order of a court or other authority to produce information the disclosure of which is prohibited or restricted by the provisions of this part without the prior approval of the Director of Selective Service.

§ 1608.22 Fees.

Fees for copies of records are the following:

(a) Search of records is made by compensated employees of the Selective Service System without charge.

(b) The charge for copies of documents and records prepared on Selective Service System equipment is 25 cents per page.

(c) Copies will not be released to any requester until the required fee is paid in full by cash, check or money order. Checks and money orders should be made payable to the Selective Service System.

(d) Documents will be furnished without charge or at a reduced charge where it is determined that the waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(e) Where a registrant has been charged under the Military Selective Service Act and must defend himself in a criminal prosecution, or where a registrant submits to induction and thereafter brings habeas corpus proceedings to test the validity of his induction, the Selective Service System will furnish to him, or to any person he may designate, one copy of his Selective Service file free of charge.

PART 1609—CLAIMS

CROSS REFERENCE: For regulations authorizing the Director of Selective Service to perform certain functions of the President under the Selective Service System, see § 1604.1 of this chapter.

EMERGENCY MEDICAL CARE, HOSPITALIZATION, AND TRANSPORTATION AND BURIAL OF REMAINS

§ 1609.51 Claims.

(a) Funds appropriated for the operation and maintenance of the Selective Service System shall be available for payment of actual and reasonable expenses of (1) emergency medical care, including hospitalization of registrants who suffer illness or injury, and (2) the transportation and burial of the remains of registrants who suffer death, while acting under travel orders issued by or under the authority of the Director of Selective Service. Burial expenses shall not exceed the maximum prescribed in section 11 of the Military Selective Service Act in any one case. No expenses arising from the illness, injury, or death of a registrant shall be payable under the provisions of this section when such illness, injury, or death occurs while the registrant is performing civilian work contributing to the maintenance of the national health, safety, or interest which he has been ordered to perform by the local board.

(b) The term "emergency medical care, including hospitalization" as used in this section shall be construed to mean such medical care or hospitalization that normally must be rendered promptly after occurrence of the illness or injury as a result of which it is required, and discharged by a physician or facility subsequent to such medical care or hospitalization shall prima facie terminate the period of emergency.

(c) The death of a registrant shall be deemed to have occurred while acting under orders issued by or under the authority of the Director of Selective Service if it results directly from an illness or injury suffered by the registrant while so acting and occurs prior to the completion of an emergency medical care, including hospitalization, occasioned by such illness or injury.

(d) Claims for payment of expenses incurred for the purposes set forth in paragraph (a) of this section shall be presented to the State Director of Selective Service of the State in which the expenses were incurred, who shall determine whether the claim shall be allowed or disallowed, in whole or in part, subject to appeal within 60 days to the Director of Selective Service.

(e) Payment of such claims when allowed shall be made only (1) directly to the person or facility with which the expenses were incurred, or (2) by reimbursement to the registrant, a relative of the registrant, or the legal representative of the registrant's estate, for original payment of such expenses.

(f) No such claim shall be paid unless it is presented within the period of one year from the date on which the expenses were incurred.

(g) No such claim shall be allowed in case it is determined that the cause of injury, illness, or death was due to negligence or misconduct of the registrant.

(Sec. 10, 62 Stat. 618, as amended; 50 U.S.C. App. 460)

[E.O. 9979, 13 FR 4188, July 22, 1948, as amended by E.O. 10363, 17 FR 5456, June 18, 1952; 37 FR 5121, Mar. 10, 1972]

PART 1615—ADMINISTRATION OF REGISTRATION

Sec.

1615.1 Registration.
1615.2 Responsibility of Director of Selective Service in Registration.
1615.3 Registration procedures.
1615.4 Duty of persons required to register.
1615.5 Persons not to be registered.
1615.6 Selective service number.
1615.7 Evidence of registration.
1615.8 Cancellation of registration.
1615.9 Registration card or form.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.* and Executive Order 11623.

SOURCE: 45 FR 48130, July 18, 1980, unless otherwise noted.

§ 1615.1 Registration.

(a) Registration under selective service law consists of (1) completing of the Registration Card prescribed by the Director of Selective Service by a person required to register and (2) the recording of the information furnished by the registrant on his Registration Card in the records (master computer file) of the Selective Service System. Registration is completed when both of these actions have been accomplished.

(b) The Director of Selective Service will furnish to each registrant a verification notice that includes a copy of the information pertaining to his registration that has been recorded in the records of the Selective Service System together with a correction form. If the information is correct, the registrant should take no action. If the information is incorrect, the registrant should forthwith furnish the correct information to the Director of Selective Service. If the registrant does not receive the verification notice within 90 days after he completed a Registration Card, he shall advise in writing the Selective Service System, 600 E Street, NW., Washington, D.C. 20435, of the applicable facts.

§ 1615.2 Responsibility of Director of Selective Service in Registration.

Whenever the President by proclamation or other public notice fixes a day or days for registration, the Director of Selective Service shall take the necessary steps to prepare for registration and, on the day or days fixed, shall supervise the registration of those persons required to present themselves for and submit to registration. The Director of Selective Service shall also arrange for and supervise the registration of those persons who present themselves for registration at times other than on the day or days fixed for any registration.

§ 1615.3 Registration procedures.

Persons required by selective service law and the Proclamation of the President to register shall be registered in accord with procedures prescribed by the Director of Selective Service.

§ 1615.4 Duty of persons required to register.

A person required by selective service law to register has the duty.

(a) To complete the Registration Card prescribed by the Director of Selective Service and to record thereon his name, date of birth, sex, Social Security Account Number (SSAN), current mailing address, permanent residence, telephone number, date signed, and signature; and

(b) To submit for inspection evidence of his identity at the time he submits his completed Registration Card to a person authorized to accept it. Evidence of identity may be a birth certificate, motor vehicle operator's license, student's identification card, United States Passport, or a similar document.

§ 1615.5 Persons not to be registered.

No person who is not required by selective service law or the Proclamation of the President to register shall be registered.

§ 1615.6 Selective service number.

Every registrant shall be given a selective service number. The Social Security Account Number will not be used for this purpose.

§ 1615.7 Evidence of registration.

The Director of Selective Service Shall issue to each registrant written evidence of his registration. The Director of Selective Service will replace that evidence upon written request of the registrant, but such request will not be granted more often than once in any period of six months.

§ 1615.8 Cancellation of registration.

The Director of Selective Service may cancel the registration of any particular registrant or of a registrant who comes within a specified group of registrants.

§ 1615.9 Registration card or form.

For the purposes of these regulations, the terms Registration Card and Registration Form are synonomous.

PART 1621—PREPARATION FOR CLASSIFICATION

Sec.
1621.11 Special form for conscientious objector.
1621.12 Claims for or information relating to deferment or exemption.
1621.13 [Reserved]
1621.14 Securing information from welfare and governmental agencies.

AUTHORITY: Sec. 10, 62 Stat. 618, as amended; 50 U.S.C. App. 460.

§ 1621.11 Special form for conscientious objector.

A registrant who claims to be a conscientious objector shall be given the opportunity to offer information in substantiation of his claim on a Special Form for Conscientious Objector (SSS Form 150). The local board, upon request, shall furnish to any registrant a copy of Special Form for Conscientious Objector (SSS Form 150).

[37 FR 25715, Dec. 2, 1972]

§ 1621.12 Claims for or information relating to deferment or exemption.

The registrant shall be entitled to present all relevant written information which he believes to be necessary to assist the local board in determining his proper classification. Such information should be included in or attached to a Current Information Questionnaire (SSS Form 127) and may include any document, affidavits, and depositions. The affidavits and depositions shall be as concise and brief as possible.

[37 FR 25715, Dec. 2, 1972]

§ 1621.13 [Reserved]

§ 1621.14 Securing information from welfare and governmental agencies.

The local board is authorized to request and receive information from welfare and governmental agencies whenever such information will assist it in determining the proper classification of a registrant.

[38 FR 731, Jan. 4, 1973]

PART 1622—CLASSIFICATION RULES AND PRINCIPLES

GENERAL PRINCIPLES

Sec.
1622.1 General principles of classification.
1622.2 Classes.

CLASS 1

1622.10 Class 1-A: Available for military service.
1622.11 Class 1-A-O: Conscientious objector available for noncombatant military service only.
1622.12 Class 1-C: Member of the Armed Forces of the United States, the Coast and Geodetic Survey or the Public Health Service.
1622.13 Class 1-D: Member of reserve component or student taking military training.
1622.14 Class 1-O: Conscientious objector available for alternate service.
1622.15 Class 1-AM: Medical, dental, or allied specialist.
1622.16 Class 1-W: Conscientious objector performing alternate service in lieu of induction.
1622.17 Class 1-A-OM: Medical, dental, or allied specialist available for noncombatant military service.
1622.18 Class 1-H (holding classification): Registrant not subject to processing for induction.
1622.19 Class 1-OM: Medical, dental, or allied specialist available for alternate service.

CLASS 2

1622.20—1622.24 [Reserved]
1622.25 Class 2-S: Registrant deferred because of activity in study.

Sec.
1622.26 Class 2-M: Registrant deferred because of study preparing for a specified medical specialty.
1622.27 Class 2-D: Registrant deferred because of study preparing for or relating to the ministry.
1622.28 Class 2-AM: Medical, dental, or allied specialist deferred because of community service.

CLASS 3

1622.30 Class 3-A: Registrant deferred because of dependency of others.

CLASS 4

1622.40 Class 4-A: Registrant who has completed military service.
1622.41 Class 4-B: Officials deferred by law.
1622.42 Class 4-C: Aliens or dual nationals.
1622.43 Class 4-D: Minister of religion.
1622.44 Class 4-F: Registrant not qualified for military service.
1622.45 Class 4-G: Registrant exempted from service during peace.
1622.46 Class 4-W: Registrant who has completed alternate service in lieu of induction.
1622.47 Class 4-FM: Medical specialist registrant not qualified for military service.

MISCELLANEOUS PROVISIONS

1622.60 Director may direct that eligibility for particular classification be disregarded.

AUTHORITY: Sec. 10, 62 Stat. 618, as amended; 50 U.S.C. App. 460.

SOURCE: E.O. 10292, 16 FR 9862. Sept. 28, 1951; E.O. 11360, 32 FR 9787, July 4, 1967, unless otherwise noted.

GENERAL PRINCIPLES

§ 1622.1 General principles of classification.

(a) It is the local board's responsibility to decide the classification in which each registrant shall be placed. Each registrant will be considered as available for military service until his eligibility for deferment or exemption from military service is clearly established to the satisfaction of the local board. The local board will receive and consider all information, pertinent to the classification of a registrant, timely presented to it. The mailing by the local board of a Current Information Questionnaire (SSS Form 127) to the latest address furnished by a registrant shall be notice to the registrant that unless information is presented to the local board, within the time specified for the return of the questionnaire, which will justify his deferment or exemption from military service the registrant will be classified in Class 1-A.

(b) In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious, or other organization. Each such registrant shall receive equal justice.

[36 FR 23376, Dec. 9, 1971, as amended at 37 FR 5121, Mar. 10, 1972]

§ 1622.2 Classes.

Each registrant shall be classified in one of the classes established in this part.

[39 FR 44015, Dec. 20, 1974; 40 FR 45436, Oct. 2, 1975]

CLASS 1

§ 1622.10 Class 1-A: Available for military service.

In Class 1-A shall be placed every registrant who has failed to establish to the satisfaction of the local board, subject to appeal hereinafter provided, that he is eligible for classification in another class.

§ 1622.11 Class 1-A-O: Conscientious objector available for noncombatant military service only.

In Class 1-A-O shall be placed every registrant who would have been classified in Class 1-A but for the fact that he has been found, by reason of religious, ethical, or moral belief, to be conscientiously opposed to participation in combatant training and service in the Armed Forces.

[39 FR 44015, Dec. 20, 1974]

§ 1622.12 Class 1-C: Member of the Armed Forces of the United States, the Coast and Geodetic Survey or the Public Health Service.

In Class 1-C shall be placed:

(a) Every registrant who is, or who by enlistment, or appointment becomes a commissioned officer, a war-

rant officer, a pay clerk, an enlisted man or an aviation cadet of the Regular Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Coast and Geodetic Survey or the Public Health Service.

(b) Every registrant who is a cadet, United States Military Academy; or a midshipman, United States Navy; or a cadet, United States Air Force Academy; or a cadet, United States Coast Guard Academy.

(c) Every registrant who by induction becomes a member of the Army of the United States, the United States Navy, the United States Marine Corps, the Air Force of the United States, or the United States Coast Guard.

(d) Exclusive of periods for training only, every registrant who is a member of a reserve component of the Armed Forces and is on active duty, and every member of the Reserve of the Public Health Service on duty prior to the enactment of the Military Selective Service Act of 1967 or who after such enactment is on active duty and assigned to staff the various offices and bureaus of the Public Health Service including the National Institutes of Health, or assigned to the Coast Guard or the Bureau of Prisons of the Department of Justice, or the Environmental Science Services Administration.

[E.O. 10292, 16 FR 9862, Sept. 28, 1951, as amended by E.O. 10659, 21 FR 1103, Feb. 17, 1956, E.O. 10984, 27 FR 193, Jan. 9, 1962, E.O. 11360, 32 FR 9789, July 4, 1967]

§ 1622.13 Class 1-D: Member of reserve component or student taking military training.

(a) In Class 1-D shall be placed any registrant who prior to attaining the age of 18 years and 6 months, and prior to September 3, 1963, became by enlistment or appointment a member of an organized unit of the Army National Guard or the Air National Guard. Such registrant shall remain eligible for Class 1-D so long as he continues to serve satisfactorily as such member or as a member of another reserve component, the Army National Guard, or the Air National Guard, as the case may be.

(b) In Class 1-D shall be placed any registrant who (1) has been selected for enrollment or continuance in the Senior (entire college level) Reserve Officers' Training Corps, or the Air Reserve Officers' Training Corps, or the Naval Reserve Officers' Training Corps, or the Naval and Marine Corps officer candidate program of the Navy, or the platoon leader's class of the Marine Corps, or the officer procurement programs of the Coast Guard and the Coast Guard Reserve, or is appointed an ensign, U.S. Naval Reserve, while undergoing professional training; (2) has agreed, in writing, to accept a commission, if tendered, and to serve subject to order of the Secretary of the military department having jurisdiction over him (or the Secretary of Transportation with respect to the U.S. Coast Guard), not less than 2 years on active duty after receipt of a commission; and (3) has agreed to remain a member of a regular or reserve component until the sixth anniversary of his receipt of a commission. Such registrant shall remain eligible for Class 1-D until completion or termination of the course of instruction and so long thereafter as he continues in a reserve status upon being commissioned except during any period he is eligible for Class 1-C under the provisions of § 1622.12.

(c) In Class 1-D shall be placed any registrant who is a fully qualified and accepted aviation cadet applicant of the Army, Navy, or Air Force, who has signed an agreement of service and is within such numbers as have been designated by the Secretary of Defense. Such registrant shall be retained in Class 1-D during the period covered by such agreement but in no case in excess of four months.

(d) In Class 1-D shall be placed any registrant who is a student enrolled in an officer procurement program at a military college the curriculum of which is approved by the Secretary of Defense.

(e) In Class 1-D shall be placed any registrant who prior to August 1, 1963, enlisted for a period of eight years in a unit of the Ready Reserve of any reserve component of the Armed Forces under the provisions of section 262 of

the Armed Forces Reserve Act of 1952, as amended. Such registrant shall remain eligible for Class 1-D so long as he continues to serve satisfactorily, as determined under regulations prescribed by the Secretary of the department concerned, as a member of such reserve component or of another reserve component, the Army National Guard, or the Air National Guard, as the case may be.

(f) In Class 1-D shall be placed any registrant, other than a registrant referred to in paragraph (b) or (g) of this section, who—

(1) Prior to the issuance of orders for him to report for induction; or

(2) Prior to the date scheduled for his induction and pursuant to a proclamation by the Governor of a State to the effect that the authorized strength of any unit of the National Guard of that State cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction; or

(3) Prior to the date scheduled for his induction and pursuant to a determination by the President that the strength of the Ready Reserve of the Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction;

enlists or accepts appointment, before attaining the age of 26 years, in the Ready Reserve of any Reserve component of the Armed Forces, the Army National Guard, or the Air National Guard. Such registrant shall remain eligible for Class 1-D so long as he serves satisfactorily as a member of an organized unit of such Ready Reserve or National Guard, or satisfactorily performs such other Ready Reserve service as may be prescribed by the Secretary of Defense, or serves satisfactorily as a member of the Ready Reserve of another reserve component, the Army National Guard, or the Air National Guard, as the case may be.

(g) In Class 1-D shall be placed any registrant who at any time has enlisted in the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, or the Coast Guard Reserve and who thereafter has been commissioned therein upon graduation from an Officers' Candidate School of such Armed Force and has not been ordered to active duty as a commissioned officer. Such registrant shall remain eligible for Class 1-D so long as he performs satisfactory service as a commissioned officer in an appropriate unit of the Ready Reserve, as determined under regulations prescribed by the Secretary of the department concerned.

(h) In Class 1-D shall be placed any registrant who is serving satisfactorily as a member of a reserve component of the armed forces and is not eligible for Class 1-D under the provisions of any other paragraph of this section: *Provided,* That, for the purposes of this paragraph, a member of a reserve component who is in the Standby Reserve or the Retired Reserve shall be deemed to be serving satisfactorily unless the armed force of which he is a member informs the local board that he is not serving satisfactorily.

[E.O. 10292, 16 FR 9862, Sept. 28, 1951, as amended by 24 FR 2256, Mar. 21, 1959, E.O. 10984, 27 FR 193, Jan. 9, 1962, E.O. 11188, 29 FR 15560, Nov. 20, 1964; E.O. 11360, 32 FR 9789, July 4, 1967; 36 FR 23376, Dec. 9, 1971]

§ 1622.14 Class 1-O: Conscientious objector available for alternate service.

In Class 1-O shall be placed every registrant:

(a) Who has been found, by reason of religious, ethical, or moral belief to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces; or

(b) Who has been separated from the armed forces (including their reserve components) by reason of conscientious objection to participation in both combatant and noncombatant training and service in the armed forces.

[39 FR 44015, Dec. 20, 1974]

§ 1622.15 Class 1-AM: Medical, dental and allied specialists.

(a) In Class 1-AM shall be placed every registrant who is or becomes a doctor of medicine, dentist, a doctor of optometry, a doctor of osteopathy, a doctor of podiatry, a veterinarian, or a registered nurse.

(b) Each registrant who is classified in Class 1-AM shall be identified as follows: Class 1-AMM for doctor of medicine; Class 1-AMD for dentist; Class 1-AME for doctor of optometry; Class 1-AMO for doctor of osteopathy; Class 1-AMP for doctor of podiatry; Class 1-AMV for veterinarian; and Class 1-AMIN for registered nurse.

(c) For the purpose of this section a doctor of medicine is a registrant who has received the degree of doctor of medicine; a dentist is a registrant who has received the degree of doctor of dental surgery or doctor of dental medicine; a doctor of optometry is a registrant who has received the degree of doctor of optometry; a doctor of osteopathy is a registrant who has received the degree of doctor of osteopathy; a doctor of podiatry is a registrant who has received the degree of doctor of podiatry; a veterinarian is a registrant who has received the degree of doctor of veterinary medicine; and a nurse is a registrant who has been licensed as a registered nurse. A registrant who has received training equivalent to that evidenced by the issuance of any of the degrees listed in the preceding sentence will be deemed to have received the respective degree.

[38 FR 732, Jan. 4, 1973, as amended at 39 FR 44015, Dec. 20, 1974]

§ 1622.16 Class 1-W: Conscientious objector performing alternate service in lieu of induction.

In Class 1-W shall be placed any registrant who has entered upon and is performing alternate service contributing to the maintenance of the national health, safety, or interest, in accordance with the order of the local board.

[36 FR 23376, Dec. 9, 1971]

§ 1622.17 Class 1-A-OM: Medical, dental, or allied specialist available for noncombatant military service.

(a) In Class 1-A-OM shall be placed every registrant who would have been classified in Class 1-AM but for the fact that he has been found, by reason of religious, ethical, or moral belief, to be conscientiously opposed to participation in combatant training and service in the Armed Forces.

(b) A registrant classified in Class 1-A-OM shall be identified as follows: Class 1-A-OMM for doctor of medicine; Class 1-A-OMD for dentist; Class 1-A-OME for doctor of optometry; Class 1-A-OMO for doctor of osteopathy; Class 1-A-OMP for doctor of podiatry; Class 1-A-OMV for veterinarian; and Class 1-A-OMN for registered nurse.

[39 FR 44015, Dec. 20, 1974]

§ 1622.18 Class 1-H (holding classification): Registrant not subject to processing for induction.

In Class 1-H shall be placed any registrant who is not eligible for Class 1-AM and is not currently subject to processing for induction according to these regulations and the rules prescribed by the Director of Selective Service.

[38 FR 733, Jan. 4, 1973]

§ 1622.19 Class 1-OM: Medical, dental, or allied specialist available for alternate service.

(a) In Class 1-OM shall be placed every registrant who would have been classified in Class 1-AM but for the fact that (1) he has been found, by reason of religious, ethical, or moral belief, to be conscientiously opposed to participation in both combatant and noncombatant training and service in the Armed Forces; or (2) has been separated from the Armed Forces (including their reserve components) by reason of conscientious objection to participation in both combatant and noncombatant training and service in the Armed Forces.

(b) A registrant classified in Class 1-OM shall be identified as follows: Class 1-OMM for doctor of medicine; Class 1-OMD for dentist; Class 1-OME

for doctor of optometry; Class 1-OMO for doctor of osteopathy; Class 1-OMP for doctor of podiatry; Class 1-OMV for veterinarian; and Class 1-OMN for registered nurse.

[39 FR 44015, Dec. 20, 1974]

CLASS 2

§§ 1622.20–1622.24 [Reserved]

§ 1622.25 Class 2-S: Registrant deferred because of activity in study.

(a) In Class 2-S shall be placed any registrant who requests such classification, who was satisfactorily pursuing a full-time course of instruction at a college, university or similar institution of learning during the 1970-71 regular academic school year and who is satisfactorily pursuing such course, such classification to continue until such registrant completes the requirement for his baccalaureate degree, fails to pursue satisfactorily a full-time course of instruction, or attains the 24th anniversary of the date of his birth, whichever occurs first.

(b) In determining eligibility for deferment in Class 2-S, a student's "academic year" shall include the 12-month period following the beginning of his course of study.

(c) A student shall be deemed to be "satisfactorily pursuing a full-time course of instruction" when, during his academic year, he has earned, as a minimum, credits toward his degree which, when added to any credits earned during prior academic years, represent a proportion of the total number required to earn his degree at least equal to the proportion which the number of academic years completed bears to the normal number of years established by the school to obtain such degree. For example, a student pursuing a four-year course should have earned 25 percent of the credits required for his baccalaureate degree at the end of his first academic year, 50 percent at the end of his second academic year, and 75 percent at the end of his third academic year.

(d) It shall be the registrant's duty, to provide the local board each year with evidence that he is satisfactorily pursuing a full-time course of instruction at a college, university, or similar institution of learning.

[E.O. 11360, 32 FR 9790, July 4, 1967, as amended at 36 FR 23377, Dec. 9, 1971; 38 FR 733, Jan. 4, 1973]

§ 1622.26 Class 2-M: Registrant deferred because of study preparing for a specified medical specialty.

(a) In Class 2-M shall be placed any registrant other than a registrant who is in a medical, dental, or allied specialist category, who is satisfactorily pursuing full-time course of study leading to a professional degree in medicine, dentistry, optometry, osteopathy, podiatry, veterinary medicine, or licensure as a registered nurse.

(b) A registrant who is classified in Class 2-M shall be identified as follows: Class 2-MM for student in medicine; Class 2-MD for student in dentistry; Class 2-ME for student in optometry; Class 2-MO for student in osteopathy; Class 2-MP for student in podiatry; Class 2-MV for student in veterinary science; and Class 2-MN for student in nursing.

[38 FR 733, Jan. 4, 1973, as amended at 38 FR 10153, Apr. 25, 1973; 39 FR 44015, Dec. 20, 1974]

§ 1622.27 Class 2-D: Registrant deferred because of study preparing for or relating to the ministry.

In Class 2-D shall be placed any registrant who has requested such deferment and who is preparing for the ministry under the direction of a recognized church or religious organization and (a) who is satisfactorily pursuing a full-time course of instruction required for entrance into a recognized theological or divinity school in which he has been preenrolled, or (b) who is satisfactorily pursuing a full-time course of instruction in or at the direction of a recognized theological or divinity school, or (c) who having completed theological or divinity school is a student in a full-time graduate program or is a full-time intern. The registrant's studies must be related to and lead toward entry into service as a regular or duly ordained minister of religion as defined in section 16(g) of the Military Selective Service Act and satisfactory progress in these studies, as

required by the school in which the registrant is enrolled, must be maintained for qualification for the deferment.

[37 FR 8665, Apr. 29, 1972]

§ 1622.28 Class 2-AM: Medical, dental, or allied specialist deferred because of community service.

(a) In Class 2-AM shall be placed every registrant in Class 1-AM whose occupation following his year of prime vulnerability as defined in § 1680.5(b) of this chapter has been found to represent an especially critical community service.

(b) The local board will reopen and consider anew the classification of each registrant in Class 2-AM not later than 365 days after he was last classified in Class 2-AM.

[38 FR 15626, June 14, 1973]

Class 3

§ 1622.30 Class 3-A: Registrant deferred because of dependency of others.

(a) In Class 3-A shall be placed any registrant—

(1) Whose induction would result in extreme hardship to his wife when she alone is dependent upon him for support;

(2) Whose deferment is advisable because his child, parent, grandparent, brother, or sister is dependent upon him for support;

(3) Whose deferment is advisable because his wife and his child, parent, grandparent, brother, or sister are dependent upon him for support; or

(4) Who has been separated from active military service by reason of dependency or hardship.

(b) The local board will reopen and consider anew the classification of each registrant in Class 3-A not later than 365 days after he was last classified in Class 3-A.

(c) As used in this section—

(1) The term "child" shall include any person under 18 years of age who is a legitimate or an illegitimate child from the date of its conception, a stepchild, a foster child, or a child legally adopted;

(2) The term "parent" shall include any person who has stood in the place of a parent to the registrant for at least 5 years preceding the 18th anniversary of the registrant's date of birth;

(3) The term "support" includes but is not limited to "financial assistance."

[38 FR 15626, June 14, 1973]

Class 4

§ 1622.40 Class 4-A: Registrant who has completed military service.

(a) In Class 4-A shall be placed any registrant other than a registrant eligible for classification in Class 1-C or Class 1-D who is within any of the following categories:

(1) A registrant who was discharged after having served honorably on active duty for a period of not less than 6 months in the Army, the Air Force, the Navy, the Marine Corps, or the Coast Guard.

(2) A registrant who has served on active duty for a period of not less than twenty-four months as a commissioned officer in the National Oceanic and Atmospheric Administration or in the Public Health Service, provided that such period of active duty in the Public Health Service as a commissioned Reserve officer commencing after June 30, 1967, shall have been performed by the registrant while assigned to staff any of the various offices and bureaus of the Public Health Service including the National Institutes of Health, or while assigned to the Coast Guard, or the Bureau of Prisons of the Department of Justice, or the National Oceanic and Atmospheric Administration or the Environmental Protection Agency.

(3) A registrant who while an alien has served on active duty for a period of not less than 12 months in the armed forces of a nation determined by the Department of State to be a nation with which the United States is associated in mutual defense activities and which grants exemption from training and service in its armed forces to citizens of the United States who have served on active duty in the Armed Forces of the United States for a period of not less than 12 months: *Provided*, That all information which is submitted to the local board con-

cerning the registrant's service in the armed forces of a foreign nation shall be written in the English language.

(4) A registrant who has completed six years of satisfactory service as a member of one or more of the Armed Forces including the Reserve components thereof.

(b) For the purpose of computation of period of active duty referred to in paragraph (a) (1), (2), or (3) of this section, no credit shall be allowed for—

(1) Periods of active duty training performed as a member of a reserve component pursuant to an order or call to active duty solely for training purposes;

(2) Periods of active duty in which the service consisted solely of training under the Army specialized training program, the Army Air Force college training program, or any similar program under the jurisdiction of the Navy, Marine Corps, or Coast Guard;

(3) Periods of active duty as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, or in a preparatory school after nomination as a principal, alternate, or candidate for admission to any of such academies;

(4) Periods of active duty in any of the Armed Forces while being processed for entry into or separation from any educational program or institution referred to in paragraphs (b) (2) or (3) of this section; or

(5) Periods of active duty performed by medical, dental, or allied specialists in student programs prior to receipt of the appropriate professional degree or in intern training.

(6) Periods of active duty of members of the Reserve of the Public Health Service commencing after the date of enactment of the Military Selective Service Act of 1967 other than when assigned to staff any of the various offices and bureaus of the Public Health Service, including the National Institutes of Health, or the Coast Guard or the Bureau of Prisons of the Department of Justice, or the Environmental Science Services Administration.

[E.O. 10659, 21 FR 1103, Feb. 17, 1956, as amended by E.O. 10984, 27 FR 194, Jan. 9, 1962; E.O. 11360, 32 FR 9791, July 4, 1967; 36 FR 23377, Dec. 9, 1971; 39 FR 44015, Dec. 20, 1974]

§ 1622.41 Class 4-B: Officials deferred by law.

In Class 4-B shall be placed any registrant who is the Vice President of the United States; a governor of a State, Territory or possession, or any other official chosen by the voters of the entire State, Territory or possession; a member of a legislative body of the United States or of a State, Territory or possession; a judge of a court of record of the United States or of a State, Territory or possession, or the District of Columbia.

§ 1622.42 Class 4-C: Aliens or dual nationals.

(a) In Class 4-C shall be placed any registrant who establishes that he is a national of the United States and of a country with which the United States has a treaty or agreement that provides that such person is exempt from liability for military service in the United States.

(b) In Class 4-C shall be placed any registrant who is an alien who establishes that he is exempt from military service under the terms of a treaty or international agreement between the United States and the country of which he is a national, and who has made application to be exempted from liability for training and service in the Armed Forces of the United States.

(c) In Class 4-C shall be placed any registrant who is an alien and who has departed from the United States prior to being issued an order to report for induction or alternate service that has not been canceled. If any registrant who is classified in Class 4-C pursuant to this paragraph returns to the United States his classification shall be reopened and he shall be classified anew.

(d) In Class 4-C shall be placed an alien who has registered at a time when he was required by the selective service law to present himself for and submit to registration and thereafter has acquired status within one of the

80-109 O—81——17

groups of persons exempt from registration.

(e) In Class 4-C shall be placed any registrant who is an alien lawfully admitted for permanent residence as defined in paragraph (20) of section 101(a) of the Immigration and Nationality Act, as amended (66 Stat. 163, 8 U.S.C. 1101), and who by reason of occupational status is subject to adjustment to nonimmigrant status under paragraph (15)(A), (15)(E), or (15)(G) of such section 101(a) but who executes a waiver in accordance with section 247(b) of that Act of all rights, privileges, exemptions, and immunities which would otherwise accrue to him as a result of that occupational status. A registrant placed in Class 4-C under the authority of this paragraph shall be retained in Class 4-C only for so long as such occupational status continues.

[E.O. 10292, 16 FR 9862, Sept. 28, 1951, as amended by E.O. 10659, 21 FR 1103, Feb. 17, 1956, E.O. 11360, 32 FR 9792, July 4, 1967; 36 FR 23377, Dec. 9, 1971; 37 FR 5121, Mar. 10, 1972; 39 FR 44016, Dec. 20, 1974]

§ 1622.43 Class 4-D: Minister of religion.

In Class 4-D shall be placed any registrant who is a regular or duly ordained minister of religion as defined in section 16(g) of the Military Selective Service Act.

[36 FR 23377, Dec. 9, 1971]

§ 1622.44 Class 4-F: Registrant not qualified for military service.

(a) In Class 4-F shall be placed any registrant, other than a registrant who is a medical, dental, or allied specialist, who is found by an Armed Forces Examining and Entrance Station, under applicable physical, mental or administrative standards, to be not qualified for service in the Armed Forces; except that no such registrant whose further examination or re-examination is determined by AFEES to be justified shall be placed in Class 4-F until such further examination has been accomplished and such registrant continues to be found not qualified for military service.

(b) In Class 4-F shall be placed any registrant other than a registrant who is a medical, dental, or allied specialist, who is confined in a prison, mental institution, or recognized drug rehabilitation center.

[39 FR 44016, Dec. 20, 1974]

§ 1622.45 Class 4-G: Registrant exempted from service during peace.

In Class 4-G shall be placed any registrant who meets the requirements of section 6(o) of the Military Selective Service Act or section 101(d)(3) of Pub. L. 92-129: *Provided*, That no registrant who volunteers for induction shall be placed or retained in Class 4-G.

[36 FR 23377, Dec. 9, 1971]

§ 1622.46 Class 4-W: Registrant who has completed alternate service in lieu of induction.

In Class 4-W shall be placed any registrant who subsequent to being ordered by the local board to perform alternate service in lieu of induction has been released from such service by the local board after satisfactorily performing the work for a period of 24 months, or has been granted an early release by the Director or State Director of Selective Service after completing at least 6 months of satisfactory service as prescribed in § 1660.10 of this chapter.

[39 FR 44016, Dec. 20, 1974]

§ 1622.47 Class 4-FM: Medical specialist registrant not qualified for military service.

(a) In Class 4-FM shall be placed any registrant who is found by an Armed Forces Examining and Entrance Station, under standards applicable to medical, dental, and allied specialists, to be not qualified for service in the Armed Forces; except that no such registrant whose further examination or re-examination is determined by AFEES to be justified shall be placed in Class 4-FM until such further examination has been accomplished and such registrant continues to be found not qualified for military service.

(b) In Class 4-FM shall be placed any registrant in the medical, dental, and allied specialist categories who has applied for an appointment as a Reserve officer in one of the Armed

Forces in any of such categories and has been rejected for such appointment on the sole ground of a physical disqualification.

(c) In Class 4-FM shall be placed any registrant in a medical, dental, or allied specialist category, who is confined in a prison, mental institution, or recognized drug rehabilitation center.

[39 FR 44016, Dec. 20, 1974]

MISCELLANEOUS PROVISIONS

§ 1622.60 Director may direct that eligibility for particular classification be disregarded.

The Director of Selective Service, notwithstanding any other provisions of the regulations in this chapter, may direct that any registrant shall be classified or reclassified without regard to his eligibility for a particular classification.

PART 1623—CLASSIFICATION PROCEDURE

Sec.
1623.1 Commencement of classification.
1623.2 Consideration of classes.
1623.3 [Reserved]
1623.4 Action to be taken when classification determined.
1623.5–1623.8 [Reserved]
1623.9 Registrants transferred for classification.
1623.10 Procedure upon transfer for classification.

AUTHORITY: Sec. 10, 62 Stat. 618, as amended; 50 U.S.C. App. 460.

§ 1623.1 Commencement of classification.

(a) Each registrant shall be classified as soon as practicable after his registration.

(b) The registrant's classification shall be determined on the basis of the official forms of the Selective Service System and other written information in his file, oral statements by the registrant at his personal appearance before the local board, appeal board, or National Selective Service Appeal Board, and oral statements by the registrant's witnesses at his personal appearance before the local board. No information in any written summary of the oral information presented at a registrant's personal appearance that was prepared by an official or employee of the Selective Service System will be considered or placed in the registrant's file unless a copy of it has been furnished to the registrant by the Selective Service System. No information in any other document in the registrant's file shall be considered in classifying the registrant into a class available for military or alternate service unless that document was supplied by the registrant or a copy of it or a fair resume of its contents has been furnished to him by the Selective Service System.

[36 FR 23378, Dec. 9, 1971, as amended at 38 FR 16059, June 20, 1973]

§ 1623.2 Consideration of classes.

Every registrant shall be placed in Class 1-A under the provisions of § 1622.10 of this chapter, except that when grounds are established to place a registrant in any one of the classes listed in the following table, the registrant shall be classified in the lowest class for which he is determined to be eligible, classified in Class 1-AM but for the fact with Class 1-AM considered the highest class and Class 1-C considered the lowest class, according to the following table:

Class 1-AM: Registrant in any of the specified medical, dental, and allied specialist categories.
Class 1-A-O: Conscientious objector available for noncombatant military service only.
Class 1-A-OM: Medical, dental, or allied specialist available for noncombatant military service.
Class 1-O: Conscientious objector available for alternate service.
Class 1-OM: Medical, dental, or allied specialist available for alternate service.
Class 2-AM: Medical, dental, or allied specialist deferred because of community essentiality.
Class 2-S: Registrant deferred because of activity in study.
Class 2-D: Registrant deferred because of study preparing for the ministry.
Class 3-A: Registrant deferred because of dependency of others.
Class 4-B: Officials deferred by law.
Class 4-C: Aliens or dual nationals.
Class 4-D: Minister of religion.
Class 4-G: Registrant exempted from service during peace.

Class 1-H: Registrant not currently subject to processing for induction.
Class 4-F: Registrant not qualified for military service.
Class 2-M: Registrant deferred because of study preparing for a specified medical specialty.
Class 4-FM: Medical specialist registrant not qualified for military service.
Class 4-W: Conscientious objector who has completed alternate service in lieu of induction
Class 4-A: Registrant who has completed military service.
Class 1-D: Member of Reserve component or student taking military training.
Class 1-W: Conscientious objector performing alternate service in lieu of induction.
Class 1-C: Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration, or the Public Health Service.

[39 FR 44016, Dec. 20, 1974]

§ 1623.3 [Reserved]

§ 1623.4 Action to be taken when classification determined.

(a) As soon as practicable after the local board has classified a registrant in a class other than Class 1-C or Class 1-W it shall mail him a notice thereof.

(b) After each local board meeting, a notice listing the registrants who have been classified or whose classification has been changed, shall be posted in a conspicuous place in the office of the local board. When a person is unable to ascertain the current classification of a registrant from this posted notice, an employee of the local board, upon request shall consult the Classification Record (SSS Form 102) and shall furnish the person making the inquiry the current classification of such registrant.

(c) In the event that the local board classifies the registrant in a class other than that which he requested it shall record its reasons therefor in his file. The local board shall inform the registrant of such reasons in writing at the time it mails to him a notice of his classification.

[36 FR 23378, Dec. 9, 1971, as amended at 37 FR 5122, Mar. 10, 1972; 38 FR 15627, June 14, 1973]

§§ 1623.5–1623.8 [Reserved]

§ 1623.9 Registrants transferred for classification.

(a) Before the local board of origin has undertaken the classification of a registrant after his administrative classification into Class 1-H, he may be transferred to another local board for classification under procedures prescribed by the Director if he is so far from his local board as to make complying with notices an extreme hardship.

(b) A registrant may be transferred to another local board for classification at any time under procedures prescribed by the Director (1) when the local board cannot act on his case because of disqualification under provisions of § 1604.55 of this chapter, or (2) when a majority of the members of the local board, or a majority of the members of every panel thereof if the board has separate panels, withdraw from consideration of the registrant's classification because of any conflicting interest, bias, or other reason.

(c) The Director or the State Director of Selective Service may transfer a registrant to another local board for classification at any time (1) when any member of the local board cannot act on the registrant's case because of disqualification under the provisions of § 1604.55 of this chapter, or (2) when the State Director of Selective Service deems such transfer to be necessary in order to assure equitable administration of the selective service law.

[37 FR 8665, Apr. 29, 1972, as amended at 37 FR 25715, Dec. 2, 1972]

§ 1623.10 Procedure upon transfer for classification.

(a) The local board from which the registrant is transferred shall prepare, in triplicate, an Order for Transfer for Classification (SSS Form No. 114), shall send one copy thereof to the registrant, and shall transmit the original to the local board to which the registrant is transferred, together with all papers pertaining to the registrant except the Registration Card (SSS Form No. 1) and the remaining copy of the Order for Transfer for Classification (SSS Form No. 114). The local

board from which the registrant is transferred shall, with red ink note the transfer in the "Remarks" column of the Classification Record (SSS Form No. 102).

(b) The local board to which the registrant is transferred shall classify the registrant. It shall follow the same procedure as in the case of one of its own registrants if a request for hearing, a request for reopening, or an appeal is filed. It shall give the same notices and maintain the same records as are sent and maintained for its own registrants, except that it shall use a separate page in its Classification Record (SSS Form No. 102) for transferred registrants and shall make all entries on that page in red ink. The local board to which the registrant is transferred shall prepare a duplicate Cover Sheet (SSS Form No. 101). After the classification, after the hearing, when requested, and after the determination on appeal, when taken the local board to which the registrant is transferred shall return to the local board of origin all papers pertaining to the registrant except the duplicate Cover Sheet (SSS Form No. 101) and the Order for Transfer for Classification (SSS Form No. 114). In the proper column of the Classification Record (SSS Form No. 102) the local board to which the registrant is transferred shall note the date of the returning of the papers.

(c) The classification made by the local board to which a registrant is transferred shall be appealed through that local board only. The local board of origin shall accept and enter on its records, without any change, the classification reported by the board which classified the registrant. If the local board of origin receives new information that might affect the registrant's classification, the board shall send the information and the registrant's file to the board to which he was transferred for further consideration: *Provided*, That if the disqualification of the local board or other reason for the original transfer for classification no longer exists, the local board may consider the new information and classify the registrant in the same manner as if he had never been transferred for classification.

[E.O. 9988, 13 FR 4874, Aug. 21, 1948. Redesignated at 14 FR 5021, Aug. 13, 1949]

PART 1624—PERSONAL APPEARANCE BEFORE LOCAL BOARD

Sec.

1624.1 Opportunity for personal appearance.
1624.2 Request for personal appearance.
1624.3 Appointment for personal appearance.
1624.4 Procedure during personal appearance before local board.
1624.5 Procedure when registrant fails to appear.
1624.6 Procedure of local board following personal appearance.
1624.7 Appearance before local board stays induction or order to report for alternate service.

AUTHORITY: Military Selective Service Act, as amended; 50 App. U.S.C. sec. 451 et seq. and Executive Order 11623 of Oct. 12, 1971.

§ 1624.1 Opportunity for personal appearance.

(a) Every registrant after his classification is determined by the local board, except his initial administrative classification into class 1-H or a classification which is determined upon an appearance before the local board under the provisions of this part, shall have an opportunity to appear in person before the local board.

(b) Registrant who has filed a claim for classification in class 1-A-O, class 1-O, class 1-A-OM, class 1-OM, or class 3-A, upon his written request, shall be afforded an opportunity to appear in person before the local board before his classification is determined by the local board. Should such registrant appear in person before the local board in advance of his classification being determined, the provisions of § 1624.4 shall apply, and he shall not be afforded an opportunity to appear concerning such classification after such determination.

[37 FR 17965, Sept. 2, 1972 and 39 FR 44016, Dec. 20, 1974]

§ 1624.2 Request for personal appearance.

A registrant, other than one who has filed a request in accord with § 1624.1 (b), who desires a personal appearance before his local board, must file a written request therefor within 15 days

after the local board has mailed a notice of classification to him. Such 15-day period may be extended by the local board when it is satisfied that the registrant's failure to request a personal appearance within such period was due to some cause beyond his control.

[37 FR 25715, Dec. 2, 1972]

§ 1624.3 Appointment for personal appearance.

The local board, not less than 15 days (unless the registrant requests an earlier appointment) in advance of the meeting at which he may appear, shall inform the registrant of the time and place of such meeting and that he may present evidence, including witnesses, bearing on his classification. Should the registrant fail to appear at such meeting, except for good cause that he establishes to the satisfaction of the local board, he shall not be afforded an opportunity to appear at a subsequent meeting. The registrant must file a written statement of the reasons for his failure to appear at his scheduled meeting within 5 days after such failure or the registrant will be deemed to have waived his right to an opportunity to appear at a subsequent meeting of the local board. Such period may be extended by the local board when it is satisfied that the registrant's failure to file a written statement of the reasons for his failure to appear at his scheduled meeting within 5 days was due to some cause beyond his control.

[37 FR 5122, Mar. 10, 1972]

§ 1624.4 Procedure during personal appearance before local board.

(a) A quorum of the local board shall be present during all personal appearances.

(b) At any such appearance, the registrant may present evidence, including witnesses, may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. The information furnished should be as concise as possible under the circumstances. The registrant may summarize in writing the oral information that he or his witnesses presented. Such summary shall be placed in the registrant's file.

(c) A registrant is entitled to such time for his personal appearance as is reasonably necessary for the fair presentation of his claim. Normally 15 minutes shall be deemed adequate for this purpose, consistent with the informal and expeditious processing required in selective service cases. If it appears to the board that further time is reasonably necessary, the board shall extend the time. During the time available to a registrant, he may present the testimony of not more than three witnesses.

(d) If the registrant does not speak English adequately he may appear with a person to act as interpreter for him. Such interpreter will not be deemed to be a witness unless he testifies in behalf of the registrant.

(e) No registrant may be represented at his personal appearance before the local board by anyone acting as attorney or legal counsel, but a registrant may invite an attorney to appear solely as a witness.

[37 FR 5122, Mar. 10, 1972, as amended at 37 FR 24421, Nov. 17, 1972]

§ 1624.5 Procedure when registrant fails to appear.

Whenever the registrant for whom a personal appearance has been scheduled fails to appear in accordance with such schedule, the local board shall consider any explanation of such failure that has been filed within 5 days (or extension thereof granted by the local board) after such failure in accordance with § 1624.3. Should the local board determine that the registrant's failure to appear for his personal appearance was without good cause, or if within 5 days (or extension thereof granted by the local board) after such failure to appear the registrant offers no explanation of such failure, the registrant will be deemed to have had his personal appearance

and the local board (a) will take such action with respect to the classification of a registrant who has requested a personal appearance following his classification as is appropriate in light of the provisions concerning reopening of classification in § 1625.2 of this chapter, or (b) if such registrant requested a personal appearance in advance of his classification in accordance with § 1624.1(b), the local board shall classify the registrant. The local board will notify the registrant in writing of the action taken.

[37 FR 25715, Dec. 2, 1972]

§ 1624.6 Procedure of local board following personal appearance.

After the registrant has appeared before the local board, it shall again classify the registrant and, in the event that the local board classifies the registrant in a class other than that which he requested, it shall record its reasons therefor in his file. Only those members of the local board before whom the registrant appeared shall classify him. The local board shall mail to the registrant notice of his classification together with the reasons the local board classified him in a class other than that which he requested.

[37 FR 25715, Dec. 2, 1972]

§ 1624.7 Appearance before local board stays induction or order to report for alternate service.

The local board shall not issue an order for a registrant to report for induction or for alternate service in lieu of induction either during the period afforded the registrant to request a personal appearance before the local board or, if the registrant has requested such appearance, during the period such personal appearance is pending. Any order to report for induction or for alternate service which has been issued during either of such periods shall be ineffective and shall be canceled by the local board.

[37 FR 5122, Mar. 10, 1972]

PART 1625—REOPENING AND CONSIDERING A NEW REGISTRANT'S CLASSIFICATION

REOPENING REGISTRANT'S CLASSIFICATION

Sec.
1625.1 Classification not permanent.
1625.2 Reopening of classification.
1625.3 [Reserved]
1625.4 Refusal to reopen and consider anew registrant's classification.

CLASSIFICATION ANEW

1625.11 Classification considered anew when reopened.
1625.12 Notice of action when classification considered anew.
1625.13 Right of appeal following reopening of classification.
1625.14 Cancellation of order to report for induction or for alternate service by reopening of classification.

AUTHORITY: Sec. 10, 62 Stat. 618, as amended; 50 U.S.C. App., 460.

REOPENING REGISTRANT'S CLASSIFICATION

§ 1625.1 Classification not permanent.

(a) No classification is permanent.
(b) [Reserved]
(c) The local board shall keep informed of the status of classified registrants. Registrants may be questioned or physically or mentally reexamined, employers may be requested to furnish information, police officials or other agencies may be requested to make investigations, and other steps may be taken by the local board to keep currently informed concerning the status of classified registrants.

[36 FR 23378, Dec. 9, 1971, as amended at 37 FR 5123, Mar. 10, 1972; 37 FR 17965, Sept. 2, 1972]

§ 1625.2 Reopening of classification.

(a) The local board will reopen and consider anew the classification of a registrant: (1) Upon the written request of the Director of Selective Service or the State Director of Selective Service and upon receipt of such request shall immediately cancel any order to report for induction or alternate service which may have been issued to the registrant; (2) who is in Class 1-H and becomes subject to processing for induction according to these

regulations and the rules prescribed by the Director; (3) in any classification for the purpose of classifying him in Class 1-H according to these regulations and the rules prescribed by the Director; (4) upon the written request of the registrant that is accompanied by written information presenting facts other than pertaining to his acceptability for induction not considered when the registrant was classified which, if true in the opinion of the board, would justify a change in the registrant's classification; or (5) upon its own motion if such action is based upon facts other than pertaining to his acceptability for induction not considered when the registrant was classified which, in the opinion of the board, would justify a change in the registrant's classification: *Provided,* That in the event of paragraph (a) (4) or (5) of this section, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an order for induction or alternate service or, in the event the order to report for induction or alternate service was postponed and a subsequent letter from the local board establishes the date for induction or for reporting for alternate service, unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control.

[38 FR 731, Jan. 4, 1973]

§ 1625.3 [Reserved]

§ 1625.4 Refusal to reopen and consider anew registrant's classification.

When a registrant files with the local board a written request to reopen and consider anew the registrant's classification and the local board is of the opinion that the information accompanying such request fails to present any facts in addition to those considered when the registrant was classified or, even if new facts are presented, the local board is of the opinion that such facts, if true, would not justify a change in such registrant's classification, it shall not reopen the registrant's classification. In such a case, the local board (a) shall record in the registrant's file the reasons for its decision not to reopen his classification, and (b) shall advise the registrant by letter of its decision not to reopen his classification and the reasons therefor.

[36 FR 23378, Dec. 9, 1971]

CLASSIFICATION ANEW

§ 1625.11 Classification considered anew when reopened.

When the local board reopens the registrant's classification, it shall consider the new information which it has received and shall again classify the registrant in the same manner as if he had never before been classified. Such classification shall be and have the effect of a new and original classification even though the registrant is again placed in the class that he was in before his classification was reopened.

[E.O. 9988, 13 FR 4874, Aug. 21, 1948. Redesignated at 14 FR 5021, Aug. 13, 1949]

§ 1625.12 Notice of action when classification considered anew.

When the local board reopens the registrant's classification, it shall, as soon as practicable after it has again classified the registrant, mail him notice thereof.

[36 FR 23379, Dec. 9, 1971]

§ 1625.13 Right of appeal following reopening of classification.

Each such classification shall be followed by the same right of appearance before the local board and the same right of appeal as in the case of an original classification.

[E.O. 9988, 13 FR 4874, Aug. 21, 1948. Redesignated at 14 FR 5021, Aug. 13, 1949]

§ 1625.14 Cancellation of order to report for induction or for alternate service by reopening of classification.

The reopening of the classification of a registrant by the local board shall cancel any order to report for induction or alternate service which may have been issued to him.

[39 FR 44017, Dec. 20, 1974]

PART 1626—APPEAL TO APPEAL BOARD

Sec.

1626.1 Who may appeal.
1626.2 Time limit within which registrant may appeal.
1626.3 Procedure for taking an appeal.
1626.4 Review by appeal board.
1626.5 Procedure of local board when advised of decision of appeal board.
1626.6 Appeal stays induction or order to report for alternate service.

AUTHORITY: Military Selective Service Act, as amended, 50 App. U.S.C. sections 451 et seq. and Executive Order 11623 of October 12, 1971.

§ 1626.1 Who may appeal.

The Director of Selective Service and the State Director of Selective Service as to the local boards in his State may appeal from any determination of a local board at any time prior to the induction of the registrant or his reporting for alternate service in lieu of induction. The registrant may appeal to an appeal board from his classification by the local board except his initial administrative classification into Class 1-H.

[37 FR 26592, Dec. 14, 1972]

§ 1626.2 Time limit within which registrant may appeal.

The registrant must file his appeal and his request for a personal appearance before the appeal board, if such personal appearance is desired, within 15 days after the date the local board mails to the registrant notice of his classification or notice pursuant to § 1624.5 of this chapter. At any time prior to the date the local board mails to the registrant an order to report for induction or for alternate service, the local board will permit him to appeal even though the period for taking an appeal has elapsed, if it is satisfied that his failure to appeal within such period was due to some cause beyond his control. If the local board grants an extension of time to appeal to the registrant, he may within such extended period also request a personal appearance before the appeal board.

[37 FR 25715, Dec. 2, 1972]

§ 1626.3 Procedure for taking an appeal.

(a) Any person entitled to do so may appeal to the appeal board by filing with the local board a written notice of appeal. If the Director of Selective Service or the State Director of Selective Service appeals to the appeal board he shall place in the registrant's file a written statement of his reasons for taking such appeal.

(b) Whenever an appeal is taken from a local board's classification by the Director of Selective Service or the State Director of Selective Service, the local board shall notify the registrant in writing of the action, the reasons therefor, and inform him that (1) his appeal will be considered by the appeal board for the area in which his local board is located unless he files, within 15 days from the date on the letter of notification, a written request with the local board that the appeal be considered by the appeal board having jurisdiction over the area in which is located his principal place of employment or residence and (2) he may request a personal appearance before the appeal board if he files with the local board within 15 days from the date on the letter of notification a written request for such personal appearance. The 15-day period may be extended by the local board when it is satisfied that the registrant's failure to file a written request within such period was due to some cause beyond his control.

(c) If the registrant is taking the appeal, he may also request an opportunity to appear in person before the appeal board and that the appeal be considered by the appeal board having jurisdiction over the area in which is located his principal place of employment or residence. The notice of appeal need not be in any particular form, but must include the name of the registrant and his request. Any notice shall be liberally construed so as to permit the appeal.

(d) Whenever the registrant's principal place of employment or residence is outside the United States he may request that the appeal be considered by the Appeal Board for the District of Columbia. "Principal place of employment" as used in this paragraph

means the geographical location at which the registrant usually performs the duties of his employment.

(e) The registrant may attach to his appeal a statement specifying the reasons he believes the classification inappropriate, directing attention to any information in his file which he believes received inadequate consideration, and setting out more fully any information which was submitted.

[37 FR 5123, Mar. 10, 1972, as amended at 37 FR 17965, Sept. 2, 1972]

§ 1626.4 Review by appeal board.

(a) The appeal board shall consider appeals in the order of the relative imminence of induction of the registrant, the most imminent being considered first, unless otherwise directed by the Director of Selective Service, in which event, appeals shall be considered in such order as the Director of Selective Service shall prescribe.

(b) Upon receipt of the registrant's file, the appeal board shall ascertain whether the registrant has requested a personal appearance before the appeal board. If no such request had been made, the appeal board may classify the registrant not less than 15 days after the receipt of the registrant's file.

(c) Not less than 15 days (unless the registrant requests an earlier appointment) in advance of the meeting at which his classification will be considered, the appeal board shall inform any registrant who has requested a personal appearance that he may appear at such meeting and present evidence, other than witnesses, bearing on his classification. Should the registrant fail to appear at such meeting, except for good cause he establishes to the satisfaction of the appeal board, he shall not be afforded an opportunity to appear at a subsequent meeting. The registrant must file a written statement of the reasons for his failure to appear at his scheduled meeting within 5 days after such failure or the registrant will be deemed to have waived his right to an opportunity to appear at a subsequent meeting. Such 5-day period may be extended by the appeal board when it is satisfied that the registrant's failure to file such written statement was due to some cause beyond his control.

(d) A registrant is entitled to such time for his personal appearance before an appeal board as the board determines is reasonably necessary for the fair presentation of his claim, consistent with the informal and expeditious processing required in selective service cases, but shall not be entitled to present witnesses. No registrant may be represented at his personal appearance before an appeal board by anyone acting as attorney or legal counsel.

(e) At any such personal appearance, there shall be present a quorum of the members of the board to which the registrant may present evidence, may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the board in determining his proper classification. The information furnished should be as concise as possible under the circumstances. The registrant may summarize in writing the oral information that he presented. Such summary shall be placed in the registrant's file.

(f) The appeal board shall classify a registrant who has requested a personal appearance after (1) he has appeared before the board, (2) he withdrew his request to appear, (3) he waived his right to an opportunity to appear, or (4) he failed to appear without establishing to the satisfaction of the appeal board good cause therefor. When a registrant appears before the appeal board, only those members of the appeal board before whom the registrant appeared shall classify him.

(g) In reviewing the appeal and classifying the registrant, the appeal board shall not receive or consider any information other than the following:

(1) Information contained in the record received from the local board;

(2) General information concerning economic, industrial and social conditions; and

(3) Oral statements by the registrant and written evidence submitted by him to the appeal board during his personal appearance.

(h) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies registrant.

(i) In the event that the appeal board classifies the registrant in a class other than that which he requested, it shall record its reasons therefor in his file.

[37 FR 5123, Mar. 10, 1972, as amended at 37 FR 24421, Nov. 17, 1972; 37 FR 25715, Dec. 2, 1972]

§ 1626.5 Procedure of local board when advised of decision of appeal board.

When the local board receives notice of the decision of a case by the appeal board, it shall mail a notice of classification to the registrant and inform him in writing of the vote of the appeal board and the reasons the appeal board classified him in a class other than that which he requested.

[37 FR 25715, Dec. 2, 1972]

§ 1626.6 Appeal stays induction or order to report for alternate service.

The local board shall not issue an order for a registrant to report for induction or for alternate service in lieu of induction either during the period afforded the registrant to take an appeal to the appeal board or during the period such an appeal is pending. Any order to report for induction, or for alternate service in lieu of induction, which has been issued during either of such periods shall be ineffective and shall be canceled by the local board. Whenever an appeal to the appeal board has been taken during the time allowed for taking appeals by a person entitled to do so, any order to report for induction or for alternate service which has been previously issued to the registrant shall be ineffective and shall be canceled by the local board.

[37 FR 5123, Mar. 10, 1972]

PART 1627—APPEAL TO THE PRESIDENT

Sec.

1627.1 Persons who may appeal to the President.
1627.2 Procedure for taking an appeal to the President.
1627.3 Procedure on appeal to the President.
1627.4 Procedures of the National Selective Service Appeal Board.
1627.5 File to be returned after appeal to the President is decided.
1627.6 Procedure of local board after file is returned.
1627.7 Appeal to the President stays an order for induction or for alternate service in lieu of induction.

AUTHORITY: Military Selective Service Act, as amended, 50 App. U.S.C. secs. 451 et seq.; Executive Order 11623, October 12, 1971.

§ 1627.1 Persons who may appeal to the President.

(a) The Director of Selective Service or the State Director of Selective Service of the State in which the local board or appeal board which classified the registrant is located may appeal to the President from any determination of an appeal board at any time prior to the induction of the registrant or his reporting for alternate service in lieu of induction.

(b) When a registrant has been classified by the appeal board and one or more members of the appeal board dissented from that classification, he may appeal to the President within 15 days after the local board has mailed a notice thereof to him. The local board may permit any registrant who is entitled to appeal to the President under this section to do so at any time prior to the date the local board issues to him an order to report for induction or for alternate service, even though the period of taking such an appeal has elapsed, if it is satisfied that his failure to appeal within such period was due to some cause beyond his control.

[37 FR 25716, Dec. 2, 1972]

§ 1627.2 Procedure for taking an appeal to the President.

(a) An appeal to the President may be taken by the Director of Selective

Service (1) by mailing to the local board, through the State Director of Selective Service, a written notice of appeal or (2) by placing in the registrant's file a written notice of appeal and, through the State Director of Selective Service, advising the local board thereof.

(b) An appeal to the President may be taken by the State Director of Selective Service (1) by mailing to the local board a written notice of appeal and directing the local board to forward the registrant's file to him for transmittal to the Director of Selective Service or (2) by placing in the registrant's file a written notice of appeal and advising the local board thereof. Before he forwards the registrant's file to the Director of Selective Service, the State Director of Selective Service shall place in such file a written statement of his reasons for taking such appeal.

(c) An appeal to the President by the registrant shall be taken by filing with the local board a written notice of appeal. Such notice need not be in any particular form but must state the name of the registrant and the fact he wishes the President to review the determination of the appeal board.

[36 FR 23379, Dec. 9, 1971]

§ 1627.3 Procedure on appeal to the President.

(a) When an appeal to the President is taken by the Director of Selective Service or a State Director of Selective Service, the local board shall notify the registrant that the appeal has been taken. If the registrant's file is in the local board's possession, it shall forward the entire file to the State Director of Selective Service and the local board shall enter on the Classification Record (SSS Form 102) under "Remarks" the date the file is forwarded or the date it receives notice that an appeal to the President has been taken.

(b) When an appeal to the President is taken, the State Director of Selective Service shall check the file which is in his possession or which is forwarded to him to be sure that all procedural requirements have been properly complied with, including notice to the registrant that such an appeal has been taken, and, if he discovers any procedural defects, return the file for correction. If any information has been placed in the file which was not considered by the local board in making the classification from which the appeal to the President is taken, the State Director of Selective Service shall review such information and, if he is of the opinion that such information, if true, would justify a different classification of the registrant, return the file to the local board with instructions to reopen the registrant's classification and classify the registrant anew.

(c) When the State Director of Selective Service has complied with the provisions of paragraph (b) of this section, he shall, unless the file is returned to the local board, forward the file to the Director of Selective Service.

(d) Whenever the Director or State Director appeals to the President, the registrant shall be notified by his local board in writing of the action and informed that if he desires to appear before the National Board he must, within 15 days from the date on the letter of notification, request such an appearance in writing, addressed to his local board. Such 15-day period may be extended by the local board when it is satisfied that the registrant's failure to request an appearance within such period was due to some cause beyond his control. The local board shall forthwith notify the National Board of the registrant's request to appear before it.

(e) If the registrant is taking the appeal, he may at the same time also file a written request with the local board to appear before the National Board. The local board shall forthwith notify the National Selective Service Appeal Board of such request.

[36 FR 23379, Dec. 9, 1971, as amended at 37 FR 5124, Mar. 10, 1972]

§ 1627.4 Procedures of the National Selective Service Appeal Board.

(a) An appeal to the President is determined by the National Board by its classification of the registrant.

(b) The National Board shall proceed forthwith to classify any regis-

trant who has not requested a personal appearance after the specified time in which to request a personal appearance has elapsed.

(c) Not less than 15 days in advance of the meeting at which his classification will be considered, the National Board shall inform any registrant who has requested a personal appearance that he may appear at such meeting and present evidence, other than witnesses, bearing on his classification. Should the registrant fail to appear at such meeting, except for good cause he establishes to the satisfaction of the National Board, he shall not be afforded an opportunity to appear at a subsequent meeting. The registrant must file a written statement of the reasons for his failure to appear at his scheduled meeting within 5 days after such failure or the registrant will be deemed to have waived his right to an opportunity to appear at a subsequent meeting. Such 5-day period may be extended by the National Board when it is satisfied that the registrant's failure to file a written statement within such period was due to some cause beyond his control.

(d) The registrant is entitled to 15 minutes for his personal appearance. The National Board may, in its discretion extend the time of the registrant's personal appearance. No registrant may be represented at his personal appearance before the National Board by anyone acting as attorney or legal counsel. The registrant shall not be entitled to present witnesses.

(e) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board or the appeal board has overlooked or to which sufficient weight has not been given. The registrant may present such further information as he believes will assist the National Board in determining his proper classification. The information furnished should be as concise as possible under the circumstances. The registrant may summarize in writing the oral information that he presented. Such summary shall be placed in the registrant's file.

(f) The National Board shall classify a registrant who has requested a personal appearance after (1) he has appeared before the National Board, (2) he withdrew his request to appear, (3) waived his right to an opportunity to appear, or (4) failed to appear without establishing to the satisfaction of the National Board good cause therefor. When a registrant appears before the National Board, only those members of the Board before whom the registrant appeared shall classify him.

(g) In reviewing the appeal and classifying the registrant, the National Board shall not receive or consider any information other than the following:

(1) Information contained in the registrant's record received from the local board;

(2) General information concerning economic, industrial, and social conditions; and

(3) Oral statements by the registrant and written evidence submitted by him to the National Board during his personal appearance.

(h) In the event that the National Board classifies the registrant in a class other than that which he requested it shall record its reasons therefor in his file.

[36 FR 23379, Dec. 9, 1971, as amended at 37 FR 5124, Mar. 10, 1972; 37 FR 24421, Nov. 17, 1972; 37 FR 25716, Dec. 2, 1972]

§ 1627.5 File to be returned after appeal to the President is decided.

When the appeal to the President has been decided, the file shall be returned to the local board through the appropriate State Director of Selective Service.

[36 FR 23379, Dec. 9, 1971]

§ 1627.6 Procedure of local board after file is returned.

When the file of the registrant is received by the local board it shall notify the registrant in writing of the classification given him by the President. Upon the receipt by the local board of a written request by the registrant mailed within 30 days after the mailing of such notice it shall furnish to such registrant a copy of the reasons the National Board classified him

in a class other than that which he requested.

[37 FR 25716, Dec. 2, 1972]

§ 1627.7 Appeal to the President stays an order for induction or for alternate service in lieu of induction.

The local board shall not issue a registrant an order to report for induction or for alternate service in lieu of induction either during the period afforded the registrant to take an appeal to the President or during the period such appeal is pending. Any order to report for induction or for alternate service in lieu of induction which has been issued during either of such periods shall be ineffective and shall be cancelled by the local board. Whenever an appeal to the President has been taken by a person entitled to do so, any order to report for induction or for alternate service in lieu of induction which has previously been issued to the registrant shall be ineffective and shall be cancelled by the local board.

[37 FR 12391, June 23, 1972]

PART 1628—EXAMINATION OF REGISTRANTS

Sec.
1628.1 Who will be examined.
1628.2-1628.5 [Reserved]
1628.6 Order to Report for Armed Forces Examination.
1628.7 Postponement of Armed Forces Examination.
1628.8 Transfer of registrants for examination.
1628.9 Transfer for armed forces examination directed by Director of Selective Service.

AUTHORITY: Military Selective Service Act, as amended, 50 App. U.S.C. secs. 451 et seq.; Executive Order 11623, October 12, 1971.

§ 1628.1 Who will be examined.

(a) Every registrant, before he is ordered to report for induction or ordered to perform alternate service contributing to the maintenance of the national health, safety, or interest, shall have his acceptability for military service determined under standards of acceptability prescribed by the Secretary of Defense, except that a registrant who has volunteered for induction or a registrant who has failed or refused to report for and submit to an armed forces examination may have his acceptability determined at the time he reports for induction.

(b) The Director of Selective Service shall prescribe procedures for the selection and delivery of registrants for armed forces examination.

[36 FR 23380, Dec. 9, 1971, as amended at 38 FR 731, Jan. 4, 1973]

§§ 1628.2-1628.5 [Reserved]

§ 1628.6 Order to Report for Armed Forces Examination.

(a) In accordance with instructions of the Director of Selective Service, the State Director of Selective Service shall periodically issue to each local board in his State an Examination Call on Local Board (SSS Form 202) for registrants to be delivered for armed forces examination and the time and place fixed for their delivery.

(b) Any member or compensated employee of the local board, or any compensated employee of the Selective Service System whose official duties include the performance of administrative duties at a local board, shall select and order for Armed Forces examination registrants in accordance with the instructions of the Director of Selective Service. The date specified for reporting for such examination shall be at least 15 days after the date on which the Order to Report for Armed Forces Examination (SSS Form 223) is mailed, except that a registrant who has volunteered for induction may be ordered to report for such examination on any date after he has so volunteered.

(c) The Director may direct the cancellation of an order for Armed Forces examination for any registrant prior to his failing or refusing to report for or submit to such examination.

[36 FR 23380, Dec. 9, 1971, as amended at 37 FR 26592, Dec. 14, 1972; 38 FR 35463, Dec. 28, 1973]

§ 1628.7 Postponement of Armed Forces Examination.

The issuance of an Order to Report for Armed Forces Examination (SSS Form 223) may be delayed in case of

death of a member of the registrant's immediate family, extreme emergency involving a member of the registrant's immediate family, serious illness of the registrant, or other emergency beyond the registrant's control. The forwarding of a registrant for examination under an Order to Report for Armed Forces Examination (SSS Form 223) may be postponed by the local board to a date certain not later than 60 days from the date of such postponement in case of death of a member of the registrant's immediate family, extreme emergency involving a member of the registrant's immediate family, serious illness of the registrant, or other emergency beyond the registrant's control. The Director or State Director of Selective Service may, for good cause, direct the local board to extend such postponement. Any postponement under this section shall be terminated whenever the cause therefor has ceased to exist or upon the request of the registrant.

[37 FR 8666, Apr. 29, 1972]

§ 1628.8 Transfer of registrants for examination.

(a) Any registrant who has received an Order to Report for Armed Forces Examination (SSS Form 223) and who is so far from his own local board that reporting to his own local board would be a hardship may, subject to the provisions of this section, be transferred for armed forces examination to the local board having jurisdiction of the area in which he is at that time located.

(b) Any such registrant desiring to be so transferred shall immediately report to the local board having jurisdiction of the area in which he is at that time located, present his Order to Report for Armed Forces Examination (SSS Form 223) and apply for transfer by completing Part 1 of Transfer for Armed Forces Examination or Induction (SSS Form 230).

(c) The registrant shall be required to report in accordance with the Order to Report for Armed Forces Examination (SSS Form 223), which he received from his own local board, if his application for transfer is disapproved.

[36 FR 23380, Dec. 9, 1971]

§ 1628.9 Transfer for armed forces examination directed by Director of Selective Service.

(a) The Director of Selective Service may direct that a particular registrant or a registrant who comes within a described group of registrants be transferred for armed forces examination to such local board or local boards as he shall designate.

[36 FR 23380, Dec. 9, 1971]

PART 1630—VOLUNTEERS

Sec.
1630.1 Who may volunteer.
1630.2 Where person may volunteer.
1630.3 Registration of certain volunteers.
1630.4 Classification of volunteers.

AUTHORITY: Sec. 10, 62 Stat. 618, as amended; 50 U.S.C. App. 460.

§ 1630.1 Who may volunteer.

(a) Any registrant who has attained the age of 18 years and who has not attained the age of *26* years and who has not discharged his current military obligation under the Military Selective Service Act may volunteer for induction into the Armed Forces other than as a medical, dental, or allied specialist by completing and filing with his local board an Application for Voluntary Induction (SSS Form 254) which shall be completed and filed in duplicate if he has not attained the age of 18 years and 6 months. A registrant in class 1-AM may volunteer for induction as a medical, dental, or allied specialist in accordance with § 1680.10 of this chapter.

(b) Any person who has attained the age of 17 years and who has not attained the age of 18 years may volunteer for induction into the Armed Forces by completing and filing with his local board two copies of the Application for Voluntary Induction (SSS Form No. 254) on both copies of which the consent to his induction has been signed by his parents or guardian.

[E.O. 10984, 27 FR 198, Jan. 9, 1962, as amended at 38 FR 733, Jan. 4, 1973]

§ 1630.2 Where person may volunteer.

(a) If a man has been registered and desires to volunteer for induction, he

may so volunteer only through his own local board. If a man has not been registered and desires to volunteer for induction, he may register and then volunteer, but may do so only through the local board having jurisdiction of the area in which his place of residence is located.

(b) A registrant who is so far from his local board that it would be a hardship for him to appear in person at such local board in order to volunteer may present himself at the local board having jurisdiction of the area in which he is at the time located, and such local board shall assist him by correspondence or other means to volunteer through his own local board to the end that all uncompleted procedure with reference to such man's registration, classification, selection, and induction may be completed as soon as possible, including when necessary, transfer for classification, transfer for physical examination, transfer for delivery, or any of such steps which may be considered proper for the purpose.

[E.O. 10202, 16 FR 391, Jan. 16, 1951, as amended by E.O. 10292, 16 FR 9862, Sept. 28, 1951]

§ 1630.3 Registration of certain volunteers.

(a) If a person who is required to be registered but who has failed to register volunteers for induction, he shall be registered and shall be given a selective service number in the same manner as in the case of a late registrant.

(b) If a person not required to be registered volunteers for induction, including a person who volunteers under the provisions of paragraph (b) of § 1630.1, he shall be registered and shall be given a selective service number in exactly the same manner as any other registrant.

(c) In registering the volunteer, the local board shall follow the procedure set forth in part 1613 of this chapter, and the local board for the area in which is located the place of residence of the registrant indicated in item 2 of the Registration Card (SSS Form No. 1) shall have jurisdiction of such registrant.

[E.O. 10202, 16 FR 391, Jan. 16, 1951, as amended by E.O. 10809, 24 FR 2256, Mar. 21, 1959; E.O. 10984, 27 FR 198, Jan. 9, 1962]

§ 1630.4 Classification of volunteers.

(a) When a registrant who is not in a deferred class files an Application for Voluntary Induction (SSS Form 254) he shall be processed for induction regardless of the class in which he is classified.

(b) When a registrant in a deferred class other than Class 4-F files an Application for Voluntary Induction (SSS Form 254) he shall be classified in Class 1-A as soon as possible.

(c) When a registrant in Class 1-A-O files an Application for Voluntary Induction (SSS Form 254) he shall be processed for induction.

[37 FR 8666, Apr. 29, 1972]

PART 1631—ALLOCATION OF INDUCTIONS

Sec.

1631.1 Random selection sequence for induction.
1631.2 Allocation of inductions under random selection.
1631.3 Calls by the Secretary of Defense.
1631.4 Allocations by the Director of Selective Service.
1631.5 Allocations by State Director of Selective Service.
1631.6 Action by local board upon receipt of allocation.

AUTHORITY: Military Selective Service Act, as amended, 50 App. U.S.C. secs. 451 et seq.; Executive Order 11623, Oct. 12, 1971.

§ 1631.1 Random selection sequence for induction.

The Director of Selective Service shall establish a random selection sequence for induction. Such random selection sequence will be established by a drawing to be conducted in the place and, on a date the Director shall fix, and shall be applied nationwide. The random selection method shall use 365 days or, when appropriate, 366 days to represent the birthdays (month and day only) of all registrants who, during the specified calendar year(s) attained their 18th year of age. The drawing, commencing with the first

day selected and continuing until all 365 days or, when appropriate, 366 days are drawn, shall be accomplished impartially. The random selection sequence thus obtained shall, in accordance with the Selective Service Regulations, determine the order of selection of such registrants. The random sequence number thus determined for any registrant shall apply to him so long as he remains subject to induction for military training and service by random selection. A random sequence number established for a registrant shall be equivalent, for purposes of selection, to the same random sequence established for other registrants in other drawings, including the drawings of December 1, 1969, and of July 1, 1970, and the random selection sequences obtained in those drawings shall continue to determine the order of selection of the registrants covered thereby in accordance with the Selective Service Regulations. Selection among registrants who have the same random sequence number shall be based upon the supplemental drawing conducted December 1, 1969, which determined alphabetically a random selection sequence by name.

[41 FR 56803, Dec. 30, 1976]

§ 1631.2 Allocation of inductions under random selection.

When persons are selected for training and service in accordance with random selection, allocations of inductions shall be placed under such rules and regulations as the Director of Selective Service may prescribe.

[36 FR 23381, Dec. 9, 1971]

§ 1631.3 Calls by the Secretary of Defense.

The Secretary of Defense may from time to time place with the Director of Selective Service a call or requisition for men required for induction into the Armed Forces.

[36 FR 23381, Dec. 9, 1971, as amended at 38 FR 733, Jan. 4, 1973]

§ 1631.4 Allocations by the Director of Selective Service.

(a) The Director of Selective Service shall, upon receipt of a call or requisition from the Secretary of Defense for men to be inducted into the Armed Forces, issue a call or requisition to the several States.

[36 FR 23381, Dec. 9, 1971, as amended at 38 FR 733, Jan. 4, 1973]

§ 1631.5 Allocations by State Director of Selective Service.

The State Director of Selective Service shall direct each local board to select and deliver men for induction in accordance with the rules and regulations as the Director of Selective Service may prescribe.

[36 FR 23381, Dec. 9, 1971]

§ 1631.6 Action by local board upon receipt of allocation.

(a) When an allocation is received from the State Director of Selective Service, any member or compensated employee of the local board, or any compensated employee of the Selective Service System whose official duties include the performance of administrative duties at a local board, shall select as provided herein, and issue orders to report for induction to those men required to fill the call from among its registrants who have been classified in Class 1-A or Class 1-A-O and have been found acceptable for service in the Armed Forces and to whom a Statement of Acceptability (DD Form 62) has been mailed: *Provided*, That notwithstanding Part 1628 or any other provision of these regulations, when a registrant in whatever classification has refused or otherwise failed to comply with an order or his local board to report for and submit to an Armed Forces examination, he may, after he is classified into Class 1-A or 1-A-O be selected and ordered to report for induction even though he has not been found acceptable for service in the Armed Forces and a Statement of Acceptability (DD Form 62) has not been mailed to him, and in such case the Armed Forces examination shall be performed after he has reported for induction as ordered and he shall not be inducted until his acceptability has been satisfactorily determined: *Provided further*, That a registrant who has volunteered for induction may be selected and ordered to report for induction to fill an induction call notwithstanding the fact that he has not been found acceptable for

80-109 O—81——18

service in the Armed Forces and regardless of whether or not a Statement of Acceptability (DD Form 62) has been mailed to him, but in such case the Armed Forces examination shall be performed after he has reported for induction as ordered and he shall not be inducted until his acceptability has been satisfactorily determined.

(b) Registrants shall be selected and ordered to report for induction in the following categories and in the order indicated: *Provided*, That a registrant who has been identified, in accord with procedures prescribed by the Director of Selective Service, as one who will become a member of one of the following categories on the next January 1, may, prior to January 1, be selected and ordered to report for induction on a date after January 1 as a member of such category:

(1) Volunteers who have not attained the age of 26 years in the sequence in which they have volunteered for induction.

(2) Nonvolunteers in the Extended Priority Selection Group who have not attained the age of 26 years in the order in which their random sequence number had been reached.

(3) Nonvolunteers in the First Priority Selection Group for the current calendar year in the order of their random sequence number established by random selection procedures prescribed in accordance with § 1631.1.

(4) Nonvolunteers who have not attained the age of 26 years in each of the lower priority selection groups, in turn, within the group in the order of their random sequence number established by random selection procedures prescribed in accordance with § 1631.1.

(5) Nonvolunteers who have attained the age of 19 years during the calendar year but who have not attained the age of 20 years, in the order of their random sequence number established by random selection procedures prescribed in accordance with § 1631.1.

(6) Nonvolunteers who have attained the age of 26 years and each year thereafter in turn, most recent year first, within the year group in the order of their random sequence number established by random selection procedures prescribed in accordance with § 1631.1: *Provided*, That the random sequence number established on December 1, 1969, will apply to any registrant born prior to January 1, 1944.

(7) Nonvolunteers who have attained the age of 18 years and 6 months and who have not attained the age of 19 years in the order of the random sequence number established by random selection procedures prescribed in accordance with § 1631.1 for registrants who during the current calendar year have attained the age of 19 years but who have not attained the age of 20 years.

(c) Definitions:

(1) Extended priority selection group consists of registrants who were members of the first priority selection group for the calendar year 1973 or for any subsequent calendar year and who were not inducted when their random sequence number was reached.

(2) First priority selection group for each calendar year consists of registrants who prior to January of such calendar year have attained the age of 19 years but not of 20 years.

(3) Lower priority selection groups: One or more priority selection groups lower than the first priority selection group in a given year.

(4) "Reached" random sequence number: A registrant's random sequence number will be deemed to have been "reached" if such number is equal to or lower than the highest random sequence number set by the Director of Selective Service for induction for that calendar year for registrants in that priority selection group.

(d) Procedures:

(1) Local boards shall identify registrants in the appropriate groups as provided in this section.

(2) Members of the first priority selection group on December 31 in any calendar year whose random sequence number had been reached but who had not been inducted during the calendar year shall be assigned to the extended priority selection group.

(3) Members of the first priority selection group on December 31 in any calendar year whose random sequence number had not been reached shall be assigned to a lower priority selection group.

(4) On December 31 of each year, each priority selection group below the first priority selection group shall be reduced one step further in priority. In this manner the second priority selection group would become the third, the third would become the fourth, and so on.

(5) Whenever the Secretary of Defense fails to place a call for the induction of men into the Armed Forces in any calendar year, registrants in the extended priority selection group who were members of the first priority selection group in the immediately preceding calendar year shall be assigned to a lower priority selection group.

[36 FR 23381, Dec. 9, 1971, as amended at 37 FR 26592, Dec. 14, 1972; 38 FR 13485, May 22, 1973; 39 FR 44017, Dec. 20, 1974]

PART 1632—DELIVERY AND INDUCTION

GENERAL

Sec.
1632.1 Order to report for induction.
1632.2 Postponement of induction; general.

TRANSFER FOR INDUCTION

1632.10 Transfer for induction.
1632.12 Enlistment of registrants ordered for induction.

INDUCTION

1632.16 Induction.

AUTHORITY: Sec. 10, 62 Stat. 618, as amended; 50 U.S.C. App. 460.

GENERAL

§ 1632.1 Order to report for induction.

(a) Immediately upon determining which men are to report for induction, the local board shall prepare for each man an Order to Report for Induction (SSS Form 252). The date specified to report for induction shall be at least 30 days after the date on which the Order to Report for Induction (SSS Form 252) is mailed, except that a registrant who has volunteered for induction may be ordered to report for induction on any date after he has so volunteered.

(b) Any registrant who has been ordered for induction and who is distant from his local board of origin, must report at the time and place specified on the notice ordering him for induction, unless he voluntarily submits to processing for induction at any Armed Forces Examining and Entrance Station and is actually inducted into the Armed Forces on or before the third day prior to the day that he was required to report in accordance with his local board's induction order.

(c) If the registrant is inducted or if the registrant is found not qualified for induction pursuant to paragraph (b) of this section, the Armed Forces Examining and Entrance Station shall inform the local board which ordered the registrant for induction of such event, and in either event the registrant shall not be required to comply with the local board's order.

(d) The Director may direct the cancellation of an order to report for induction for any registrant prior to his failing or refusing to report for induction.

(e) No local board shall issue an order to report for induction or alternate service to a registrant who is an alien unless he shall have resided in the United States for one year. When such a registrant has been within the United States for two or more periods (including periods before his registration) and the total of such periods equals one year, he shall be deemed to have resided in the United States for one year. In computing the length of such periods, any portion of one day shall be counted as a day.

[36 FR 23383, Dec. 9, 1971, as amended at 38 FR 35464, Dec. 28, 1973; 39 FR 44017, Dec. 20, 1974]

§ 1632.2 Postponement of induction; general.

(a) In case of death of a member of the registrant's immediate family, extreme emergency involving a member of the registrant's immediate family, serious illness of the registrant, or other emergency beyond the registrant's control, the local board may, after the Order to Report for Induction (SSS Form 252) has been issued, postpone until a date certain the time when such registrant shall report but such date shall not be later than 60 days from the date of such postponement. In case of imperative necessity,

the local board may grant one further postponement to a date certain but such date shall not be later than 60 days from the date of such postponement.

(b) The Director of Selective Service or any State Director of Selective Service (as to registrants registered within his State) may, for a good cause, at any time prior to the issuance of an Order to Report for Induction (SSS Form 252), postpone the issuance of such order until such time as he may deem advisable, or the Director of Selective Service or any State Director of Selective Service (as to registrants registered within his State) may, for good cause, at any time after the issuance of an Order to Report for Induction (SSS Form 252), postpone the induction of a registrant until such time as he may deem advisable.

(c) The local board shall postpone the induction of a registrant in accord with section 6(i)(1) or section 6(i)(2) of the Military Selective Service Act.

(d) The local board shall issue to each registrant whose induction is postponed a Postponement of Induction (SSS Form 264). A copy of such form shall be mailed to the State Director of Selective Service, and a copy filed in the registrant's Cover Sheet (SSS Form 101). The local board shall note the date of the granting of the postponement and the date of its expiration in the "Remarks" column of the Classification Record (SSS Form 102).

(e) A postponement authorized in paragraph (b) or (c) of this section in excess of 60 days or without limit may be terminated when the issuing authority so directs and upon not less than 30 days nor more than 60 days notice to the registrant. The registrant shall then report for induction at such time and place as may be fixed by the local board.

(f) No registrant whose induction has been postponed shall be inducted into the Armed Forces during the period of any such postponement. A postponement of induction shall not render invalid the Order to Report for Induction (SSS Form 252) which has been issued to the registrant but shall operate only to postpone the reporting date and the registrant shall report on the new date without having issued to him a new Order to Report for Induction (SSS Form 252).

[37 FR 5125, Mar. 10, 1972, as amended at 37 FR 23320, Nov. 2, 1972]

Transfer for Induction

§ 1632.10 Transfer for induction.

(a) *The Director of Selective Service* may direct that a particular registrant or a registrant who comes within a described group of registrants be transferred for induction to such local board or local boards as he shall designate.

(b) Whenever a transfer of induction has been directed in accord with paragraph (a) of this section, such transfer will be accomplished in the manner prescribed by the Director of Selective Service.

[37 FR 17966, Sept. 2, 1972]

§ 1632.12 Enlistment of registrants ordered for induction.

Whenever a local board receives official notification that one of its registrants to whom an induction order has been issued has been enlisted or appointed in the Armed Forces of the United States, including the Reserve components thereof, and the date of enlistment or appointment is at least 10 days prior to his scheduled reporting date for induction it shall reopen his classification and classify him anew.

[39 FR 44017, Dec. 20, 1974]

Induction

§ 1632.16 Induction.

At the induction station the selected men who have been forwarded for induction and found qualified will be inducted into the Armed Forces.

[E.O. 10984, 27 FR 201, Jan. 9, 1962]

PART 1641—DUTY OF REGISTRANTS

Sec.

1641.1 Reporting by registrants of their current status.
1641.2 [Reserved]
1641.3 Waiver of right or privilege.

Sec.
1641.4 Duty to report for and submit to Armed Forces examination.
1641.5 Duty to report for and submit to induction.
1641.6 Effect of failure to have unaltered documents in personal possession.

AUTHORITY: Military Selective Service Act, as amended (50 App. U.S.C. sections 451 et seq.).

SOURCE: 37 FR 17966, Sept. 9, 1972, unless otherwise noted.

§ 1641.1 Reporting by registrants of their current status.

(a) It shall be the duty of every registrant, so long as his file is actively maintained by his local board, to keep his local board currently informed in writing of the address where mail will reach him.

(b) It shall be the duty of every registrant until his liability for training and service has terminated, to inform his local board in writing of his entrance into a professional course of study leading to a professional degree in a medical, dental or allied specialist category, together with his current address, and to inform his local board in writing of the receipt of any such professional degree, together with his current address.

(c) It shall be the duty of every registrant to submit to his local board information concerning his status within ten days after the date on which the local board mails him a request therefor, or within such longer period as may be fixed by the local board.

[39 FR 44017, Dec. 20, 1974]

§ 1641.2 [Reserved]

§ 1641.3 Waiver of right or privilege.

If a registrant fails to claim and exercise any right or privilege within the required time, he shall be deemed to have waived the right or privilege.

§ 1641.4 Duty to report for and submit to Armed Forces examination.

(a) When the local board mails to a registrant an Order to Report for Armed Forces Examination (SSS Form 223), it shall be the duty of the registrant to report for such examination at the time and place fixed in such order unless, after the date the Order to Report for Armed Forces Examination (SSS Form 223) is mailed and prior to the time fixed therein for the registrant to report for his armed forces examination, the local board cancels such Order to Report for Armed Forces Examination (SSS Form 223) or postpones that time when such registrant shall so report and advises the registrant in writing of such cancellation or postponement.

(b) If the time when the registrant is ordered to report for Armed Forces examination is postponed, it shall be the duty of the registrant to report for Armed Forces examination upon the termination of such postponement and he shall report for Armed Forces examination at such time and place as may be fixed by the local board. Regardless of the time when or the circumstances under which a registrant fails to report for Armed Forces examination when it is his duty to do so, it shall thereafter be his continuing duty from day to day to report for Armed Forces examination to his local board and to each local board whose area he enters or in whose area he remains.

(c) Upon reporting for Armed Forces examination, it shall be the duty of the registrant (1) to follow the instructions of a member, executive secretary, or local board clerk as to the manner in which he will be transported to the location where his Armed Forces examination will take place, (2) to obey the instructions of the leader or assistant leaders appointed for the group being forwarded for Armed Forces examination, (3) to appear at the place where such examination will be accomplished, (4) to obey the orders of the representatives of the Armed Forces while at the place where his examination will be accomplished, (5) to submit to examination, and (6) to follow the instructions of a member, executive secretary, or clerk of the local board as to the manner in which he will be transported on his return trip from the place where his Armed Forces examination takes place.

§ 1641.5 Duty to report for and submit to induction.

(a) When the local board orders the registrant for induction it shall be the duty of the registrant to report for induction at the time and place ordered by the local board. If the time when the registrant is ordered to report for induction is postponed, it shall be the continuing duty of the registrant to report for induction at such time and place as may be ordered by the local board. Regardless of the time when or the circumstances under which a registrant fails to report for induction when it is his duty to do so, it shall thereafter be his continuing duty from day to day to report for induction to his local board.

(b) Upon reporting for induction, it shall be the duty of the registrant (1) to follow the instructions of a member or clerk of the local board as to the manner in which he shall be transported to the location where his induction will be accomplished, (2) to obey the instructions of the leader or assistant leaders appointed for the group being forwarded for induction, (3) to appear at the place where his induction will be accomplished, (4) to obey the orders of the representatives of the Armed Forces while at the place where his induction will be accomplished, (5) to submit to induction, and (6) if he is found not qualified for induction, to follow the instructions of the representatives of the Armed Forces as to the manner in which he will be transported on his return trip to the local board.

§ 1641.6 Effect of failure to have unaltered documents in personal possession.

The failure of any person to have his registration certificate (SSS Form 2) or status card (SSS Form 7) in his personal possession shall be prima facie evidence of his not having registered.

[39 FR 44017, Dec. 20, 1974]

PART 1655—REGISTRATION OF UNITED STATES CITIZENS OUTSIDE OF THE UNITED STATES AND CLASSIFICATION OF SUCH REGISTRANTS

GENERAL

Sec.
1655.1 Applicability of regulations in this part.

REGISTRATION

1655.2 Duty to register.
1655.3 Appointment of registrars.
1655.4 [Reserved]
1655.5 District of Columbia Local Board No. 100 (Foreign).

AUTHORITY: Sec. 10, 62 Stat. 618, as amended; 50 U.S.C. App. 460.

GENERAL

§ 1655.1 Applicability of regulations in this part.

The registration of citizens of the United States outside of the United States not previously registered and the classification of registrants who are outside of the United States shall be governed by the provisions of the regulations in this part and the provisions of such other regulations in this chapter as are not in conflict with the provisions of this part.

[E.O. 10344, 17 FR 3481, Apr. 19, 1952]

REGISTRATION

§ 1655.2 Duty to register.

(a) Unless he is a person excepted from registration by section 6(a) of the Military Selective Service Act of 1967, every male citizen of the United States outside the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, and the Canal Zone who has not been registered and who on July 31, 1952, had attained or who thereafter shall have attained the eighteenth anniversary of the day of his birth and who on July 31, 1952, had not attained the twenty-sixth anniversary of the day of his birth, is required, on the day or days fixed by Proclamation of the President, to present himself for and submit to registration before—

(1) Any diplomatic or consular officer of the United States who is a citizen of the United States, all of whom are hereby appointed chief registrars; or

(2) Any other person who may be appointed by the Director of Selective Service as chief registrar; or

(3) Any registrar appointed as provided in § 1655.3.

(b) Any person subject to registration under the provisions of this section who, because of circumstances over which he has no control, is prevented from presenting himself for and submitting to registration on the day or any of the days and in the manner required by the Proclamation of the President, shall present himself for and submit to registration immediately upon its becoming possible for him to do so.

[E.O. 10344, 17 FR 3481, Apr. 19, 1952, as amended by E.O. 10837, 24 FR 7506, Sept. 17, 1959, E.O. 11360, 32 FR 9788, July 4, 1967]

§ 1655.3 Appointment of registrars.

Any chief registrar is authorized to appoint any reliable citizen of the United States as a registrar. Whenever necessary such appointment may be made by mail. Before entering upon his duties, every person appointed as chief registrar or as registrar shall sign the oath of office portion of the Oath of Office and Waiver of Pay or Compensation-Foreign (SSS Form No. 450) and, unless he is in the employ of the United States, also shall sign the waiver of pay or compensation portion of that form. When so signed, the Oath of Office and Waiver of Pay or Compensation-Foreign (SSS Form No. 450) shall be transmitted to the Director of Selective Service.

[E.O. 10344, 17 FR 3481, Apr. 19, 1952]

§ 1655.4 [Reserved]

§ 1655.5 District of Columbia Local Board No. 100 (Foreign).

(a) There is hereby created and established a local board designated as District of Columbia Local Board No. 100 (Foreign) which shall consist of three or more members and which shall have its office in the District of Columbia. Such local board shall act as an independent local board and shall have all the rights, powers, duties, and responsibilities of a local board.

(b) District of Columbia Local Board No. 100 (Foreign) shall have jurisdiction for all purposes under selective service law over any person who at the time of his registration under the provisions of the regulations in this part does not designate for entry in item 2 of his registration card (SSS Form 1) an address of a place within the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, or the Canal Zone.

[E.O. 10344, 17 FR 3481, Apr. 19, 1952, as amended by E.O. 10837, 24 FR 7506, Sept. 17, 1959; 37 FR 25716, Dec. 2, 1972]

PART 1660—ALTERNATE SERVICE

Sec.

1660.1 Responsibility for administration.
1660.2 Examination of registrants.
1660.3 Volunteer for alternate service.
1660.4 Selection of nonvolunteer for alternate service.
1660.5 Eligible employers of registrants performing alternate service.
1660.6 Eligible jobs for registrants performing alternate service.
1660.7 Assigning alternate service.
1660.8 Performance of alternate service.
1660.9 Administration of alternate service.
1660.10 Release from alternate service.
1660.11 Completion of alternate service.
1660.12 Information concerning alternate service.

AUTHORITY: Sec. 6(j) of the Military Selective Service Act, as amended (50 App. U.S.C. secs. 451 et seq.).

SOURCE: 36 FR 23384, Dec. 9, 1971, unless otherwise noted.

§ 1660.1 Responsibility for administration.

(a) The State director, under the supervision of the Director, will assure compliance with the law, the regulations, and Selective Service policy concerning the program of alternate service for registrants who have been classified in class 1-O.

(b) The State director of the State in which a registrant is registered will have primary responsibility for the initial placement of the registrant in alternate service. That State director

will coordinate any job placement activities in any State outside his own with the State director of that State. In assigning a registrant outside his own State, the assigning State director must have the approval of the "receiving" State director or the Director of Selective Service.

(c) Alternate service to be performed outside the geographical area under the jurisdiction of any State director will be administered by the Director of Selective Service after the assignment to such work has been made by the State director.

[36 FR 23384, Dec. 9, 1971, as amended at 37 FR 5127, Mar. 10, 1972]

§ 1660.2 Examination of registrants.

A registrant classified in Class 1-O shall be ordered to report for Armed Forces examination in accord with the provisions of Part 1628 of this chapter. If he fails to report for or submit to this examination, or if he is found to be qualified for military service, he will be selected for alternate service in accord with § 1660.4.

[37 FR 24898, Nov. 23, 1972]

§ 1660.3 Volunteer for alternate service.

Only registrants classified in Class 1-O may volunteer for alternate service in lieu of induction. Any registrant in Class 1-O may submit Application of Volunteer for Alternate Service (SSS Form 151) to his local board. If the volunteer wishes to propose jobs which he feels would be approved for his alternate service he will submit each job on an Employer's Statement of Availability of a Job as Alternate Service (SSS Form 156) simultaneously with his completed Application of Volunteer for Alternate Service (SSS Form 151). The State Director will approve or disapprove the proposed jobs. If the registrant fails to locate a suitable job or if the jobs submitted on the Employer's Statement of Availability of a Job as Alternate Service (SSS Form 156) are not approved, the State Director will not request the issuance of the Order to Report for Alternate Service (SSS Form 153) until the registrant would have been issued an Order to Report for Alternate Service (SSS Form 153) in accordance with § 1660.4 had he not volunteered.

[37 FR 24898, Nov. 23, 1972]

§ 1660.4 Selection of nonvolunteer for alternate service.

(a) Any member or compensated employee of the local board, or any compensated employee of the Selective Service System whose official duties include the performance of administrative duties at a local board, will issue to a registrant classified in Class 1-O an order to report for alternate service (SSS Form 153) together with Conscientious Objectors Skills Questionnaire (SSS Form 152) and three copies of Employer's Statement of Availability of a Job as Alternate Service (SSS Form 156) at the same time that he would be issued an order to report for induction (SSS Form 252) were he classified in Class 1-A or 1-A-O. Such order to report for alternate service (SSS Form 153) shall specify the place and a date on which the registrant is to report for alternate service in accord with the instructions of the State Director. The date specified shall be not earlier than 70 days after such order is mailed.

(b) If a registrant to whom an Order to Report for Alternate Service (SSS Form 153) has been issued submits within 60 days after the issuance of such order a proposed job that is approved by the State Director, a suitable Amendment to Order to Report for Alternate Service (SSS Form 153A) will be issued by the registrant's local board in accord with instructions of the State Director.

(c) A registrant in Class 1-O who would be eligible for Class 1-AM were he not in 1-O will be ordered to alternate service in lieu of induction at the time that he would be ordered for induction if he were in Class 1-AM.

(d) The Director may direct the cancellation of an order to report for alternate service for any registrant prior to his failing or refusing to report for alternate service.

[37 FR 24898, Nov. 23, 1972, as amended at 37 FR 26593, Dec. 14, 1972; 38 FR 734, Jan. 4, 1973; 38 FR 15627, June 14, 1973]

§ 1660.5 Eligible employers of registrants performing alternate service.

Employment which may be considered to be appropriate as alternate service in lieu of induction into the Armed Forces by registrants who have been classified in Class 1-O shall be limited to the following:

(a) Employment by the U.S. Government, or by a State, Territory, or possession of the United States or by a political subdivision thereof, or by the District of Columbia;

(b) Employment by a nonprofit organization, association, or corporation which is primarily engaged either in a charitable activity conducted for the benefit of the general public or in carrying out a program for the improvement of the public health or welfare, including educational and scientific activities in support thereof, when such activity or program is not principally for the benefit of the members of such organization, association, or corporation, or for increasing the membership thereof; or

(c) Employment in an activity of an organization, association, or corporation which is either charitable in nature performed for the benefit of the general public or is for the improvement of the public health or welfare, including educational and scientific activities in support thereof, and when such activity or program is not for profit.

§ 1660.6 Eligible jobs for registrants performing alternate service.

(a) Five elements will be considered as a basis for determining whether a specific job is acceptable as alternate service for a registrant classified in Class 1-O:

(1) *National Health, Safety or Interest.* The job must fulfill specifications of the law and regulations.

(2) *Noninterference with the competitive labor market.* The registrant cannot be assigned to a job for which there are more numerous qualified applicants not in Class 1-O than spaces available. This restriction does not prohibit the approval of special programs such as Peace Corps or VISTA for alternate service by registrants in Class 1-O.

(3) *Compensation.* The compensation will provide a standard of living to the registrant reasonably comparable to the standard of living the same man would have enjoyed had he gone into the service.

(4) *Skill and talent utilization.* A registrant may utilize his special skills.

(5) *Job location.* A registrant will work outside his community of residence. Paragraphs (a)(3), (4), and (5) of this section are waiverable by the State director when such action is determined to be in the national interest and would speed the placement of registrants in alternate service.

[36 FR 23384, Dec. 9, 1971, as amended at 37 FR 5127, Mar. 10, 1972]

§ 1660.7 Assigning alternate service.

(a) [Reserved]

(b) A registrant classified in Class 1-O may submit Employer's Statement of Availability of a Job as Alternate Service (SSS Form 156) or a letter from an employer to the State director at any time within 60 days following the issuance to him of an Order to Report for Alternate Service (SSS Form 153). The State director will determine whether the proposed job is acceptable. When a job is approved, the registrant's local board will issue an appropriate Amendment to Order to Report for Alternate Service (SSS Form 153A) in accord with instructions of the State director.

(c) Any time the State director disapproves a job proposed by the registrant in accord with paragraph (b) of this section, he will inform the registrant of his decision within 15 days after the State director receives such form. The registrant may request that the State director's decision(s) be reviewed by the Director. The registrant's case will be considered by the Director on only one occasion in accordance with this paragraph, but the registrant may request a review of as many as three adverse decisions on jobs in this one review. If the Director approves a job proposed by the registrant he shall direct the registrant's local board to issue an appropriate Amendment to Order to Report for Alternate Service (SSS Form 153A).

(d) A registrant classified in Class 1-O may take a job anticipating that it might later be approved as alternate service. If such a job is approved, the registrant will be credited with having performed acceptable service, when in fact he has performed such service, from the date he started the job, or the date he was classified in Class 1-O, whichever is later.

(e) An order to report for alternate service will be deemed an order to report for induction within the meaning of § 1632.2 of this chapter.

[37 FR 24898, Nov. 23, 1972, as amended at 38 FR 15627, June 14, 1973]

§ 1660.8 Performance of alternate service.

Any registrant who knowingly fails or neglects to obey an order from his local board to perform alternate service contributing to the maintenance of the national health, safety, or interest in lieu of induction or who constructively fails or neglects to obey such order by his failure to comply with reasonable requirements of an employer shall be deemed to have knowingly failed or neglected to perform a duty required of him under the Military Selective Service Act. The registrant shall have failed to meet the standards or failed to perform satisfactorily if he did not meet the standards of performance demanded by the employer of his other employees in similar jobs.

§ 1660.9 Administration of alternate service.

(a) Whenever a registrant is refused employment by an employer who had previously agreed to hire him, whenever the registrant refuses employment, whenever a registrant's employment is terminated, or whenever he leaves his job, the State director administering the registrant's case will consider the circumstances surrounding the refusal, termination, or departure to determine whether the registrant had failed to perform his job or to conduct himself satisfactorily.

(b) Whenever the State Director has reason to believe that a registrant was refused employment, or the registrant refused or constructively refused employment or was relieved for cause or left his job without authority he will determine whether the registrant was at fault. If he determines that the registrant was at fault, he may report the registrant for prosecution or he may request the registrant's local board to order the registrant to an appropriate job by issuing an Amendment to Order to Report for Alternate Service (SSS Form 153A). Time not spent on an approved job will not be creditable toward completion of his alternate service obligation.

(c) If the State Director finds no failure of the registrant to perform satisfactorily, he will request the registrant's local board to order the registrant to an appropriate job by issuing an Amendment to Order to Report for Alternate Service (SSS Form 153A). If the registrant complies with the order, the intervening time between jobs will not constitute a break in the required period of alternate service.

(d) The State Director may reassign a working registrant at any time he determines (1) that the job to which the registrant is assigned ceases to be acceptable as alternate service as defined in § 1660.6, or (2) that there is a hardship, medical, or other bona fide basis for such reassignment. To reassign the registrant, the State Director shall request the registrant's local board to issue an Amendment to Order to Report for Alternate Service (SSS Form 153A). Prior to the issuance of an Amendment to Order to Report for Alternate Service (SSS Form 153A) in accord with this paragraph, the registrant is required to continue in the alternate service to which he had been ordered most recently.

(e) The Director of Selective Service or the State Director of Selective Service will issue travel orders, tickets or transportation requests and meal and lodging requests to the registrant for his travel (1) from the office of his local board or local board nearest the place of his residence at the time he is selected for alternate service to the place of performance of the alternate service to which he is ordered within the United States, (2) for his return travel from such place to the office of the local board from which he traveled to the place of performing alternate service upon his satisfactorily completing his period of work or his

travel to any other place upon his satisfactorily completing his period of alternate service whenever the cost of such transportation would not exceed the cost of travel to the local board from which he traveled, and (3) for his travel from one place of employment to another when his employment is transferred under the provisions of paragraph (c) or (d) of this section.

(f) No action shall be required of a registrant by an Amendment to Order to Report for Alternate Service (SSS Form 153A) without his consent within 10 days after the issuance of such form.

[36 FR 23384, Dec. 9, 1971, as amended at 39 FR 44019, Dec. 20, 1974]

§ 1660.10 Release from alternate service.

The State Director of the State in which a registrant is working or the Director may release a registrant prior to his completion of 24 months of service upon a determination of hardship, medical, or other bona fide basis for such early release. If the registrant is working outside the State in which he is registered, the decision should be made in consultation with the State Director of the State in which the registrant is registered.

[39 FR 44020, Dec. 20, 1974]

§ 1660.11 Completion of alternate service.

When a registrant's local board is informed by the State Director that the registrant has been released from alternate service after six months or more of satisfactory service, the local board shall classify the registrant in Class 4-W and issue a Certificate of Release from Alternate Service (SSS Form 154).

[39 FR 44020, Dec. 20, 1974]

§ 1660.12 Information concerning alternate service.

A registrant who is outside the area of his local board may seek information relative to any aspect of processing for alternate service from the local board or State director of his new place of residence. The assisting State director or local board will not assume the responsibility of the State director or local board of jurisdiction.

PART 1661—CLASSIFICATION OF CONSCIENTIOUS OBJECTORS

Sec.

1661.1 Purpose; definitions.
1661.2 The claim of conscientious objection.
1661.3 Basis for classification in Class 1-A-O or Class 1-A-OM.
1661.4 Basis for classification in Class 1-O or Class 1-OM.
1661.5 Exclusion from Class 1-A-O, Class 1-A-OM, Class 1-O, and Class 1-OM.
1661.6 Analysis of religious training and belief.
1661.7 Impartiality.
1661.8 Determination as to whether claim is prima facie.
1661.9 Considerations relevant to granting or denying a prima facie claim for classification as a conscientious objector.
1661.10 Types of decisions.
1661.11 Statement of reasons for denial.

AUTHORITY: Military Selective Service Act, as amended (50 App. U.S.C. secs. 451 et seq.); Executive Order 11623, October 12, 1971.

§ 1661.1 Purpose; definitions.

(a) The provisions of this part govern the consideration of a claim by a registrant for classification in Class 1-A-O (§ 1622.11 of this chapter), Class 1-A-OM (§ 1622.17 of this chapter), Class 1-O (§ 1622.14 of this chapter), or Class 1-OM (§ 1622.19 of this chapter).

(b) The definitions in this paragraph shall apply in the interpretation of the provisions of this part:

(1) *Crystallization of a Registrant's Beliefs.* The registrant's becoming conscious of the fact that he is opposed to participation in war in any form.

(2) *Noncombatant Service.* Service in any unit of the Armed Forces which is unarmed at all times; any other military assignment not requiring the bearing of arms or the use of arms in combat or training in the use of arms.

(3) *Noncombatant Training.* Any training which is not concerned with the study, use, or handling of arms or other implements of warfare designed to destroy human life.

(4) *Prima Facie Claim.* A nonfrivolous claim, which, if true, would be sufficient on its face to warrant granting classification in Class 1-A-O, Class 1-A-OM, Class 1-O, or Class 1-OM.

[37 FR 28898, Dec. 30, 1972, as amended at 39 FR 44017, Dec. 20, 1974]

§ 1661.2 The claim of conscientious objection.

A claim to classification in Class 1-A-O, Class 1-A-OM, Class 1-O, or Class 1-OM may be made by the registrant in writing, such document shall be placed in his File Folder.

[39 FR 44017, Dec. 20, 1974]

§ 1661.3 Basis for Classification in Class 1-A-O or Class 1-A-OM.

(a) A registrant must be conscientiously opposed to participation in war in any form and conscientiously opposed to combatant training and service in the Armed Forces.

(b) A registrant's objection must be founded on religious training and belief; it may be based on strictly religious beliefs, or on personal beliefs that are purely ethical or moral in source or content and occupy in the life of a registrant a place parallel to that filled by belief in a Supreme Being for those holding more traditionally religious views.

(c) A registrant's objection must be sincere.

[37 FR 28898, Dec. 30, 1972, as amended at 39 FR 44017, Dec. 20, 1974]

§ 1661.4 Basis for Classification in Class 1-O or Class 1-OM.

(a) A registrant must be conscientiously opposed to participation in war in any form and conscientiously opposed to participation in both combatant and noncombatant training and service in the Armed Forces.

(b) A registrant's objection must be founded on religious training and belief; it may be based on strictly religious beliefs, or on personal beliefs that are purely ethical or moral in source or content and occupy in the life of a registrant a place parallel to that filled by belief in a Supreme Being for those holding more traditionally religious views.

(c) A registrant's objection must be sincere.

[37 FR 28898, Dec. 30, 1972, as amended at 39 FR 44017, Dec. 20, 1974]

§ 1661.5 Exclusion from Class 1-A-O, Class 1-A-OM, Class 1-O, and Class 1-OM.

(a) Registrants who assert beliefs which are of a religious, moral, or ethical nature, but who are not found to be sincere in their assertions.

(b) Registrants whose stated objection to participation in war does not rest at all upon moral, ethical, or religious principle, but instead rests solely upon considerations of policy, pragmatism, expediency, or their own self-interest or well-being.

(c) Registrants whose objection to participation in war is directed against a particular war rather than against war in any form (a selective objection). If a registrant objects to war in any form, but also believes in a theocratic, spiritual war between the forces of good and evil, he may not by reason of that belief alone be considered a selective conscientious objector.

[37 FR 28898, Dec. 30, 1972, as amended at 39 FR 44017, Dec. 20, 1974]

§ 1661.6 *Analysis of religious training and* belief.

(a) A registrant claiming conscientious objection is not required to be a member of a "peace church" or any other church, religious organization, or religious sect to qualify for a 1-A-O, 1-A-OM, 1-O, or 1-OM classification; nor is it necessary that he be affiliated with any particular group opposed to participation in war in any form.

(b) The registrant who identifies his beliefs with those of a traditional church or religious organization must show that he basically adheres to beliefs of that church or religious organization whether or not he is actually affiliated with the institution whose teachings he claims as the basis of his conscientious objection.

(c) A registrant whose beliefs are not religious in the traditional sense, but are based primarily on moral or ethical principle should hold such beliefs with the same strength or conviction as the belief in a Supreme Being is held by a person who is religious in the traditional sense. Beliefs may be mixed; they may be a combination of traditional religious beliefs and of nontraditional religious, moral, or

ethical beliefs. The registrant's beliefs must play a significant role in his life but should be evaluated only insofar as they pertain to his stated objection to his participation in war.

(d) Where the registrant is or has been a member of a church, religious organization, or religious sect, and where his claim of a conscientious objection is related to such membership, the board may properly inquire as to the registrant's membership, the religious teachings of the church, religious organization, or religious sect, and the registrant's religious activity, insofar as each relates to his objection to participation in war. The fact that the registrant may disagree with or not subscribe to some of the tenets of his church or religious organization or religious sect does not necessarily discredit his claim.

(e) (1) The history of the process by which the registrant acquired his beliefs, whether founded on religious, moral, or ethical principle is relevant to the determination whether his stated opposition to participation in war in any form is sincere.

(2) The registrant must demonstrate that his religious, ethical, or moral convictions were acquired through training, study, contemplation, or other activity comparable to the processes by which traditional religious convictions are formulated. He must show that these religious, moral, or ethical convictions, once acquired, have directed his life in the way traditional religious convictions of equal strength, depth, and duration have directed the lives of those whose beliefs are clearly founded in traditional religious conviction.

(f) The registrant need not use formal or traditional language in describing the religious, moral, or ethical nature of his beliefs. Board members are not free to reject beliefs because they find them incomprehensible or inconsistent with their own beliefs.

(g) Conscientious objection to participation in war in any form, if based on moral, ethical, or religious beliefs, may not be deemed nonreligious simply because those beliefs may influence the registrant concerning the Nation's domestic or foreign policies.

[37 FR 28898, Dec. 30, 1972, as amended at 39 FR 44017, Dec. 20, 1974]

§ 1661.7 Impartiality.

Local and appeal boards may not give precedence to one religion over another, and all beliefs whether of a religious, ethical, or moral nature, are to be given equal consideration.

[37 FR 28898, Dec. 30, 1972]

§ 1661.8 Determination as to whether claim is prima facie.

(a) A prima facie claim as defined in § 1661.1(b)(4) must include the following:

(1) An affirmative statement (which does not on its face appear to be frivolous) that the registrant is conscientiously opposed to participation in war in any form.

(2) An affirmative statement (which does not on its face appear to be frivolous) explaining the registrant's moral, ethical, or religious basis for his claim.

(b) If the local board determines on the basis of information submitted by the registrant that a prima facie claim has been presented, it shall reopen his classification in accord with § 1625.2(a) of this chapter. If the local board determines on the basis of information submitted by the registrant that a prima facie claim has not been presented, it need not reopen the classification. See § 1625.4 of this chapter. In such case, the board should accompany its refusal to reopen with a written statement setting forth its reason(s) for deciding that the registrant failed to submit a prima facie claim. This statement will be placed in the registrant's File Folder (SSS Form 101), and the registrant will be notified of the board's reason(s).

[37 FR 28899, Dec. 30, 1972]

§ 1661.9 Considerations relevant to granting or denying a prima facie claim for classification as a conscientious objector.

(a) If it is determined that the registrant has submitted a prima facie claim, the information in the registrant's file folder should then be evaluated to determine whether the registrant is sincere in his claim of conscientious objection. Oral statements by

the registrant at a personal appearance before the local or appeal board, and the registrant's general demeanor during such an interview, are to be taken into account in assessing his sincerity.

(b) The registrant's stated convictions should be a matter of conscience which would give him no rest or peace should he participate in war.

(c) The board should be convinced that the registrant's personal history since the crystallization of his conscientious objection is not inconsistent with his claim and demonstrates that the registrant's objection is not solely a matter of expediency. A late crystallization of beliefs does not necessarily indicate expediency.

(d) The information presented by the registrant should reflect a pattern of behavior in response to war and weapons which is consistent with his stated beliefs. Instances of violent acts or conviction for crimes of violence, or employment in the development or manufacturing of weapons of war may, if the claim is based upon or supported by a life of nonviolence, be indicative of inconsistent conduct.

(e) The development of a registrant's opposition to war in any form may bear on his sincerity. If the registrant claims a recent crystallization of beliefs, his claim should be supported by evidence of a religious or educational experience, a traumatic event, an historical occasion, or some other special situation which explains when and how his objection to participation in a war crystallized.

(f) In the event that a registrant has previously claimed or been granted a deferment to work in the development of or manufacturing of weapons of war or to serve as a member of a military reserve unit, it should be determined whether such a deferment was claimed or granted prior to the stated crystallization of the registrant's conscientious objector beliefs. Inconsistent classifications claimed or held prior to the actual crystallization of conscientious objector beliefs are not necessarily indicative of insincerity. But, inconsistent claims or classifications claimed or held subsequent to actual crystallization may indicate that registrant's stated objection is not sincere.

(g) If a registrant attends a personal appearance before the local or appeal board, his behavior before the local board may be relevant to the matter of the sincerity of his claim.

(1) Evasive answers to questions by board members or the use of hostile, belligerent, or threatening words or actions, for example, may in proper circumstances be deemed inconsistent with a claim in which the registrant bases his objection on a belief in nonviolence. But such behavior may have less relevance to the sincerity question if the registrant bases his beliefs solely on a conscientious objection to bearing arms.

(2) Care should be exercised that nervous, frightened, or apprehensive behavior at the personal appearance is not misconstrued as a reflection of insincerity.

(h) Oral response to questions by board members should be consistent with the written statements of the registrant and should generally substantiate the submitted information in the registrant's File Folder (SSS Form 101); any material inconsistencies should be satisfactorily explained by the registrant. It is important to recognize that the registrant need not be eloquent in his answers. But, a clear inconsistency between the registrant's oral remarks at his personal appearance and his written submission to the board may be adequate grounds, if not satisfactorily explained, for concluding that his claim is insincere.

(i) The registrant may submit letters of reference and other supporting statements of friends, relatives and acquaintances to corroborate the sincerity of his claim, although such supplemental documentation is not essential to approval of this claim. A finding of insincerity based on these letters or supporting statements must be carefully explained in the board's decision, specific mention being made of the particular material relied upon for denial of classification in Class 1-A-O, Class 1-A-OM, Class 1-O, or Class 1-OM.

[37 FR 28898, Dec. 30, 1972, as amended at 39 FR 44017, Dec. 20, 1974]

§ 1661.10 Types of decisions.

(a) The following are the types of decisions which may be made by the local and appeal board when a prima facie claim of conscientious objection has been stated.

(1) Decision to grant a claim for classification in Class 1-A-O, Class 1-A-OM, Class 1-O, or Class 1-OM, as requested, based on a determination that the truth or sincerity of the registrant's prima facie claim is not refuted by any information contained in the registrant's file or obtained during his personal appearance.

(2) Decision to deny a claim for classification in Class 1-A-O, Class 1-A-OM, Class 1-O or Class 1-OM, finding on the basis of all information before the board, that the claim fails to meet the tests specified in §§ 1661.3 and 1661.4. If supported by evidence in the file the board may find that the facts presented by the registrant in support of his claim are untrue.

(3) Decision to grant classification in Class 1-A-O or Class 1-A-OM to a registrant even though he requested reclassification in Class 1-O or Class 1-OM. It should be noted that the registrant who requests classification in Class 1-O or Class 1-OM should be classified in Class 1-A-O or Class 1-A-OM only when the information presented demonstrates clearly that the registrant is opposed only to bearing arms and that he does not object to noncombatant service.

[39 FR 44018, Dec. 20, 1974]

§ 1661.11 Statement of reasons for denial.

(a) Denial of a conscientious objector claim either by the local or appeal board must be accompanied by a statement specifying the reason(s) for such denial as prescribed in §§ 1623.4 and 1626.4 of this chapter. The reason(s) must, in turn, be supported by evidence in the registrant's file (which should include a summary of the interview with the registrant, if any, at his personal appearance).

(b) If the board's denial is based on statements by the registrant or on a determination that the claim is inconsistent or insincere, this should be fully explained in the statement of reasons accompanying the denial.

[37 FR 28900, Dec. 30, 1972]

PART 1680—MEDICAL, DENTAL, OR ALLIED SPECIALIST CATEGORIES (CLASS 1-AM)

Sec.

1680.1 Examinations.
1680.2 Calls by the Secretary of Defense.
1680.3 Allocations by the Director of Selective Service.
1680.4 Allocations by the State Director of Selective Service.
1680.5 Action by Local Board upon receipt of allocation.
1680.6 Random selection sequence.
1680.7 Postponement of induction.
1680.8 Deferments.
1680.9 Alternate service.
1680.10 Volunteers.
1680.11 Noncombatant military service.

AUTHORITY: Military Selective Service Act, as amended (50 U.S.C. App., sections 451 et seq.) and Executive Order 11623, dated October 12, 1971.

SOURCE: 38 FR 733, Jan. 4, 1973, unless otherwise noted.

§ 1680.1 Examinations.

Local boards shall forward registrants in Class 1-AM for Armed Forces examination in accord with instructions of the Director of Selective Service.

§ 1680.2 Calls by the Secretary of Defense.

The Secretary of Defense may from time to time place with the Director of Selective Service a call or requisition for men in any medical, dental, or allied specialist category required for induction into the Armed Forces.

§ 1680.3 Allocations by the Director of Selective Service.

Upon receipt of a call or requisition from the Secretary of Defense for men in a medical, dental, or allied specialist category to be inducted into the Armed Forces, the Director of Selective Service shall issue a call or requisition to the several States. The allocation of a call for the delivery of registrants shall specify the random selection sequence numbers of registrants in the appropriate speciality who shall be selected for induction.

§ 1680.4 Allocations by the State Director of Selective Service.

The State Director of Selective Service shall allocate a call for the delivery of registrants as prescribed by the Director of Selective Service pursuant to § 1680.3.

§ 1680.5 Action by local board upon receipt of allocation.

(a) When an allocation is received from the State Director of Selective Service, any member or compensated employee of the local board, or any compensated employee of the Selective Service System whose official duties include the performance of administrative duties at a local board shall select as provided herein, and issue orders to report for induction to those men required to fill the call from among its registrants who have been classified in Class 1-AM and have been found acceptable for service in the Armed Forces and to whom a Statement of Acceptability (DD Form 62) has been mailed: *Provided,* That a registrant in Class 1-AM who has volunteered for induction may be selected and ordered to report for induction to fill an induction call notwithstanding the fact that he has not been found acceptable for service in the Armed Forces and regardless of whether or not a Statement of Acceptability (DD Form 62) has been mailed to him, but in such case the Armed Forces examination shall be performed after he has reported for induction as ordered and he shall not be inducted until his acceptability has been satisfactorily determined.

(b) Registrants shall be selected and ordered to report for induction in the following categories and in the order indicated:

(1) Volunteers in the sequence in which they have volunteered for induction;

(2) Nonvolunteers within their year of prime vulnerability in the order of their random sequence number established by random selection procedures prescribed in accordance with § 1680.6;

(3) Nonvolunteers within the first year after their year of prime vulnerability in the order of their random sequence number established by random selection procedures prescribed in accordance with § 1680.6;

(4) Nonvolunteers within the second year after their year of prime vulnerability in the order of their random sequence number established by random selection procedures prescribed in accordance with § 1680.6;

(5) Nonvolunteers within the third year after their year of prime vulnerability in the order of their random sequence number established by random selection procedures prescribed in accordance with § 1680.6;

(6) Nonvolunteers within each succeeding year, in turn, after their year of prime vulnerability in the order of their random sequence number established by random selection procedures prescribed in accordance with § 1680.6, until attainment of age 35.

(c) As used in paragraph (b) of this section, the year of prime vulnerability for an alien who enters the United States after he has completed the professional training described in § 1622.15(c) of this chapter will begin when he completes one year of residence in the United States: *Provided,* That the year of prime vulnerability for an alien who has resided in the United States in a nonpermanent resident status will begin when he completes one year of residence in the United States, or when he registers for Selective Service, whichever is later. The year of prime vulnerability for all other persons will begin upon attainment of the first appropriate professional degree or diploma, or upon completion of one year of internship or equivalent training, whichever is later. The one year of internship or equivalent training must follow immediately upon the attainment of the appropriate professional degree.

[38 FR 733, Jan. 4, 1973, as amended at 39 FR 44018, Dec. 20, 1974]

§ 1680.6 Random selection sequence.

A registrant in Class 1-AM who was born before 1944 shall be assigned a birth date sequence based upon the results of the drawing held on December 1, 1969. A registrant in Class 1-AM who was born in 1944 or later shall be assigned a birth date sequence based

upon the results of drawings held in accord with § 1631.1 of this chapter.

§ 1680.7 Postponement of induction.

Section 1632.2 of this chapter applies to registrants subject to this part. The Director of Selective Service or any State Director of Selective Service (as to the registrants registered within his State), in accord with § 1632.2(b) of this chapter, may postpone the induction of a registrant who applies or has applied for an appointment as a Reserve Officer in one of the Armed Forces in any of the medical, dental, and allied specialist categories until final action has been taken on such application.

§ 1680.8 Deferments.

Any registrant subject to this part may be considered for classification in class 2-AM as provided in § 1622.28 of this chapter.

[38 FR 15627, June 14, 1973]

§ 1680.9 Alternate service.

A registrant in Class 1-OM will be ordered to alternate service in lieu of induction in accord with Part 1660 of this chapter at the time that he would be called for induction if he were in Class 1-AM.

[39 FR 44018, Dec. 20, 1974]

§ 1680.10 Volunteers.

Any registrant in Class 1-AM who has not attained the age of 35 years may volunteer for induction under this part by filing with his local board his written request for such induction.

§ 1680.11 Noncombatant military service.

A registrant classified in Class 1-A-OM will be ordered for induction at the time that he would be ordered for induction if he were in Class 1-AM.

[39 FR 44018, Dec. 20, 1974]

80-109 O—81——19

CHAPTER XIX—CENTRAL INTELLIGENCE AGENCY

Part		*Page*
1900	Public access to documents and records and declassification requests	282
1901	Rules and regulations to implement the Privacy Act of 1974	291
1902	Information security regulations	297

PRECEDING PAGE BLANK-NOT FILMED

PART 1900—PUBLIC ACCESS TO DOCUMENTS AND RECORDS AND DECLASSIFICATION REQUESTS

GENERAL

Sec.
1900.1 Purpose and authority.
1900.3 Definitions.
1900.5 Organization: requests and submittals.

REQUESTING RECORDS

1900.11 Freedom of information communications: requirements as to form.
1900.21 Option to request records.
1900.23 Pre-request option: estimates of charges.
1900.25 Fees for records services.

PROCESSING FREEDOM OF INFORMATION COMMUNICATIONS

1900.31 Screening communications.
1900.33 Processing expressions of interest.
1900.35 Processing requests for records.

ACTIONS ON REQUESTS

1900.41 Searching for requested records.
1900.43 Reviewing records.
1900.45 Expeditious action: extension of time.
1900.47 Allocation of manpower and resources: agreed extension of time.
1900.49 Notification and payment: furnishing records.

APPEALS

1900.51 Appeal to CIA Information Review Committee.
1900.53 Appeal to Interagency Classification Review Committee.

MISCELLANEOUS

1900.61 Access for historical research.
1900.63 Suggestions and complaints.

AUTHORITY: National Security Act of 1947, the Central Intelligence Agency Act of 1949, the Freedom of Information Act (5 U.S.C. 552), and Executive Order 11652.

SOURCE: 40 FR 7294, Feb. 19, 1975, unless otherwise noted.

GENERAL

§ 1900.1 Purpose and authority.

This part is issued under the authority of, and in order to implement, section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403), the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a et seq.), Executive Order 11652, as amended (3 CFR Revised as of January 1, 1974, p. 339) and the Freedom of Information Act, as amended (5 U.S.C. 552). It prescribes procedures for:

(a) Requesting records pursuant to the Freedom of Information Act;

(b) Requesting the declassification of documents pursuant to Executive Order 11652;

(c) Appealing any denial or refusal of any such request to an appeal authority with the Central Intelligence Agency, to the Interagency Classification Review Committee, in appropriate cases, and to the courts;

(d) The prompt and expeditious processing of such requests and appeals; and

(e) Requesting estimates and advice prior to actually requesting records, thus affording protection against unanticipated fees.

This part is also designed to assist Central Intelligence Agency management at all appropriate echelons, to allocate resources to perform the functions, duties and responsibilities of the Central Intelligence Agency prescribed by and pursuant to law, including in particular those situations where it is deemed necessary to choose among conflicting requirements, duties and responsibilities.

§ 1900.3 Definitions.

For the purpose of this part, the following terms have the meanings indicated:

(a) "Agency" includes any executive department, military department or other establishment or entity included in the definition of agency in subsection 552(e) of Title 5 of the United States Code;

(b) "Coordinator" means the Central Intelligence Agency Freedom of Information Coordinator;

(c) "Expression of interest" means a written communication submitted by a potential requester pursuant to § 1900.23 to indicate an interest in requesting records;

(d) "Freedom of Information Act" means section 552 of Title 5 of the United States Code, as amended;

(e) "National Security Council Directive of May 1972" means the directive entitled "National Security Council Directive Governing the Classification,

Downgrading, Declassification and Safeguarding of National Security Information" approved on May 17, 1972 and published at page 227 of Title 3A (The President, Appendix (1972 Compilation)) of the Code of Federal Regulations;

(f) "Potential requester" means a person, organization or other entity who submits an expression of interest in accordance with § 1900.23;

(g) "Records," with reference to records of the Central Intelligence Agency, includes all papers, maps, photographs, machine readable materials and other documentary materials regardless of physical form or characteristics made or received by the Central Intelligence Agency in pursuance of federal law or in connection with the transaction of public business and appropriate for preservation by the Central Intelligence Agency as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Agency or because of the informational value of data contained therein. But the term does not include:

(1) Index, filing and museum documents made or acquired and preserved solely for reference, indexing, filing or exhibition purposes;

(2) Routing and transmittal sheets and notes and filing instructions and notes which do not also include information, comment or statement of substance or policy;

(3) Books, newspapers, magazines, and similar publications and clippings and excerpts from any such publications;

(h) "Records of interest" means records which are the subject of an expression of interest or of a request;

(i) "Work days" means calendar days other than Saturdays and Sundays and legal public holidays.

[40 FR 7294, Feb. 19, 1975, as amended at 42 FR 24049, May 12, 1977]

§ 1900.5 Organization: requests and submittals.

The headquarters of the Central Intelligence Agency is located in Fairfax County, Va. Functions are channeled and determined by regular chain-of-command procedures. Except as provided by this part, there are no formal or informal procedural requirements regarding public access to Agency records. Requests and other submittals may be addressed to the CIA Freedom of Information Coordinator, Central Intelligence Agency, Washington, D.C. 20505.

Requesting Records

§ 1900.11 Freedom of information communications; requirements as to form.

(a) Any communication to the Central Intelligence Agency or to the Director of Central Intelligence under the Freedom of Information Act should be addressed to:

CIA Freedom of Information Coordinator,
Central Intelligence Agency,
Washington, D.C. 20505.

That address should appear on the envelope or other folder or package in which the communication is transmitted. It should also be included as the addressee of the letter or other communication or be clearly set forth in the text of the communication.

(b) Any request for records under the Freedom of Information Act (§ 1900.21), expression of interest in requesting records (§ 1900.23) or request for declassification of records under Executive Order 11652 shall be in writing and shall be addressed as prescribed by paragraph (a) of this section. The Coordinator may, but need not, waive the requirements as to address.

(c) The request or expression of interest shall reasonably describe the records of interest.

(d) Any request or communication to an agency other than the Central Intelligence Agency which requests or concerns documents or records originated by the CIA, and which is transferred by that agency to the CIA, shall be considered a Freedom of Information request to the CIA for that referred document as of date of receipt by the CIA of the referral, and shall be processed pursuant to regulations. CIA will respond directly to the requester.

[40 FR 7249, Feb. 19, 1975, as amended at 42 FR 24049, May 12, 1977]

§ 1900.21 Option to request records.

Any person, organization or entity may submit a written request for records to the Coordinator, in accordance with the procedures prescribed by § 1900.11. An estimate of charges likely to be incurred may be obtained by requesting such an estimate as provided by § 1900.23.

§ 1900.23 Pre-request option: estimates of charges.

(a) In order to avoid being faced with unanticipated sizeable charges, interested persons and entities may defer the submission of requests for records and first submit a written request, in accordance with the procedures prescribed by § 1900.11, for an estimate of charges likely to be incurred if the records are requested.

(b) Notice is hereby given that a requester may be liable for the payment of search charges, in accordance with the fee schedule and provisions of § 1900.25, even if search for requested records locates no such records and even if some or all of requested records which are located are denied the requester under one or more exemptions of the Freedom of Information Act. In determining which of options §§ 1900.21 and 1900.23(a) to exercise, interested persons and entities are urged to take into consideration the fact of possible liability.

§ 1900.25 Fees for records services.

(a) Search and duplication fees shall be charged according to the schedule set forth in paragraph (c) of this section for services rendered in responding to requests for Agency records under this part. Records shall be furnished without charge or at a reduced rate whenever the Coordinator determines that a waiver or reduction of he charge is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Thus, the Coordinator shall determine the existence and extent of any identifiable benefit which would result from furnishing the requested information and he shall consider the following factors in making this determination:

(1) The public or private character of the information sought;

(2) The private interest of the requester;

(3) The numbers of the public to be benefited;

(4) The significance of the benefit to the public;

(5) The usefulness of the information to the public; and

(6) The quantity of similar or duplicative information already in the public domain.

in no case will the assessment of fees be utilized as an obstacle to the disclosure of the requested information. The Coordinator may also waive or reduce the charge whenever he determines that the interest of the government would be served thereby. Fees shall not be charged where they would amount, in the aggregate, for a request, or a series of related requests, to less than $6. Denials of requests for fee waivers may be appealed by writing to the Executive Secretary of the Information Review Committee, via the Coordinator.

(b) In order to protect the requester and the Agency from large, unexpected fees, when it is anticipated that the charges will amount to more than $25, the processing of the request shall be suspended until the requester indicates his willingness to pay. The requester shall be notified and asked for his commitment to pay all reasonable search and duplication fees. At his option, the requester may indicate in advance a dollar limitation to the fees. In such an event, the Coordinator shall initiate a search of the system or systems of records deemed most likely to produce relevant records, instructing the system managers to discontinue the search as soon as the stipulated amount has been expended. Where an advance limit has not been stipulated. the Coordinator may, at his discretion or at the behest of the requester, compile an estimate of the search fees likely to be incurred in processing a request, or of such portion thereof as can readily be estimated. The requester shall be promptly notified of the amount and be asked to approve its expenditure. In those cases where the Coordinator estimates that the fees

will be substantial, an advance deposit of 50 percent of the estimated fees will be required; in those cases where there is reasonable evidence that the requester may possibly fail to pay the fees which would be accrued by processing his request, an advance deposit of 100 percent of the estimated fees will be required. The notice or request for an advance deposit shall extend an offer to the requester whereby he is afforded an opportunity to revise the request in a manner calculated to reduce the fees. Dispatch of such a notice or request shall suspend the running of the period for response by the Agency until a reply is received from the requester.

(c) The schedule of fees for services performed in responding to requests for Agency records is established as follows:

(1) For each one quarter hour, or fraction thereof, spent by clerical personnel in searching for a record, $1.50;

(2) For each one quarter hour, or fraction thereof, spent by professional personnel in searching for a record, $3.50;

(3) For each on-line computer search, $11.00;

(4) For each off-line (batch) computer search of Central Reference files, $27.00;

(5) For all other off-line computer searches of Agency files, $8.00 per minute of Central Processing Unit (CPU) time;

(6) For copies of paper documents in sizes not larger than 8½ × 14 inches, $0.10 per copy of each page;

(7) For duplication of non-paper media (film, magnetic tape, etc.) or any document that cannot be reproduced on a standard office copier, actual direct cost; and

(8) For extra copies of reports, maps, reference aids, and other Agency publications, actual cost.

(d) Inasmuch as the Agency's systems of records are highly decentralized, several computer searches may be required to process a request, depending upon its scope. The computer search costs given in paragraph (c), of this section, do not include whatever professional/clerical search time is needed to determine whether the records located are in fact responsive to the request.

(e) Search fees are assessable even when no records pertinent to the requests, or no releasable records are found, provided the requester has been advised of this fact and he has, that notwithstanding agreed to incur the costs of search.

(f) For requests which have accrued substantial search and duplication fees, or for requests for records which have been previously released, or where there is reasonable evidence that the requester may possibly fail to pay the accrued fees, then, at the discretion of the Coordinator, the requester may be required to pay the accrued search and duplication fees prior to the actual delivery of the requested records; otherwise, the requester shall be billed for such fees at the time that the records are provided. Payment shall be remitted by check or money order, made payable to the Treasurer of the United States, and shall be sent to the Coordinator. No appeals or additional requests shall be accepted for processing until the requester has paid all outstanding charges for services rendered under this part.

(Sec. 102 of the National Security Act of 1947, as amended (50 U.S.C. 430), the Central Intelligence Act of 1949, as amended (50 U.S.C. 403 et seq.), Executive Order 12065 (3 CFR, 1978 Comp., p. 190), and The Freedom of Information Act, as amended (5 U.S.C. 522))

[45 FR 74920, Nov. 13, 1980]

Processing Freedom of Information Communications

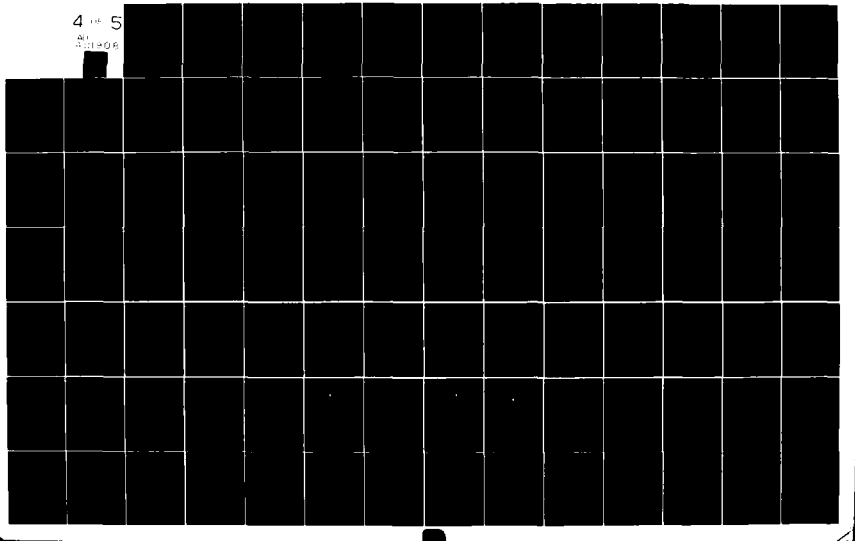
§ 1900.31 Screening communications.

(a) If any Agency employee receives a written communication which the employee deems to be an apparent or intended communication under the Freedom of Information Act, he shall expeditiously transmit the communication to the Coordinator and alert the Coordinator to the fact that the communication may be a communication under the Freedom of Information Act.

(b) Upon receipt of a communication in accordance with § 1900.11 or paragraph (a) of this section, the Coordi-

AD-A111 908 NATIONAL ARCHIVES AND RECORDS SERVICE WASHINGTON DC O--ETC F/G 5/4
CODE OF FEDERAL REGULATIONS 32. PARTS 1000 TO END.(U)
JUL 81

UNCLASSIFIED NL



nator shall promptly consult with such Agency components as he may deem appropriate and:

(1) Determine the nature of the communication (an intended expression of interest (§ 1900.21), an intended request (§ 1900.23) or other); and

(2) If he determines the communication to be an intended expression of interest or intended request, he shall further determine whether it fails to qualify as an expression of interest or request only because it fails to reasonably describe the records of interest.

(c) The Coordinator thereupon shall take the appropriate one of the following actions.

(1) If he determined that the communication was not an intended expression of interest or an intended request, he shall take such action with respect to the communication as he may deem appropriate.

(2) If he determined that the communication was an intended expression of interest or an intended request but failed to reasonably describe the records of interest, he shall so inform the originator of the communication promptly, in writing, and he may offer to assist the originator in revising and perfecting the description of the records of interest.

(3) The Coordinator shall determine whether any communication not acted on under paragraph (c)(1) or (2) of this section is an expression of interest, or is a request made in accordance with published rules stating the procedures to be followed, as required by subsection (a)(3) of the Freedom of Information Act. The Coordinator's determination in this regard shall be based on and shall reflect the clear intent of the originator of the communication insofar as the Coordinator is able to determine that intent. When the originator's intent is not apparent to the Coordinator and when the Coordinator deems it desirable and feasible, he shall promptly communicate with the originator in order to ascertain the latter's intent.

(d) The Coordinator shall inform the requester, in writing, of his determination made under paragraph (c)(3) of this section and, in the case of a determination that the communication is a request, of the date of such determination. Such notification shall be given promptly and, in any case, within five work days of the date of such determination. The ten work days within which the Agency must determine whether to comply with a request, as provided by subsection (a)(6)(A)(i) of the Freedom of Information Act, shall begin as of the date of such determination.

(e) The Coordinator shall promptly process under the procedures prescribed by § 1900.33 those communications which he determines to be expressions of interest. He shall promptly process under the procedures prescribed by § 1900.35 those communications which he determines to be requests.

§ 1900.33 Processing expressions of interest.

(a) Upon determining, in accordance with paragraph (c)(3) of § 1900.31, that a communication is an expression of interest, and after promptly consulting with such Agency components as he may deem appropriate, the Coordinator, to the extent feasible, shall determine the search and duplication charges likely to be incurred by the potential requester if the potential requester ultimately requests such records. In determining such charges, the Coordinator shall take into account the nature and quantity of the work and services of people and computers and other equipment which may be required, and the applicable rates set out in the fee schedule prescribed by paragraph (c) of § 1900.25. If feasible at this stage, the Coordinator also shall determine whether to waive or reduce the fee in accordance with paragraph (a) of § 1900.25.

(b) The Coordinator thereupon shall advise the potential requester, in writing, of the likely search and duplication charges. He shall explain the bases and reasons for the charges and he shall make clear that the amounts indicated are estimates only, if such be the case, and, if there is a possibility that the charges to be incurred may be in larger amounts, he shall so inform the potential requester. If the amounts indicated are not estimates but are the amounts which in fact are

to be charged if the potential requester makes a request, he shall inform the potential requester of that fact. In either event and if such be the case, he shall also inform the potential requester that search charges will be levied upon the requester even if no records fitting the description are located or if any or all records which do fit the description are denied the requester.

(c) When he deems it appropriate or when the potential requester so requests, the Coordinator shall consult with and advise the potential requester with the view to assisting the latter to determine whether and, if so, how to revise the description of the records of interest so as to cause or permit a reduction in the likely and actual search and duplication charges.

(d) Upon receipt of such estimate and advice concerning likely charges, the potential requester may:

(1) In accordance with § 1900.21, submit a request for records, either the records of interest indicated in his expression of interest or records encompassed in a less-inclusive description;

(2) Advise the Coordinator that he does not intend to request records; or

(3) Take no additional action.

(e) If, as a result of his consultations with the Coordinator or otherwise, the potential requester wants to request records additional to or other than those described in his expression of interest, he may submit an expression of interest with respect to such records, in accordance with § 1900.23, or a request for such records, in accordance with § 1900.21.

§ 1900.35 Processing requests for records.

(a) Upon determining that a communication is a request for records, the Coordinator, after consulting with such Agency components as he may deem appropriate, shall promptly transmit a copy of the request to the component or components believed responsible for the records, if any exist, inform the components of the date of receipt of the request as determined by him pursuant to paragraph (c)(3) of § 1900.31, and alert the components to the action required of them by § 1900.41 through § 1900.47 with respect to the request.

(b) Notwithstanding paragraph (a) of this section, the Coordinator may determine that there is no basis for searching for requested records or that the appropriate answer to a request obviates the need to determine the existence or non-existence of records responsive to the request. Whenever the Coordinator makes such a determination he shall respond to the requester accordingly, and the requirements of paragraph (a) of this section and of §§ 1900.41 through 1900.47 shall not apply as to that request.

[40 FR 7294, Feb. 19, 1975, as amended at 40 FR 24897, June 11, 1975]

Actions on Requests

§ 1900.41 Searching for requested records.

(a) Upon receipt of a copy of a request and an alert pursuant to § 1900.35, the components responsible for requested records (hereinafter the "responsible components"), shall, with such assistance as may be appropriate from the Coordinator and from such reference, indexing or filing components as may have reference, indexing or filing responsibilities with respect to any such records, undertake to locate the requested records.

(b) If no records described by the request are located, the responsible components shall so inform the Coordinator who shall promptly so inform the requester, in writing. The Coordinator also shall determine the charges, if any, for which the requester shall be liable, in accordance with the fee schedule and provisions of § 1900.25. He shall inform the requester of the amount charged, explain the basis of computation and request prompt payment thereof.

§ 1900.43 Reviewing records.

(a) The responsible components shall review any located records in accordance with the provisions of the Freedom of Information Act and Executive Order 11652, and on the basis of other applicable law, regulations and policy, and determine which, if any, requested records, or reasonably segregable portions of records, are to

be furnished the requester and which are to be denied or withheld. Any decision to furnish or to deny or withhold requested records shall be made only by employees and officials to whom authority to make such decisions has been duly delegated.

(b) In the event records require review by more than one Agency component or by more than one agency, the Coordinator or the responsible component, as may be appropriate, shall expeditiously coordinate such review.

(c) In the event located records are determined to have originated with another government agency, the Coordinator shall notify the requester of such fact and shall expeditiously forward such records or a description thereof to the originating agency for their determination and direct response to the requester.

[40 FR 7294, Feb. 19, 1975, as amended at 42 FR 24049, May 12, 1927]

§ 1900.45 Expeditious action: extension of time.

Whenever feasible under the standards prescribed by § 1900.47, the search and review functions prescribed by §§ 1900.41 and 1900.43 and notice to the requester of the Agency action on the request, as prescribed by paragraph (a) of § 1900.49, shall be completed within ten days of the date of Agency receipt of the request as determined by the Coordinator pursuant to paragraph (c)(3) of § 1900.31. Whenever the Coordinator determines that "unusual circumstances," as defined by subsection (a)(6)(B) of the Freedom of Information Act, exist, he may, by written notice to the requester, authorize an additional period for completion of Agency action, but no such extension shall be for more than ten work days. His notice shall also set forth the reasons for the extension.

§ 1900.47 Allocation of manpower and resources: agreed extension of time.

(a) Agency components shall devote such manpower and other resources to searching for, locating and reviewing records in accordance with §§ 1900.41 and 1900.43 as may be appropriate and expedient in the circumstances, taking into account:

(1) The manpower and resources available for those purposes;

(2) The right of the requester to resort to litigation if the Agency decision on the request is not made within ten work days; and

(3) All functions, duties and responsibilities assigned to those components by, or pursuant to, law.

(b) The responsible components shall consult with the Coordinator with regard to the need to allocate resources and establish priorities, and the latter with the requester, as may be appropriate, in order to accomplish such arrangements and agreements with the requester as may be acceptable to the requester concerning the Agency's efforts and ability to act on his request expeditiously. In particular, when the Coordinator deems it feasible and of possible benefit to the requester, the public or the Agency, he shall inform the requester that more thorough or extensive search or review, or both, could be accomplished, which might be of benefit to the requester, if additional time were to be available. When appropriate in such cases, the Coordinator shall also advise the requester of the effect on charges and fees such additional search might cause. Any extensions arranged or agreed to under this section may be in addition to any extension under § 1900.45.

§ 1900.49 Notification and payment: furnishing records.

(a) The Coordinator shall promptly inform the requester in writing, which of the requested records or portions thereof, if any, are to be furnished the requester and those, if any, which are denied, as determined pursuant to paragraph (a) of § 1900.43. With respect to the latter, he shall also explain the reasons for the denial and he shall furnish the names and titles or positions of the persons responsible for the decision to deny access.

(b) Upon receipt of payment of all fees and charges, or upon the completion of arrangement satisfactory to the Coordinator that payment will be made promptly, the Coordinator shall promptly prepare copies of the records, or portions of records, which

are to be made available and transmit them to the requester. The Coordinator shall do likewise with respect to any records or portions of records made available to a requester by the action of the Central Intelligence Agency Information Review Committee under paragraph (e)(1) or (2) of § 1900.51.

(c) As an alternative to any Freedom of Information Act requester receiving any records from the Agency by mail, a requester may arrange to inspect the records at a CIA Reading Room. The requester may be the person who initially requested the records or the requester may be someone who was not a party to that request. The Information and Privacy Coordinator will designate a Reading Room for the purposes of records inspection, and the requester may select whatever records the requester wishes to purchase at a cost set forth in § 1900.25. Access to the Reading Room will be granted only after the fees that accumulated from the search to produce the requested records have been paid, or waived by the Information and Privacy Coordinator pursuant to § 1900.25(a). Upon receipt of a written statement from the requester exercising this option, the Coordinator will advise the requester of the location of the Reading Room and provide directions thereto. Unless otherwise designated, the Reading Room location will be in the metropolitan Washington, D.C. area. Records that the Agency will release will be available for inspection in the Reading Room on a date or dates mutually agreed upon by the Coordinator and the requester, not more than seven days from the Agency's receipt of the written request or from completion of the processing of the request for records, whichever is later. The requester may agree to a date or dates more than seven days from such time. On the days the Reading Room is open, it will be available to requesters from 9:30 a.m. to 3:30 p.m.

(E.O. 12065 (3 CFR 190), the Freedom of Information Act, as amended (5 U.S.C. 552), and the Federal Records Management Amendments of 1978 (Sec. 4, Pub. L. 94-575, 90 Stat. 2723)

[40 FR 7294, Feb. 19, 1975, as amended at 45 FR 6781, Jan. 30, 1980]

APPEALS

§ 1900.51 Appeal to CIA Information Review Committee.

(a) *Establishment of Committee.* The Central Intelligence Agency Information Review Committee is hereby established, pursuant to the Freedom of Information Act and section 5-404(c) of Executive Order 12065. The Committee shall be composed of the Deputy Director for Administration, the Deputy Director for Operations, the Deputy Director for Science and Technology, and the Director, National Foreign Assessment Center. The Director of Central Intelligence shall appoint a chairman. The Committee, by majority vote, may delegate to one or more of its members the authority to act on any appeal or appeals under this section, and may authorize the chairman to delegate such authority. The chairman may call upon appropriate components to participate when special equities or expertise are involved.

(b) *Right of appeal: Notice.* Whenever any requested record or any portion thereof is denied a requester, the requester may appeal the denial to the Committee and the Coordinator shall inform the requester of this right, in writing. Also, any requester for the declassification of classified documents under Executive Order 11652 who is not informed of Agency action thereon within sixty days of his request may request the Committee to declassify the documents and make them available.

(c) *Appeal procedures.* Any such appeal or request to the Committee shall be in writing, addressed to the CIA Freedom of Information Coordinator. The appeal or request may present such information, data and argument in support thereof as the requester may desire. The Committee shall not permit a requester to appear before the Committee or to make an oral presentation.

(d) *Time for appeal: Expiration of right of appeal.* An appeal shall be submitted within thirty days of the date of receipt of notification of the right to appeal and the right of appeal shall cease as of the expiration of that

period. But the Committee, for good cause shown, may permit an additional thirty days for the submission of an appeal.

(e) *Committee action on appeals and requests.* (1) The Committee shall promptly consider any appeal, together with any submissions in support thereof, and shall grant or deny the appeal or take such other action thereon as it may deem appropriate. The Committee's review, decision and action shall be based on and shall be in conformance with the Freedom of Information Act, Executive Order 11652 and other applicable law, directives, regulations and policy.

(2) The Committee shall promptly consider any requests for declassification under paragraph (a) of this section and shall declassify any such records or reasonably segregable portions of such records as it deems appropriate in accordance with Executive Order 11652.

(3) Committee action on appeals shall be completed within twenty work days of receipt of the appeal, except that the Committee may, in accordance with the provisions of § 1900.45, avail itself of an additional period of time for completion of its work on the appeal. But no such extension shall be available with respect to an appeal of a denial of a request which was the subject of an extension of time for Agency action by the Coordinator under that paragraph. In the event the Committee is unable to complete its review of an appeal within the time prescribed by the two preceding sentences it may, by agreement with the requester, extend the period for completion of such review.

(4) The Committee shall promptly inform the requester of its decisions and, with respect to any decision to withhold or deny records, it shall furnish the names and titles or positions of the persons responsible for the decision. If any record or portion thereof is denied the requester by the Committee's action, the Committee shall also inform the requester of the provision for judicial review of that determination under subsection (a)(4) of the Freedom of Information Act.

[40 FR 7294, Feb. 19, 1975, as amended at; 45 FR 50329, July 29, 1980]

§ 1900.53 Appeal to Interagency Classification Review Committee.

In the case of any refusal to declassify records which are at least ten years old, the Committee also shall inform the requester of his right to appeal that denial to the Interagency Classification Review Committee established pursuant to section 7(A) of Executive Order 11652, as provided by section IX(D) of the National Security Council Directive of May 1972. In that event, the Committee shall also inform the requester that appeal to the Interagency Classification Review Committee shall not waive his right to judicial review as provided by subsection (a)(4) of the Act.

Miscellaneous

§ 1900.61 Access for historical research.

(a) Any person engaged in a historical research project may submit a request, in writing, to the Coordinator to be given access to information classified pursuant to an Executive order for purposes of that research. Any such request shall indicate the nature, purpose, and scope of the research project. It is the policy of the Agency to consider applications for historical research privileges only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records.

(b) The Coordinator may authorize access, under such conditions and at such time and place as he may deem feasible. But the Coordinator shall authorize access only with respect to documents and records prepared or originated not less than ten years prior to the date of such request and only upon the prior written approval by the Agency Director of Security of a current security clearance of the requester and of persons associated with him in the project, in accordance with Executive Order 10450, and upon the Coordinator's further determination that:

(1) A serious professional or scholarly research project is contemplated;

(2) Such access is clearly consistent with the interests of national security;

(3) Appropriate steps have been taken to assure that classified information will not be published or otherwise compromised;

(4) The information requested is reasonably accessible and can be located and compiled with a reasonable amount of effort;

(5) The historical researcher agrees to safeguard the information in a manner consistent with Executive Order 11652 and the National Security Council Directive of May 1972; and

(6) The historical researcher agrees to authorize a prior review of his notes and manuscript by the Agency for the sole purpose of determining that no classified information is contained therein.

(c) An authorization shall be valid for the period required for the research project, as the Coordinator may determine, but in no event for more than two years. But upon renewed request in accordance with paragraph (a) of this section, authorization may be renewed in accordance with paragraph (b) of this section and this paragraph.

(d) The Coordinator shall cancel any authorization whenever the Director of Security cancels the security clearance of the requester or of any person associated with the requester in the research project or whenever the Coordinator determines that continued access would not be in compliance with one or more of the requirements of paragraph (b) of this section.

[40 FR 7294, Feb. 19, 1975, as amended at 45 FR 48131, July 18, 1980]

§ 1900.63 Suggestions and complaints.

Any person may direct any suggestion or complaint with respect to the Agency administration of Executive Order 11652 to the CIA Information Review Committee. The Committee shall consider such suggestions and complaints and shall take such action thereon as it may deem feasible and appropriate.

PART 1901—RULES AND REGULATIONS TO IMPLEMENT THE PRIVACY ACT OF 1974

Sec.

1901.1 Purpose and scope.
1901.3 Definitions.
1901.11 Procedures for requests pertaining to individual records in a record system.
1901.13 Requirements for identification of individuals making requests.
1901.15 Disclosure of requested information to individuals.
1901.17 Appeal of determination to deny access to requested record.
1901.19 Special procedures for disclosure of medical and psychological records.
1901.21 Request for correction or amendment to record.
1901.23 Appeal of initial adverse agency determination on correction or amendment.
1901.31 Disclosure of record to person other than the individual to whom it pertains.
1901.41 Fees.
1901.51 Penalties.
1901.61 General exemptions.
1901.71 Specific exemptions.

AUTHORITY: 5 U.S.C. 552A; 5 U.S.C. 553.

SOURCE: 40 FR 45322, Oct. 1, 1975, unless otherwise noted.

§ 1901.1 Purpose and scope.

(a) This proposed regulation is published pursuant to the Privacy Act of 1974 (5 U.S.C. 552a). This proposed regulation establishes procedures by which an individual may request notification of whether the Central Intelligence Agency maintains a record pertaining to him in any non-exempt portion of a system of records or any non-exempt system of records, request a copy of such record, request that the record be amended, appeal any initial adverse determination of any request to deny access to or amend a record and submit additional data to augment or correct such record. The proposed regulation further specifies those systems of records or portions of systems of records the Director has determined to exempt from the procedures established by this regulation and from certain provisions of the Act.

(b) The purpose of the proposed general exemption, in the instance of polygraph records, is to prevent access and review of records which intimately

reveal a CIA security method. The purpose of the proposed general exemption from the provisions of subsections (c)(3) and (e)(3) (A-D) is to avoid disclosures that may adversely affect ongoing operational relationships with other intelligence and related organizations and thus reveal or jeopardize intelligence sources and methods or risk exposure of intelligence sources and methods in the processing of covert employment applications.

(c) The purpose of the proposed general exemption from subsections (d), (e) (4) (G), (f) (1) and (g) of the Act is to protect only those portions of systems of records which if revealed would risk exposure of intelligence sources and methods or hamper the ability of the CIA to effectively use information received from other agencies or foreign services.

(d) It should be noted that by subjecting information which would consist of, reveal or pertain to intelligence sources and methods to separate determinations by the Director of Central Intelligence under § 1901.61 (c) and (d) regarding access and notice, an intent is established to apply the exemption from access and notice only in those cases where notice in itself would constitute a revelation of intelligence sources and methods. In all cases where only access to information would reveal such source or method, notice will be given upon request.

(e) The purpose of the proposed specific exemptions provided for under section (k) of the Act is to exempt only those portions of systems of records which would consist of, pertain to or reveal that information which is enumerated in the above noted section (k).

(f) In each case, the Director of Central Intelligence has determined that the enumerated classes of information should be exempt in order to comply with directives in Executive Order 11652 dealing with the proper classification of national defense or foreign policy information; protect the privacy of other persons who supplied information under an implied or express grant of confidentiality in the case of law enforcement or employment and security suitability investigations or promotion material in the case of the armed services; protect information used in connection with assisting in protective services under 18 U.S.C. 3056; protecting the efficacy of testing materials; and protect information which would constitute information required by statute to be maintained and used solely as statistical records.

§ 1901.3 Definitions.

For the purposes of this part:

(a) "Agency" means each authority of the United States Government as defined in 5 U.S.C. 552(e).

(b) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence who is a living being and to whom a record might pertain.

(c) "Maintain" means maintain, collect, use, or disseminate.

(d) "Record" means an item, collection or grouping of information about an individual that is maintained by the Central Intelligence Agency.

(e) "System of Records" means a group of any records under the control of the Central Intelligence Agency from which records are retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual.

(f) "Routine use" means (with respect to the disclosure of a record) the use of such record for a purpose which is compatible with the purpose for which the record is maintained.

§ 1901.11 Procedures for requests pertaining to individual records in a record system.

(a) An individual seeking notification of whether a system of records contains a record pertaining to him or an individual seeking access to information or records pertaining to him which is available under the Act shall address his request in writing to the Privacy Act Coordinator, Central Intelligence Agency, Washington, D.C. 20505.

(b) In addition to meeting the identification requirements set forth in § 1901.13 individuals seeking notification or access shall, to the best of their ability, describe the nature of the record sought and the system in which

it is thought to be included, as described in the Notices of Records Systems which is published in the August 28, 1975 issue of the FEDERAL REGISTER.

§ 1901.13 Requirements for identification of individuals making requests.

(a) An individual seeking access to or notification of the existence of records about himself shall provide in the letter of request his full name, address, date and place of birth together with a notarized statement swearing to or affirming his identity. If it is determined by the Privacy Act Coordinator that this information does not sufficiently identify the individual, the Privacy Act Coordinator may request additional identification from the individual or clarification of information submitted by the individual.

(b) In the case of an individual who is an alien lawfully admitted for permanent residence, said individual shall provide, in addition to the information required under paragraph (a) of this section, his or her Alien Registration number.

(c) The parent or guardian of a minor or a person judicially determined to be incompetent shall, in addition to establishing the identity of the minor or person represented as required in paragraph (a) or (b) of this section, establish evidence of such parentage or guardianship by providing a copy of the minor's birth certificate or the court order establishing such guardianship.

§ 1901.15 Disclosure of requested information to individuals.

(a) The Privacy Act Coordinator shall within ten days (excluding Saturdays, Sundays and legal holidays) send the requester written acknowledgment pursuant to § 1901.11 of receipt of the request.

(b) Responses to requests made pursuant to § 1901.11 will be made promptly by the Privacy Act Coordinator.

(c) The Privacy Act Coordinator upon receipt of a request made pursuant to § 1901.11 shall refer the request to the responsible components.

(d) The responsible components shall:

(1) Determine whether a record exists; and

(2) Determine whether access may be available under the Act.

(e) The responsible components shall inform the Privacy Act Coordinator of any determination made pursuant to paragraph (d) (1) or (2) of this section. The Privacy Act Coordinator shall, in turn, notify the individual of the determination and shall provide copies of records determined to be accessible if copies have been requested. In the event that information pertaining to the individual in a CIA record system was received from another Federal agency, the individual will be so notified and that information shall be referred to the originating agency.

(f) If a determination has been made not to give access to requested records the Privacy Act Coordinator shall inform the individual of the reason therefor and the right of appeal of this determination by the responsible components under § 1901.17.

(g) This section shall not be construed to allow access to information determined to be exempt under determinations made pursuant to 5 U.S.C. 552a (j) and (k).

[40 FR 45322, Oct. 1, 1975, as amended at 41 FR 19105, May 10, 1976]

§ 1901.17 Appeal of determination to deny access to requested record.

(a) Any individual whose request made pursuant to § 1901.11 is refused may appeal by submitting a written statement setting forth the basis for the appeal to the Privacy Act Coordinator. Persons who require procedural guidance in preparing an appeal to the Agency's initial refusal to provide records may write for assistance to the Privacy Act Coordinator, Central Intelligence Agency, Washington, D.C. 20505.

(b) The Privacy Act Coordinator, upon receipt of the appeal letter, shall promptly refer the appeal to the Deputy Directors of the responsible components and shall inform the Deputy Directors of the date of receipt of the appeal and shall request the Deputy Directors make a determination on the appeal within thirty

days (excluding Saturdays, Sundays or legal holidays).

(c) The Deputy Directors of the responsible components, or senior officers designated by them, shall review the initial decision to deny access to the requested records and shall inform the Privacy Act Coordinator of the review determination. The Privacy Act Coordinator shall, in turn, notify the individual of the result of the determination. If the determination reverses the initial denial, the Privacy Act Coordinator shall provide copies of the records requested. If the determination upholds the initial denial the Privacy Act Coordinator shall inform the individual of his right to judicial review as provided for by this part.

[40 FR 45322, Oct. 1, 1975, as amended at 41 FR 19105, May 10, 1976]

§ 1901.19 Special procedures for disclosure of medical and psychological records.

(a) When a request for copies of medical records is made by an individual and when the Privacy Act Coordinator determines that such medical and psychological records are not exempt from disclosure, the Privacy Act Coordinator, after consultation with Director of Medical Services, may determine (1) which medical or psychological records may be sent directly to the requestor and (2) which medical or psychological records should not be sent directly to the requestor because of possible harm to the individual. In the case of paragraph (a)(2) of this section, the Privacy Act Coordinator shall so notify the requestor.

(b) When a determination has been made not to make medical or psychological records noted in paragraph (a) of this section available to the individual the Privacy Act Coordinator shall inform the individual that the medical or psychological record will be made available to a physician of the individual's choice if the individual specifically requests. Upon receipt of such request and after proper verification of the identity of the physician, the Privacy Act Coordinator shall send such records to the named physician.

§ 1901.21 Request for correction or amendment of record.

(a) An individual may request amendment or correction of a record pertaining to him by addressing such request by mail to the Privacy Act Coordinator, Central Intelligence Agency, Washington, D.C. 20505. The request shall identify the particular record the individual wishes to amend or correct, the nature of the correction or amendment sought, and a justification for such correction or amendment.

(b) Within ten days of receipt of the request by the Privacy Act Coordinator (excluding Saturdays, Sundays and legal holidays) the Privacy Act Coordinator shall acknowledge receipt of the request.

(c) The Privacy Act Coordinator shall refer such requests to the components responsible for the record upon receipt of such request, shall advise the responsible components of the date of receipt and shall request that the responsible components make an initial determination on such request within thirty days of receipt (excluding Saturdays, Sundays and legal holidays).

(d) The responsible components shall:

(1) Make any correction or amendment to any portion of the record which the individual believes is not accurate, relevant, timely, or complete, and inform all other identified persons or agencies to whom the record has been amended and inform the Privacy Act Coordinator of this action; and the Privacy Act Coordinator shall, in turn, promptly inform the requestor; or

(2) Determine that the requested correction or amendment will not be made and shall so inform the Privacy Act Coordinator who, in turn, shall promptly inform the individual, setting out the reasons for the refusal and advising the individual of the right of appeal to Deputy Directors of the responsible components under § 1901.23.

[40 FR 45322, Oct. 1, 1975, as amended at 41 FR 19105, May 10, 1976]

§ 1901.23 Appeal of initial adverse agency determination on correction or amendment.

(a) Any individual whose request made pursuant to § 1901.21 is refused may appeal such refusal.

(b) Appeals shall be sent in writing to the Privacy Act Coordinator and shall identify the particular record which is the subject of the appeal and shall state the basis for the appeal.

(c) The Privacy Act Coordinator, upon receipt of the appeal letter, shall promptly refer the appeal to the Deputy Directors of the responsible components and shall inform the Deputy Directors of the date of receipt of the appeal and shall direct that the Deputy Directors make a determination on the appeal within thirty days (excluding Saturdays, Sundays or legal holidays).

(d) The Deputy Directors of the responsible components, or senior officers designated by them, shall determine whether or not to amend the record and shall inform the Privacy Act Coordinator of the determination. The Privacy Act Coordinator shall, in turn, notify the individual of the result of the determination, and inform the individual of his right to submit a statement pursuant to paragraph (e) of this section or to judicial review as provided for by this part.

(e) If, on appeal, the refusal to amend or correct the record is upheld, the individual may file a concise statement setting forth the reasons for his disagreement with the determination. This statement shall be sent to the Privacy Act Coordinator, Central Intelligence Agency, Washington, D.C. 20505, within thirty days of notification of refusal to correct or amend the record. The System Manager shall clearly note any portion of the record which is disputed, and provide copies of the statement and, if the System Manager deems it appropriate, copies of a concise statement of reasons for not making the requested amendments to all other identified persons or agencies to whom the disputed record has been disclosed.

(f) The Director of Central Intelligence may extend up to thirty days the time period prescribed in paragraph (c) of this section within which to make a determination on an appeal from a refusal to amend or correct a record if it is found that a fair and equitable review cannot be completed within the prescribed time.

[40 FR 45322, Oct. 1, 1975, as amended at 41 FR 19105, May 10, 1976]

§ 1901.31 Disclosure of a record to a person other than the individual to whom it pertains.

(a) No record which is within a system of records shall be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

(1) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) Required under 5 U.S.C. 552.

(3) For a routine use as defined in § 1901.3(f), as contained in the Notice of Systems published in the FEDERAL REGISTER of August 28, 1975 and as described in subsection (e)(4)(D) of the Act.

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instru-

mentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

§ 1901.41 Fees.

No fee shall be charged for the provision of copies of records requested under the Privacy Act (5 U.S.C. 552a).

§ 1901.51 Penalties.

(a) Criminal penalties may be imposed against any officer or employee of the CIA who, by virtue of his employment, has possession of, or access to, Agency records which contain information identifiable with an individual, the disclosure of which is prohibited by the Act or by these rules, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it.

(b) Criminal penalties may be imposed against any officer or employee of the CIA who willfully maintains a system of records without meeting the requirements of subsection (e)(4) of the Act (5 U.S.C. 552a(e)(4)).

(c) Criminal penalties may be imposed upon any person who knowingly and willfully requests or obtains any record concerning an individual from the CIA under false pretenses.

§ 1901.61 General exemptions.

(a) Pursuant to authority granted in section (j) of the Act (5 U.S.C. 552a(j)) the Director of Central Intelligence has determined to exempt from all sections of the Act except 552a(b), (c) (1) and (2), (e) (1) (4) (A) through (F), (e) (5), (6), (7), (9), (10), and (11), and (i) the following systems of records or portions of records in a system of record:

(1) Polygraph records.

(b) Pursuant to authority granted in section (j) of the Act the Director of Central Intelligence has determined to exempt from subsections (c)(3) and (e)(3) (A through D) of the Act all systems of records maintained by the CIA.

(c) Pursuant to authority granted in subsection (j) of the Act the Director of Central Intelligence has determined to exempt from notification under subsections (e)(4)(G) and (f)(1) those portions of each and all systems of records which have been exempted from individual access under subsection (j), in those cases where the Privacy Act Coordinator determines after advice by the responsible components, that confirmation of the existence of a record may jeopardize intelligence sources and methods. In such cases the CIA may choose to neither confirm nor deny the existence of the record and may advise the individual that there is no record which is available to him pursuant to the Privacy Act of 1974.

(d) Pursuant to authority granted in subsection (j) of the Act the Director of Central Intelligence has determined to exempt from access by individuals under subsection (d) of the Act those portions and only those portions of all systems of records maintained by the CIA that;

(1) Consist of, pertain to, or would otherwise reveal intelligence sources and methods;

(2) Consist of documents or information provided by foreign, federal, state, or other public agencies or authorities.

(e) Pursuant to authority granted in subsection (j) of the Act the Director of Central Intelligence has determined to exempt from judicial review under subsection (g) of the Act all determinations to deny access under section (d) of the Act and all decisions to deny notice under subsections (e) (4) (G) and (f) (1) of the Act pursuant to de-

termination made under paragraph (c) of this section when it has been determined by an appropriate official of the CIA that such access would disclose information which would;

(1) Consist of, pertain to or otherwise reveal intelligence sources and methods;

(2) Consist of documents or information provided by foreign, federal, state, or other public agencies or authorities.

§ 1901.71 Specific exemptions.

(a) Pursuant to authority granted in subsection (k) of the Act (5 U.S.C. 552a (k)) the Director of Central Intelligence has determined to exempt from subsection (d) those portions and only those portions of all systems of records maintained by the CIA that would consist of, pertain to or would otherwise reveal information that is;

(1) Subject to the provisions of section 552(b)(1) of Title 5 U.S.C.;

(2) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Act; *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) Required by statute to be maintained and used solely as statistical records;

(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

PART 1902—INFORMATION SECURITY REGULATIONS

Subparts A–E—[Reserved]

Subpart F—Declassification and Downgrading

§ 1902.13 Declassification and Downgrading Policy.

(a) [Reserved]

(b) [Reserved]

(c) The Executive Order provides that in some cases the need to protect properly classified information "may be outweighed by the public interest in disclosure of the information," and that "when such questions arise" the competing interests in protection and disclosure are to be balanced. The Order further provides that the information is to be declassified in such cases if the balance is struck in favor of disclosure. The drafters of the Order recognized that such cases would be rare and that declassification decisions in such cases would remain the responsibility of the Executive

Branch. For purposes of these provisions, a question as to whether the public interest favoring the continued protection of properly classified information is outweighed by a public interest in the disclosure of that information will be deemed to exist only in circumstances where, in the judgment of the agency, nondisclosure could reasonably be expected to:

(1) Place a person's life in jeopardy.

(2) Adversely affect the public health and safety.

(3) Impede legitimate law enforcement functions.

(4) Impede the investigative or oversight functions of the Congress.

(5) Obstruct the fair administration of justice.

(6) Deprive the public of information indispensable to public decisions on issues of critical national importance (effective for declassification reviews conducted on or after 1 February 1980).

(d) When a case arises that requires a balancing of interests under paragraph (c) above, the reviewing official shall refer the matter to an Agency official having Top Secret classification authority, who shall balance. If it appears that the public interest in disclosure of the information may outweigh any continuing need for its protection, the case shall be referred with a recommendation for decision to the appropriate Deputy Director or Head of Independent Office. If those officials believe disclosure may be warranted, they, in coordination with OGC, as appropriate, shall refer the matter and a recommendation to the DDCI. If the DDCI determines that the public interest in disclosure of the information outweighs any damage to national security that might reasonably be expected to result from disclosure, the information shall be declassified.

(Sec. 5-402 of Executive Order 12065)

[45 FR 64175, Sept. 29, 1980]

CHAPTER XX—INFORMATION SECURITY OVERSIGHT OFFICE

Part		*Page*
2000	Administrative procedures [Reserved]	
2001	National security information; classification; declassification and downgrading; safeguarding; implementation and review; general provisions ...	300
2002	Guidelines for systematic review of foreign government information 30 years old or older	310

PART 2000—ADMINISTRATIVE PROCEDURES [RESERVED]

PART 2001—NATIONAL SECURITY INFORMATION; CLASSIFICATION; DECLASSIFICATION AND DOWNGRADING; SAFE GUARDING; IMPLEMENTATION AND REVIEW; GENERAL PROVISIONS

Subpart A—Original Classification

Sec.
2001.1 Definition.
2001.2 Classification authority.
2001.3 Request for classification authority.
2001.4 Record requirements.
2001,5 Classification procedure.
2001.6 Foreign government information.
2001.7 Standard identification and markings.
2001.8 Additional markings required.
2001.9 Abbreviations.

Subpart B—Derivative Classification

2001.20 Definition.
2001.21 Responsibility.
2001.22 Marking derivatively classified documents.
2001.23 Classification guides.

Subpart C—Declassification and Downgrading

2001.30 Record requirements.
2001.31 Declassification policy.
2001.32 Systematic review for declassification.
2001.33 Procedures for mandatory declassification review.

Subpart D—Safeguarding

2001.40 General.
2001.41 General restrictions on access.
2001.42 Access by historical researchers and former presidential appointees.
2001.43 Dissemination.
2001.44 Accountability procedures.
2001.45 Storage.
2001.46 Transmittal.
2001.47 Loss or possible compromise.
2001.48 Destruction.

Subpart E—Implementation and Review

2001.50 Challenges to classification.

Subpart F—General Provisions

2001.60 Notification.
2001.61 Posted notice.
2001.62 Downgrading, declassification, and upgrading markings.
2001.63 Combat operations.
2001.64 Publication and effective date.

AUTHORITY: Sec. 6-204, E.O. 12065, 43 FR 28949, July 3, 1978.

SOURCE: 43 FR 46280, Oct. 5, 1978, as amended at 44 FR 34129, June 14, 1979, unless otherwise noted.

Subpart A—Original Classification

§ 2001.1 Definition.

"Original classification" as used in Executive Order 12065 (order) means an initial determination that information requires protection against unauthorized disclosure in the interest of national security, and a designation of the level of classification (1).[1]

§ 2001.2 Classification authority.

In the absence of an authorized classifier, anyone designated to act in that person's absence may exercise the classifier's authority (1-204).

§ 2001.3 Request for classification authority.

Requests for original classification authority for agencies not listed in section 1-2 of the order shall be submitted to the President through the Information Security Oversight Office. Requests shall include: (a) The designation of the officials for whom or positions for which authority is sought, (b) the level of authority requested, and (c) the justification for such requests, including a description of the type of information that is anticipated to require original classification (1-2).

§ 2001.4 Record requirements.

Agencies and officials granted original classification authority pursuant to section 1-2 of the order shall maintain a current listing, by classification designation, of individuals to whom or positions to which original classification authority has been delegated (1-2).

§ 2001.5 Classification procedure.

Except as provided in section 1-303 of the order, the fact that the information concerns one or more of the qualifying criteria or categories of information shall not create any pre-

[1] Parenthetical references are to related sections of Executive Order 12065.

sumption as to whether the information meets the damage tests (1-302 and 1-303).

§ 2001.6 Foreign government information.

(a) *Identification.* "Foreign government information" is:

(1) Information provided to the United States by a foreign government or international organization of governments in the expectation, express or implied, that the information is to be kept in confidence; or

(2) Information produced by the United States pursuant to a written joint arrangement with a foreign government or international organization of governments requiring that either the information or the arrangement, or both, be kept in confidence. Such a written joint arrangement may be evidenced by an exchange of letters, a memorandum of understanding, or other written record (1-303 and 6-103).

(b) *Duration of classification.* Unless the guidelines developed pursuant to section 3-404 of the order or other guidelines prescribe dates or events for declassification or for review for declassification:

(1) Foreign government information shall not be assigned a date or event for automatic declassification unless such is specified or agreed to by the foreign government or international.

(2) Foreign government information classified after the effective date of the order shall be assngned a date for review for declassification up to 30 years from the time the information was classified or acquired, (1-402 and 3-404).

§ 2001.7 Standard identification and markings

At the time of original classification, the following shall be shown on the face of paper copies of all classified documents:

(a) *Identity of classifier.* The identity of the classifier, unless also the signer or approver of the document, shall be shown on a "classified by" line; e.g., "Classified by John Doe" or "Classified by Director, XXX" (1-501(a)).

(b) *Date of classification and office of origin.* The date and office of origin on a document at the time of its origination may be considered the date of classification and identification of the office of origin (1-501(b)).

(c) *Date or event for declassification or review.* The date for automatic declassification or for declassification review shall be shown on a "declassify on" or a "review for declassification on" line; e.g., "Declassify on 1 November 1984," "Declassify on completion of State visit," or "Review for declassification on 1 November 1998" (1-501(c)).

(d) *Downgrading markings.* When it is determined (e.g., in a classification guide) that a classified document should be downgraded automatically at a certain date or upon a certain event, that date or event shall be recorded on the face of the document; e.g., "Downgraded to Secret on 1 November 1990" or "Downgraded to Confidential on 1 December 1985" (1-5).

(e) *Identity of extension authority.* The identity of the official who authorizes a date for declassification or for review for declassification that is more than 6 years beyond the date of the document's classification shall be shown on the document, unless that official also is the classifier, signer, or approver of the document. This marking shall be shown substantially as follows: "Extended by (Insert name or title of position of agency head or Top Secret classification authority)" (1-502).

(f) *Reason for extension.* When classification is extended beyond 6 years, the reason shall be stated on the document either in narrative form or by reference to an agency regulation that states the reason for extension in narrative form. The reason shall be shown substantially as follows: "Reason for extension: (State reason or applicable reference)" (1-502).

(g) *Overall and page marking of documents.* The overall classification of a document shall be marked, stamped, or affixed permanently at the top and bottom of the outside of the front cover (if any), on the title page (if any), on the first page, and on the outside of the back cover (if any). Each interior page of a classified document shall be marked or stamped at the top and bottom either according to the highest classification of the content of

the page, including the designation "Unclassified" when appropriate, or according to the highest overall classification of the document. In any case, the classification marking of the page shall not supersede the classification marking of portions of the page marked with lower levels of classification (1-501(d)).

(h) *Subject and titles.* Whenever practicable, subjects and titles shall be selected so as not to require classification. When the subject or title is classified, an unclassified identifier may be assigned to facilitate receipting and reference (1-5).

(i) *Mandatory portion marking.* Classifiers shall identify the level of classification of each classified portion of a document (including subjects and titles), and those portions that are not classified. Portion marking shall be accomplished by placing a parenthetical designator immediately preceding or following the text that it governs. The symbols "(TS)" for top secret. "(S)" for secret, "(C)" for confidential, and "(U)" for unclassified shall be used for this purpose. If individual portion marking is impracticable, the document shall contain a description sufficient to identify the information that is classified and the level of such classification. A waiver of the portion marking requirement may be granted by the Director of the Information Security Oversight Office. Requests for such waivers shall be made by the head of an agency or designee to the Director and shall include: (1) Identification of the information or classes of documents for which such waiver is sought, (2) a detailed explanation of why the waiver should be granted, (3) the agency's best judgment as to the anticipated dissemination of the information or class of documents for which waiver is sought, and (4) the extent to which the information subject to the waiver may form a basis for classification of other documents (1-504).

(j) *Material other than documents.* The classification and associated markings prescribed by this directive of documents shall, where practicable, be affixed to material other than documents by stamping, tagging, or other means. If this is not practicable, recipients shall be made aware of the classification and associated markings by notification or other means as prescribed by the agency (1-5).

(k) *Transmittal documents.* A transmittal document shall indicate on its face the highest classification of the information transmitted by it and the classification, if any, of the transmittal document. For example, an unclassified transmittal document should bear a notation substantially as follows: "Unclassified When Classified Enclosure is Detached" (1-5).

(l) *Marking foreign government information.* Except in those cases where such markings would reveal intelligence information, foreign government information incorporated in United States documents shall, whenever practicable, be identified in such manner as to ensure that the foreign government information is not declassified prematurely or made accessible to nationals of a third country without consent of the orginator. Documents classified by a foreign government or an international organization of governments shall, if the foreign classification is not in English, be marked with the equivalent U.S. classification. Foreign government information not classified by a foreign government or an international organization of governments but provided to the United States in confidence by a foreign government or by an international organization of governments shall be classified at an appropriate level and shall be marked with the U.S. classification accordingly (1-5).

§ 2001.8 Additional markings required.

In addition to the marking requirements in § 2001.7, the following markings shall, as appropriate, be displayed prominently on classified information. When display of these additional markings is not practicable, their applicability to the information shall be included in the written notification of the assigned classification (1-5).

(a) *Restricted data or formerly restricted data.* For classified information containing restricted data or formerly restricted data as defined in the Atomic Energy Act of 1954, as amended, such markings as may be pre-

scribed by the Department of Energy in regulations issued pursuant to the act shall be applied.

(b) *Intelligence sources and methods information.* For classified information involving intelligence sources or methods: "Warning Notice—Intelligence Sources and Methods Involved".

(c) *Dissemination and reproduction notice.* For classified information that the originator has determined, pursuant to section 1-506 of the order, should be subject to special dissemination or reproduction limitations, or both, a statement placing the user on notice of the restrictions shall be included in the text of the document or on its cover sheet; e.g., "Reproduction requires approval of originator," or "Further dissemination only as directed by (Insert appropriate office or official)" (1-506).

§ 2001.9 Abbreviations.

Classified documents that are transmitted electrically may be marked with abbreviations or codes in a single line to satisfy the requirements of each paragraph of §§ 2001.7 and 2001.8 in a manner consistent with economic and efficient use of electrical transmission systems, provided that the full text represented by each such abbreviation or code and its relation to each paragraph of §§ 2001.7 and 2001.8 is readily available to each expected user of the classified documents affected.

Subpart B—Derivative Classification

§ 2001.20 Definition.

"Derivative classification" as used in the order means a determination that information is in substance the same as information that is currently classified, and a designation of the level of classification (2-1).

§ 2001.21 Responsibility.

Derivative application of classification markings is a responsibility of those who incorporate, paraphrase, restate, or generate in new form information that is already classified, and of those who apply markings in accordance with instructions from an authorized classifier or in accordance with an authorized classification guide. Persons who apply derivative classification markings should take care to determine whether their paraphrasing, restating, or summarizing of classified information has removed the basis for classification. Where checks with originators or other appropriate inquiries show that no classification or a lower classification than originally assigned is appropriate, the derivative document shall be issued as unclassified or shall be marked appropriately (2-101 and 2-102).

§ 2001.22 Marking derivatively classified documents.

Paper copies of derivatively classified documents shall be marked at the time of origination as follows:

(a) The classification authority shall be shown on a "classified by" line; e.g., "Classified by (Insert identity of classification guide)" or "Classified by (Insert source of original classification)." If the classification is derived from more than one source, the single phrase "multiple sources" may be shown, provided that identification of each such source is maintained with the file or record copy of the document (2-102(c));

(b) The identity of the office originating the derivatively classified document shall be shown on the face of the document (2-102);

(c) Dates or events for declassification or review shall be carried forward from the source material or classification guide and shown on a "declassify on" or "review for declassification on" line. If the classification is derived from more than one source, the latest date for declassification or review applicable to the various source materials shall be applied to the new information (2-102(c));

(d) The classification marking provisions of §§ 2001.7 (g)-(i) and 2001.7(l) are also applicable to derivatively classified documents (2-102(c));

(e) Any additional marking under § 2001.8 of this Part appearing on the source material shall be carried forward to the new material when appropriate (2-102(c)); and

(f) Any abbreviation or code permitted under § 2001.9 of this part may be

applied to derivatively classified documents.

§ 2001.23 Classification guides.

(a) *Requirements.* Classification guides issued pursuant to section 2-2 of the order shall:

(1) Identify the information to be protected, using categorization to the extent necessary to insure that the information involved can be identified readily and uniformly (2-201);

(2) State which of the classification designations (i.e., top secret, secret, or confidential) applies to the information (2-201);

(3) State the duration of classification in terms of a period of time or future event. When such duration is to exceed 6 years, the reason for such extension shall be provided in the guide. However, if the inclusion of classified reasons would result in a level of classification for a guide that would inhibit its desirable and required dissemination, those reasons need be recorded only on or with the record copy of the guide (2-201); and

(4) Indicate how the designations, time limits, markings, and other requirements of the order and this directive are to be applied, or make specific reference to agency regulations that provide for such application (2-201).

(b) Review and record requirements. Each classification guide shall be kept current and shall be reviewed at least once every 2 years. Each agency shall maintain a list of all its classification guides in current use (2-2).

Subpart C—Declassification and Downgrading

§ 2001.30 Record requirements.

Agencies and officials granted original classification authority pursuant to section 1-2 of the order shall maintain a record of individuals or positions designated as declassification authorities pursuant to section 3-103 of the order (3-103).

§ 2001.31 Declassification policy.

In making determinations under section 3-303 of the order, officials shall respect the intent of the order to protect foreign government information and confidential foreign sources (3-303).

§ 2001.32 Systematic review for declassification

(a) *Systematic review guidelines—(1) U.S. originated information.* System review guidelines shall be kept current through review at least every 2 years, unless earlier review for revision is requested by the Archivist of the United States (3-402).

(2) *Foreign government information.* Within 1 year after the effective date of the order, heads of affected agencies shall, in consultation with the Archivist and in accordance with the provisions of section 3-404 of the order, develop systematic review guidelines for 30-year-old foreign government information. These guidelines shall be kept current through review by agency heads at least once every 2 years, unless earlier review for revision is requested by the Archivist of the United States. A copy of these guidelines and any revisions thereto shall be furnished to the Information Security Oversight Office. Upon request, the Department of State shall provide advice and such assistance as is necessary to effect foreign government coordination of the guidelines (3-404).

(b) *Systematic review procedures—(1) Scheduling for systematic review.* Classified nonpermanent records that are scheduled to be retained for more than 20 years need not be systematically reviewed but shall be reviewed for declassification upon request. Within 60 days of the effective date of the order, heads of agencies and officials designated by the President pursuant to section 1-2 of the order shall direct that all classified records 20 years old or older, whether held in storage areas by the agency or in Federal records centers, be surveyed to identify those that require scheduling for future disposition. Such scheduling shall be accomplished within 2 years of the effective date of the order (3-401).

(2) *Extending classification after review—(i) Foreign government information.* Agency heads listed in section 1-2 and officials designated by the President pursuant to section 1-201 of

the order may extend the classification of foreign government information beyond 30 years, but only in accordance with sections 3-3 and 3-404. This authority may not be delegated. When classification is extended beyond 30 years, a date no more than 10 years later shall be set for declassification or for the next review. Subsequent reviews for declassification shall be set at no more than 10-year intervals (3-404).

(ii) *Waivers of further review.* Heads of agencies listed in section 1-2 and officials designated by the President pursuant to section 1-201 of the order may request from the Director of the Oversight Office a waiver of the 10-year review requirement for both U.S.-originated and foreign government information. Such requests shall include a personal certification by the agency head that the classified information for which the waiver is sought has been systematically reviewed as required, and that a definitive date for declassification could not be determined. Waivers should not be requested unless the results of the review have established an identifiable need to continue classification for a period in excess of 20 additional years. Each request shall include a recommended date or event for subsequent review or automatic declassification (3-401).

(3) *Assistance to the Archivist.* (i) The head of each agency shall designate experienced personnel to assist the Archivist of the United States in the systematic review of 20-year-old U.S.-originated information and 30-year-old foreign government information accessioned into the National Archives of the United States. Such personnel shall:

(A) Provide guidance and assistance to National Archives employees in identifying and separating documents and specific categories of information within documents that are deemed to require continued classification; and

(B) Submit to the head of the agency recommendations for continued classification that identify documents or specific categories of information so separated.

(ii) The head of the agency shall then make the determinations personally and in writing required under section 3-401 of the order as to which documents or categories of information require continued protection. The agency shall inform the Archivist of the United States of this determination (3-4).

(4) *Special procedures.* Special procedures for systematic review and declassification of classified cryptologic information and classified information concerning the identities of clandestine human agents promulgated in accordance with the provisions of section 3-403 of the order shall be binding on all agencies (3-403).

(5) *Foreign relations series.* In order to permit the editors of foreign relations of the United States to meet their mandated goal of publishing 20 years after the event, heads of departments and agencies are requested to assist the editors in the Department of State by facilitating access to appropriate classified materials in their custody and by expediting declassification review of items from their files selected for publication (3-4).

§ 2001.33 Procedures for mandatory declassification review.

(a) *U.S.-originated information*—(1) *Action on an initial request.* Each Agency shall designate, in its implementing regulations published in the FEDERAL REGISTER, offices to which requests for mandatory review for declassification may be directed. Upon request for declassification pursuant to section 3-5 of the order, agencies shall apply the following procedures:

(i) The designated offices shall acknowledge receipt of the request.

(ii) Whenever a request does not reasonably describe the information sought, the requestor shall be notified that unless additional information is provided or the scope of the request is narrowed, no further action will be undertaken (3-501).

(2) *Information in the custody of and under the exclusive declassification authority of an agency.* The designated office shall determine whether, under the declassification provisions of section 3-3 of the order, the requested information may be declassified and, if so, shall make such information available to the requestor,

unless withholding is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requestor shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination to a designated agency appellate authority (including name, title, and address of such authority), and a notice that such an appeal must be filed with the agency within 60 days in order to considered (3-501).

(3) *Information classified by agencies other than the custodial agency.* When an agency receives a request for information in its custody that was classified by another agency, it shall forward the request to the appropriate agency for review, together with a copy of the document containing the information requested where practicable, and with its recommendation to withhold any of the information where appropriate. Unless the agency that classified the information objects on grounds that its association with the information requires protection, the agency that received the request shall also notify the requestor of the referral. After the agency that classified the information completes its review (in coordination with other agencies that a direct interest in the subject matter), a response shall be sent to the requestor in accordance with the procedures described above. If requested, the agency shall also communicate its determination to the referring agency (3-501).

(4) *Action on appeal.* The head of an agency or a designee shall establish procedures to act within 30 days upon all appeals of denials of requests for declassification. These procedures shall provide for meaningful appellate consideration, shall be forwarded to the Oversight Office for review, and shall be published in the FEDERAL REGISTER. In accordance with these procedures, agencies shall determine whether continued classification is required in whole or in part, notify the requestor of the determination, and make available any information that is declassified and otherwise releasable. If continued classification is required under the provisions of section 3-3 of the order, the requestor shall be notified of the reasons therefor. If requested, the Agency shall also communicate the appeal determination to any referring agency (3-5 and 5-404(c)).

(5) *Fees.* If the request requires the rendering of services for which fair and equitable fees may be charged pursuant to title 5 of the Independent Offices Appropriation Act, 65 Stat. 290, 31 U.S.C. 483a (1976), such fees may be imposed at the discretion of the agency rendering the services. Schedules of such fees shall be published in the FEDERAL REGISTER (3-501).

(b) *Foreign government information.* Except as provided hereinafter, requests for mandatory review for the declassification of classified documents that contain foreign government information shall be processed and acted upon in accordance with the provisions of paragraph (a) of this section. If the agency receiving the request is also the agency that initially received or classified the foreign government information, it shall determine whether the foreign government information in the document may be declassified and released in accordance with agency policy or guidelines, after consulting with other agencies that have subject matter interest as necessary. If the agency receiving the request is not the agency that received or classified the foreign government information, it shall refer to the request to the appropriate agency, which shall take action as described above, including its recommendation to withhold any of the information where appropriate. In those cases where agency policy or guidelines do not apply, consultation with the foreign originator through appropriate channels may be advisable prior to final action on the request (3-5).

Subpart D—Safeguarding

§ 2001.40 General.

Information classified pursuant to Executive Order 12065 or prior orders shall be afforded a level of protection against unauthorized disclosure commensurate with its level of classification (4-1).

§ 2001.41 General restrictions on access.

(a) *Determination of need-to-know.* Classified information shall be made available to a person only when the possessor of the classified information establishes in each instance, except as provided in section 4-3 of the order, that access is essential to the accomplishment of official Government duties or contractual obligations (4-101).

(b) *Determination of trustworthiness.* A person is eligible for access to classified information only after a showing of trustworthiness as determined by agency heads based upon appropriate investigations in accordance with applicable standards and criteria (4-101).

§ 2001.42 Access by historical researchers and former Presidential appointees.

Agencies shall obtain: (a) Written agreements from requestors to safeguard the information to which they are given access as permitted by the order and this directive; and (b) Written consent to the agency's review of their notes and manuscripts for the purpose of determining that no classified information is contained therein. A determination of trustworthiness is a precondition to a requestor's access. If the access requested by historical researchers and former Presidential appointees requires the rendering of services for which fair and equitable fees may be charged pursuant to title 5 of the Independent Offices Appropriations Act, 65 Stat. 290, 31 U.S.C. 483a (1976), the requestor shall be so notified and the fees may be imposed (4-3).

§ 2001.43 Dissemination.

Except as otherwise provided by section 102 of the National Security Act of 1947, 61 Stat. 495, 50 U.S.C. 403 (1970 and Supp. V 1975), classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency (4-403).

§ 2001.44 Accountability procedures.

(a) *Top secret.* Top secret control officers shall be designated to receive, transmit, and maintain current access and accountability records for top secret information. An inventory of top secret documents shall be made at least annually; however, heads of agencies may authorize the annual inventory of top secret documents in repositories, libraries, or activities that store large volumes of such information to be limited to documents to which access has been afforded within the past 12 months. The Director of the Oversight Office may grant a waiver with respect to the requirement of an annual inventory for storage systems involving large volumes of information if security measures with respect to such storage systems are adequate to prevent access by unauthorized persons (4-103).

(b) *Secret and confidential.* Secret and confidential classified information shall be subject to such controls and current accountability records as the head of the agency may prescribe (4-103).

§ 2001.45 Storage.

Classified information shall be stored only in facilities or under conditions adequate to prevent unauthorized persons from gaining access to it (4-103).

(a) *Top secret.* Top secret information shall be stored in a GSA-approved, safe-type, steel file cabinet having a built-in, three-position, dial-type combination lock or within an approved vault, or vault-type room, or in other storage facility that meets the standards for top secret established under the provisions of subsection 3 below. In addition, heads of agencies shall prescribe such additional, supplementary controls as are deemed appropriate to restrict unauthorized access to area where such information is stored (4-103).

(b) *Secret and confidential.* Secret and confidential information shall be stored in a manner and under the conditions prescribed for top secret information, or in a container or vault that meets the standards for secret or confidential, established pursuant to the provisions of subsections 3 or 4 below (4-103).

(c) *Standards for security equipment.* The General Services Administration shall, in coordination with agencies originating classifed information, establish and publish uniform standard, specifications, and supply schedules for containers, vaults, alarm systems, and associated security devices suitable for the storage and protection of all categories of classfied information. Any agency may establish more stringent standards for its own use. Whenever new security equipment is procured, it shall be in conformance with the standards and specifications referred to above and shall, to the maximum extent practicable, be of the type designated on the Federal Supply Schedule, General Services Administration (4-103).

(d) *Exception to standards for security equipment.* (1) Secret and confidential information may also be stored in a steel filing cabinet having a built-in, three-position, dial-type, changeable combination lock, or a steel filing cabinet equipped with a steel lock bar, provided it is secured by a three-position, changeable, combination padlock approved by GSA for the purpose. The storage of secret information in the steel filing cabinets described above requires the use of such supplementary controls as the head of the agency deems necessary to achieve the degree of protection warranted by the sensitivity of the information involved (4-103).

(2) For protection of bulky secret and confidential material (for example, weaponry containing classified components) in magazines, strong rooms, or closed areas, access openings may be secured by changeable combination or key-operated, high-security padlocks approved by GSA. When key-operated padlocks are used, keys shall be controlled in accordance with subsection 6 below (4-103).

(e) *Combinations*—(1) *Equipment in service.* Combinations to dial-type locks shall be changed only by persons having appropriate security clearance, and shall be changed whenever such equipment is placed in use, whenever a person knowing the combination no longer requires access to the combination, whenever a combination has been subjected to possible compromise, whenever the equipment is taken out of service, and at least once every year. Knowledge of combinations protecting classified information shall be limited to the minimum number of persons necessary for operating purposes. Records of combinations shall be classified no lower than the highest level of classified information to be stored in the security equipment concerned (4-103).

(2) *Equipment out of service.* When security equipment having a built-in combination lock is taken out of service, the lock shall be reset to the standard combination 50-25-50. Combination padlocks shall be reset to the standard combination 10-20-30 (4-103).

(f) *Keys.* Heads of agencies shall establish administrative procedures for the control and accountability of keys and locks whenever key-operated, high-security padlocks are utilized. The level of protection provided such keys shall be equivalent to that afforded the classified information being protected. Under no circumstances may keys be removed from the premises. They shall be stored in a secure container (4-103).

(g) *Responsibilities of custodians.* Persons entrusted with classified information shall be responsible for providing protection and accountability for such information at all times and for locking classified information in approved security equipment whenever it is not in use or under direct supervision of authorized persons. Custodians shall follow procedures that insure unauthorized persons do not gain access to classified information (4-103).

(h) *Inspections.* Individuals charged with the custody of classified information shall conduct the necessary inspections within their areas to insure adherence to procedural safeguards prescribed to protect classified information. Agency security officers shall insure that periodic inspections are made to determine whether procedural safeguards prescribed by agency regulations are in effect at all times (4-103).

§ 2001.46 Transmittal.

(a) *Preparation and receipting.* Classified information shall be enclosed in opaque inner and outer covers before transmitting. The inner cover shall be a sealed wrapper or envelope plainly marked with the assigned classification and addresses of both sender and addressee. The outer cover shall be sealed and addressed with no identification of the classification of its contents. A receipt shall be attached to or enclosed in the inner cover, except that confidential information shall require a receipt only if the sender deems it necessary. The receipt shall identify the sender, addressee, and the document, but shall contain no classified information. It shall be immediately signed by the recipient and returned to the sender. Any of these wrapping and receipting requirements may be waived by agency heads under conditions that will provide adequate protection and prevent access by unauthorized persons (4-103).

(b) *Transmittal of top secret.* The transmittal of top secret information shall be by specifically designated personnel, by State Department diplomatic pouch, by a messenger-courier system specially created for that purpose, or over authorized secure communications circuits (4-103).

(c) *Transmittal of secret.* The transmittal of secret material shall be effected in the following manner:

(1) *The 50 States, District of Columbia, and Puerto Rico.* Secret information may be transmitted within and between the 50 States, District of Columbia and Puerto Rico by one of the means authorized for top secret information, by the U.S. Postal Service registered mail, or by protective services provided by U.S. air or surface commercial carriers under such conditions as may be prescribed by the head of the agency concerned (4-103).

(2) *Canadian Government Installations.* Secret information may be transmitted to and between United States Government and Canadian Government installations in the 50 States, the District of Columbia, and Canada by the United States and Canadian registered mail with registered mail receipt (4-103).

(3) *Other areas.* Secret information may be transmitted from, to, or within areas other than those specified in paragraphs (c) (1) or (2) of this section by one of the means established for top secret information, or by U.S. registered mail through Army, Navy, or Air Force Postal Service facilities provided that the information does not at any time pass out of U.S. citizen control and does not pass through a foreign postal system. Transmittal outside such areas may also be accomplished under escort of appropriately cleared personnel aboard U.S. Government and U.S. Government contract vehicles or aircraft, ships of the United States Navy, civil service manned U.S. Naval ships, and ships of U.S. Registry. Operators of vehicles, captains or masters of vessels, and pilots of aircraft who are U.S. citizens and who are appropriately cleared may be designated as escorts (4-103).

(d) *Transmittal of confidential information.* Confidential information shall be transmitted within and between the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories or possessions by one of the means established for higher classifications, or by U.S. Postal Service certified, first class, or express mail service when prescribed by an agency head. Outside these areas, confidential information shall be transmitted only as is authorized for higher classification (4-103).

§ 2001.47 Loss or possible compromise.

Any person who has knowledge of the loss or possible compromise of classified information shall immediately report the circumstances to an official designated by the agency or organization. In turn, the originating agency shall be notified about the loss or compromise in order that a damage assessment may be conducted and appropriate measures taken to negate or minimize any adverse effect of such a compromise. An immediate inquiry shall be initiated by the agency under whose cognizance the loss or compromise occurred, for the purpose of taking corrective measures and appropriate administrative, disciplinary, or legal action (4-103).

§ 2001.48 Destruction.

Nonrecord classified information that has served its intended purpose shall be destroyed in accordance with procedures and methods approved by the head of the agency. The method of destruction selected must preclude recognition or reconstruction of the classified information or material (4-103).

Subpart E—Implementation and Review

§ 2001.50 Challenges to classification.

Agency programs established to implement the order shall encourage holders of classified information to challenge classification in cases where there is reasonable cause to believe that information is classified unnecessarily, improperly, or for an inappropriate period of time. These programs shall provide for action on such challenges or appeals relating thereto within 30 days of receipt and for notification to the challenger of the results. When requested, anonymity of the challenger shall be preserved (5-404(d)).

Subpart F—General Provisions

§ 2001.60 Notification.

Notification of unscheduled changes in classification or changes in duration of classification may be by general rather than specific notice (4-102).

§ 2001.61 Posted notice.

If prompt remarking of large quantities of information would be unduly burdensome, the custodian may attach a change of classification notice to the storage unit in lieu of the marking action otherwise required. Each notice shall indicate the change, the authority for the action, the date of the action, and the storage units to which it applies. Items permanently withdrawn from such storage units shall be marked promptly in accordance with the marking provisions herein. However, when information subject to a posted downgrading, upgrading, or declassification notice is withdrawn from one storage unit solely for transfer to another, or a storage unit containing such information is transferred from one place to another, the transfer may be made without marking if the notice is attached to or remains with each shipment (4-102).

§ 2001.62 Downgrading, declassification, and upgrading markings.

Whenever a change is made in the original classification or in the dates of downgrading or declassification of any classified information, it shall be promptly and conspicuously marked to indicate the change, the authority for the action, the date of the action, and the identity of the person taking the action. Earlier classification markings shall be cancelled when practicable (4-102).

§ 2001.63 Combat operations.

The provisions of the order and this Part with regard to dissemination, transmittal, or safeguarding of classified information may be so modified in connection with combat or combat-related operations as the Secretary of Defense may by regulations prescribe (4-103).

§ 2001.64 Publication and effective date.

This directive shall be published in the FEDERAL REGISTER. It shall become effective December 1, 1978 (6-204).

PART 2002—GUIDELINES FOR SYSTEMATIC REVIEW OF FOREIGN GOVERNMENT INFORMATION 30 YEARS OLD OR OLDER

Sec.

2002.1 Purpose.
2002.2 Definitions.
2002.3 Scope.
2002.4 Agency responsibilities.
2002.5 Effect of publication.
2002.6 Categories requiring item-by-item review.
2002.7 Referral and decision.
2002.8 Downgrading.

AUTHORITY: Sec. 3-404, E.O. 12065, 43 FR 28949, July 3, 1978.

SOURCE: 45 FR 19551, Mar. 26, 1980, unless otherwise noted.

§ 2002.1 Purpose.

These Guidelines for the systematic review and declassification of foreign

government information have been developed in accordance with the provisions of Section 3-404 of Executive Orders 12065, "National Security Information," and § 2001.32 of Information Security Oversight Office Directive No. 1. All foreign government information constituting permanently valuable records of the United States Government, for which a prior declassification date has not been established, shall be systematically reviewed for declassification as it becomes thirty years old. Foreign government information found to be within one of the specific categories of information listed in § 2002.6 shall be reviewed item-by-item by authorized personnel of the agency or agencies concerned to determine whether continued protection beyond thirty years is needed. All foreign government information not identified in these Guidelines as requiring item-by-item review and for which a prior declassification date has not been established shall be declassified at the end of thirty years from the date of original classification.

§ 2002.2 Definitions.

"Foreign government information" as used in these Guidelines consists of:

(a) Documents or material provided by a foreign government or governments international organization of governments, or any element thereof in the expectation, expressed or implied, that the document, material, or the information contained therein is to be held ir confidence;

(b) Documents originated by the United States that contain classified information provided, in any manner, to the United States by foreign governments, international organizations of governments, or elements thereof, with the expectation, express or implied, that the information will be held in confidence;

(c) Classified information or material produced by the United States pursuant to or as a result of a joint arrangement, evidenced by an exchange of letters, memorandum of understanding, or other written record, with a foreign government or organization of governments requiring that the information, the arrangement, or both be kept in conficence.

§ 2002.3 Scope.

(a) These Guidelines apply to 30-year old foreign government information which has been received or classified by the United States Government or its agents.

(b) Atomic energy information (including that originated prior to 1947 and not marked as such, that received from the United Kingdom or Canada marked "Atomic," and that received from NATO marked "Atomal") which is defined and idetified as Restricted Data or Formerly Restricted Data in Sections 11y and 142d of the Atomic Energy Act of 1954, as amended, is outside the scope of these Guidelines and is not subject to systematic review and may not be automatically downgraded or declassified. Any document containing information within the definition of Restricted Data or Formerly Restricted Data that is not so marked will be referred to the Department of Energy Office of Classification for review and appropriate marking, except for licensing and related regulatory matters which shall be referred to the Division of security, U.S. Nuclear Regulatory Commission.

§ 2002.4 Agency responsibilities.

(a) Foreign government information transferred to the General Services Administration for accession into the National Archives of the United States shall be reviewed for declassification by the Archivist of the United States in accordance with Executive Order 12065, the directives of the Information Security Oversight Office, these Guidelines. any applicable terms of accession, and any supplemental guidelines provided by the agency with classification jurisdiction over the information.

(b) Foreign government information constituting permanently valuable records of the government (as defined in 44 U.S.C. 2103) that is 30 years old and undergoing systematic review for declassification while in the custody of an agency shall, except as provided in § 2002.3 be reviewed for declassification and downgrading by that agency

80-109 O—81——21

in accordance with Executive Order 12065, the directives of the Information Security Oversight Office, these Guidelines, and any supplemental internal agency guidelines.

(c) Foreign government information falling within any of the categories listed in § 2002.6 of these Guidelines shall be declassified or downgraded only upon specific authorization of the agencies to which the information was furnished by the foreign government or international organization of governments concerned and/or which have classification jurisdiction over it. When such information is in the custody of an agency but was furnished to or classified by, or is otherwise under the classification jurisdiction of another agency or agencies the information shall be referred thereto for review. Information so referred shall remain classified until all reviewing agencies have authorized its declassification. If the custodial agency cannot readily identify the agency or agencies having classification jurisdiction, the information shall be referred in accordance with § 2002.7 of these Guidelines for review or further referral.

(d) Consultations with foreign governments concerning the proposed declassification of foreign government information shall be the responsibility of the agency having classification jurisdiction over the information affected.

(e) Foreign government information falling within any of the categories listed in § 2002.6 of these Guidelines appearing in White House documents, which is either identifiable as having been furnished or appears to have been frunished by a foreign government shall be reviewed by designated White House personnel and further referred for review to any other agencies whose classification interest is indicated by the nature or content of the documents.

§ 2002.5 Effect of publication.

(a) Foreign government information shall be considered declassified when published in an unclassified United States Government executive branch publication (e.g., the Foreign Relations of the United States series) or when cleared for such publication by United States Government executive branch officials authorized to declassify the information; or if officially published as unclassified by the foreign government(s) or international organization(s) of governments that furnished the information unless the fact of the U.S. Government's possession of the information requires continued protection.

(b) The unofficial publication, in the United States or abroad, of foreign government information contained in United States or foreign documents, or of substantially similar information, does not in or of itself constitute or permit the declassification of such documents. Although prior unofficial publication is a factor to be considered in the systematic review process and may affect determinations as to continuation of classification, there may be valid reasons for continued protection of the information which could preclude its declassification. In particular, the classification status of foreign government information which concerns or derives from intelligence activities, sources or methods shall not be affected by any unofficial publication of identical or similar information. The final determination as to the declassification of foreign government information similar to or identical with unofficially published information shall be made by the agency or agencies having classification jurisdiction over it.

§ 2002.6 Categories requiring item-by-item review.

Foreign government information falling into the specific categories listed below shall be reviewed for declassification in accordance with § 2002.1.

(a) Information exempted from declassification under any joint arrangement evidenced by an exchange of letters, memorandum of understanding, or other written record, with the foreign government or international organization of governments, or element(s) thereof, that furnished the information. Questions concerning the existence or applicability of such arrangements shall be referred to the agency

or agencies holding classification jurisdiction over the records under review.

(b) Information related to the safeguarding of nuclear materials or facilities, foreign and domestic, including but not necessarily limited to vulnerabilities and vulnerability assessments of nuclear facilities and Special Nuclear Material.

(c) Nuclear arms control information (see also paragraph (k) of this section).

(d) Information regarding foreign nuclear programs (other than Restricted Data and Formerly Restricted Data), such as:

(1) Nuclear weapons testing.

(2) Nuclear weapons storage and stockpile.

(3) Nuclear weapons effects, hardness, and vulnerability.

(4) Nuclear weapons safety.

(5) Cooperation in nuclear programs including, but not limited to, peaceful and military applications of nuclear energy.

(6) Exploration, production and import of uranium and thorium from foreign countries.

(e) Information concerning intelligence or counterintelligence sources, methods or activities including but not limited to intelligence, counterintelligence and covert action programs, plans, policies, operations, or assessments; or which would reveal or identify:

(1) Any present, past or prospective undercover personnel, installation, unit, or clandestine human agent, of the United States or a foreign government;

(2) Any present, past or prospective method, procedure, mode, technique or requirement used or being developed by the United States or by foreign governments, individually or in combination, to produce, acquire, transmit, analyze, correlate, assess, evaluate or process intelligence or counterintelligence, or to support an intelligence or counterintelligence source, operation, or activity;

(3) The present, past or proposed existence of any joint United States and foreign government intelligence, counterintelligence, or covert action activity or facility, or the nature thereof.

(f) Information that could result in or lead to actions which would place an individual in jeopardy attributable to disclosure of the information, including but not limited to:

(1) Information identifying any individual or organization as a confidential source of intelligence or counterintelligence.

(2) Information revealing the identity of an intelligence, counterintelligence or covert action agent or agents.

(g) Information about foreign individuals, organizations or events which, if disclosed, could be expected to:

(1) Adversely affect a foreign country's or international organization's present or future relations with the United States.

(2) Adversely affect present or future confidential exchanges between the United States and any foreign government or international organization of governments.

(h) Information related to plans (whether executed or not, whether presented in whole or in part), programs, operations, negotiations, and assessments shared by one or several foreign governments with the United States, including but not limited to those involving the territory, political regime or government of another country, and which if disclosed could be expected to adversely affect the conduct of U.S. foreign policy or the conduct of another country's foreign policy with respect to a third country or countries. This item would include contingency plans, plans for covert political, military or paramilitary activities or operations by a foreign government acting alone or jointly with the United States Government, and positions or actions taken by a foreign government alone or jointly with the United States concerning border disputes or other territorial issues.

(i) Information concerning arrangments with respect to foreign basing of cryptologic operations and/or foreign policy considerations relating thereto.

(j) Scientific information such as that concerning space, energy, climatology, communications, maritime, undersea, and polar projects, that could be expected to adversely affect current and/or future exchanges of such in-

formation between the United States and any foreign governments or international organizations of governments.

(k) Information on foreign policy aspects of nuclear matters, the disclosure of which could be expected to adversely affect cooperation between one or more foreign governments and the United States Government.

(l) Nuclear propulsion information.

(m) Information concerning the establishment, operation, and support of nuclear detection systems.

(n) Information concerning or revealing military or paramilitary escape, evasion, cover or deception plans, procedures, and techniques whether executed or not.

(o) Information which could adversely affect the current or future usefulness of military defense policies, programs, weapon systems, operations, or plans.

(p) Information concerning research, development, testing and evaluation of chemical and biological weapons and defense systems; specific identification of chemical and biological agents and *munitions*; and chemical and biological warfare plans.

(q) Technical information concerning weapons systems and military equipment that reveals the capabilities, limitations, or vulnerabilities of such systems or equipment and that could be exploited to destroy, counter, render ineffective or neutralize such weapons or equipment.

(r) Cryptologic information, including cryptologic sources and methods, currently in use. This includes information concerning or revealing the processes, techniques, operations, and scope of signal intelligence comprising communications intelligence, electronics intelligence, and telemetry intelligence, the cryptosecurity and emission security components of communications security, and the communications portion of cover and deception plans.

(s) Information concerning electronic warfare (electronic warfare support measures, electronic counter-countermeasures) or related activities, including but not necessarily limited to:

(1) Nomenclature, functions, technical characteristics or descriptions of communications and electronic equipment, its employment/development, and its association with weapon systems or military operations.

(2) The processes, techniques, operations or scope of activities involved in the acquisition, analysis and evaluation of such information, and the degree of success achieved by the above processes, techniques, operations or activities.

(t) Present, past or proposed protective intelligence information relating to the sources, plans, techniques, equipment and methods in carrying out assigned duties of protecting United States Government officials or other protectees abroad and foreign officials while in the United States or United States possessions. This includes information concerning the identification of witnesses, informants and persons suspected of being dangerous to persons under protection.

(u) Information on deposits of foreign official institutions in United States banks and on foreign official institutions' holdings, purchases and sales of long-term marketable securities in the United States.

(v) Information concerning economic and policy studies and sensitive assessments or analyses of economic conditions, policies or activities of foreign countries or international organizations of governments received through the Multilateral Development Banks and Funds or through the International Monetary Fund (IMF) and the Organization for Economic Cooperation and Development (OECD).

(w) Information described in § 2002.6 (a) through (v) contained in correspondence, transcripts, memoranda of conversation, or minutes of meetings between the President of the United States or the Vice President of the United States and foreign government officials.

(x) Information described in § 2002.6 (a) through (v) contained in documents originated by or sent to the Assistant to the President for National Security Affairs, his Deputy, members of the National Security Council staff, or any other person on the White House or the Executive Office of the President staffs performing national security functions.

(y) Federal agency originated documents bearing Presidential, National Security Council, or White House or Executive Office of the President staffs comments relating to categories of information described in § 2002.6 (a) through (v).

(z) Information as described in § 2002.6 (a) through (v) contained in correspondence to or from the President or the Vice President, including background briefing memoranda and talking points for meetings between the President or the Vice President and foreign government officials, and discussions of the timing and purposes of such meetings.

(aa) Information as described in § 2002.6 (a) through (v) contained in agency message traffic originated by White House or Executive Office of the President staffs members but sent through agency communication networks.

§ 2002.7 Referral and decision.

(a) When the identity of agencies having classification jurisdiction over foreign government information is not apparent to the agency holding the information, or when reviewing officials do not possess the requisite expertise, classification jurisdiction for systematic review shall be transferred as follows:

(1) Categories § 2002.6 (b) through (d), Department of Energy or Nuclear Regulatory Commission (as appropriate).

(2) Categories § 2002.6 (e) and (f), Central Intelligence Agency.

(3) Categories § 2002.6 (g) through (k), Department of State.

(4) Categories § 2002.6 (l) through (s), Department of Defense.

(5) Categories § 2002.6 (t) and (v), Department of the Treasury.

(6) Categories § 2002.6 (w) through (aa), National Security Council.

(b) Agencies shall declassify information when it is determined after any necessary consultation with other United States agencies and, as appropriate, with foreign governments and international organization of governments that the information no longer requires classification protection. If it is determined that classification must be extended beyond 30 years, the provisions of § 2001.32 of Information Security Oversight Office Directive No. 1 apply.

§ 2002.8 Downgrading.

Foreign government information classified Top Secret may be downgraded to Secret after 30 years unless an agency with classification jurisdiction over it determines on its own authority, or after consultation, as appropriate, with the foreign government or international organization of governments which furnished the information, that it requires continued protection at the Top Secret level.

CHAPTER XXI—NATIONAL SECURITY COUNCIL

Part		*Page*
2101	Freedom of Information Act requests for classified documents—processing, fees, reports, applicable material, declassification criteria, partial release	318
2102	Rules and Regulations to implement the Privacy Act of 1974	324
2103	Regulations to implement E.O. 12065—including procedures for public access to documents that may be declassified	328

PRECEDING PAGE BLANK-NOT FILMED

PART 2101—FREEDOM OF INFORMATION ACT REQUESTS FOR CLASSIFIED DOCUMENTS—PROCESSING, FEES, REPORTS, APPLICABLE MATERIAL, DECLASSIFICATION CRITERIA, PARTIAL RELEASE

Subpart A—Introduction

Sec.

2101.1 The amended Freedom of Information Act.
2101.2 Purpose of amended Act.

Subpart B—Processing Requests for Classified Material

2101.11 Receipt of requests.
2101.12 Initial processing.
2101.13 Requests for time extensions.
2101.14 Initial review period.
2101.15 Initial reply to request.
2101.16 Processing of appeals to "Head of Agency."
2101.17 Appeals to Federal District Courts.

Subpart C—Schedule of Fees and Method of Payment for Services Rendered

2101.21 Fees schedule.
2101.22 Fee payments.

Subpart D—Reports

2101.31 Quarterly Index of Publications.
2101.32 Annual Report to Congress.

Subpart E—Applicable Material

2101.41 Primary review by NSC staff.
2101.42 Recommendations to other agencies.

Subpart F—Declassification Criteria

2101.51 Criteria for denying a request for release of classified material.
2101.52 Procedural criteria under E.O. 11652.
2101.53 Substantive criteria under E.O. 11652 for material under ten years old.
2101.54 Substantive criteria under E.O. 11652 for material over ten years old.

Subpart G—Partial Release

2101.61 Release of "reasonably segregable portion" of requested classified material.
2101.62 Downgrading of classified material reviewed under the FOI Act.

AUTHORITY: E.O. 11652, as amended by Pub. L. 93-502, unless otherwise noted.

SOURCE: 40 FR 7316, Feb. 19, 1975, unless otherwise noted.

Subpart A—Introduction

§ 2101.1 The amended Freedom of Information Act.

The amended Freedom of Information Act, Pub. L. 93-502 (5 U.S.C. 552), provided, and to the extent, it is applicable to the National Security Council Staff, provides expanded opportunities for the public to secure the release of classified material under the control of, or of primary interest to, the NSC Staff. The amended Act sets more restrictive time periods within which requests must be processed, modifies the criteria upon which denials of such requests can be based, and permits appeals to district courts of denials of requests. As a result of these changes, modified procedures are required from those followed in the case of requests for the release of classified material over ten years old made under Executive Order 11652. These regulations are intended to guide the NSC Staff response to requests for classified material under the amended Freedom of Information Act, insofar as it is applicable.

§ 2101.2 Purpose of amended Act.

The underlying purpose of the amended Freedom of Information Act is to insure that the public is informed to the fullest extent possible about governmental policies and actions, consistent with the requirement to protect certain categories of sensitive information. In the case of classified material, the Act is intended to protect the public against the improper classification of information, particularly to conceal inefficiency or administrative error or to prevent embarrassment to a person or department. These goals are fully consistent with the provisions of Executive Order 11652 and the implementing NSC Directive of May 17, 1972, which regulate and control the protection and management of national security information. The provisions of these documents relating to the criteria, authority and procedures for classifying and safeguarding national security material remain unaffected by the amended Act.

Subpart B—Processing Requests for Classified Material

§ 2101.11 Receipt of requests.

(a) Request for classified documents under the FOI Act should be addressed to:

National Security Council
ATTN: Staff Secretary
Old Executive Office Building
Washington, D.C. 20506

Oral requests received by the Staff Secretary or other members of the NSC Staff will be rejected and the requester informed that his request should be made in writing and directed to the Staff Secretary.

(b) All time limits are based on the date of receipt by the NSC Staff of a request. Consequently, this "key date" must in all cases be accurately recorded.

(c) If a request is misdirected to the NSC Staff, the requestor will be promptly notified in writing.

(d) Requests for declassification of material forwarded by the National Archives and Records Service (or other Agencies) should be submitted with three copies of the requested material attached.

§ 2101.12 Initial processing.

(a) Requested material will be rapidly gathered (when not received with the request) screened, and disseminated to appropriate reviewing officers.

(1) Initial dissemination of material to reviewing officers will be made by the Secretariat, with review by the Staff Secretary.

(2) Material to be reviewed will be disseminated utilizing "highly visible" and clearly distinguishable orange folders.

(3) Deadline for submitting recommendations will be indicated in all cases and must be adhered to.

(b) Dissemination of material to other Agencies for comment will be made by the Staff Secretary to responsible officials of these Agencies.

(c) Strict accounting of status and location of all material disseminated will be maintained by the Secretariat.

§ 2101.13 Requests for time extensions.

(a) Requestors will be promptly notified by the Staff Secretary of a time extension (indicating the new date by which a determination will be dispatched) due to the following three "unusual circumstances":

(1) Need to search for or collect records from field facilities or other establishments separate from the office of request;

(2) Need to search for, collect and examine voluminous amounts of records;

(3) Need to consult with other agencies because of their having substantial subject-matter interests.

(b) Time extensions will not exceed ten working days in the aggregate, either solely in the initial or the review stage, or divided between them.

(c) The Staff Secretary will authorize all time extensions.

(d) Prior to requesting a court authorized time extension, requestors will be contacted by the Staff Secretary in an attempt to arrange informal agreement on a time extension (any verbal agreement will be quickly formalized in writing).

(e) The Staff Secretary will authorize all requests to courts for time extensions based on "exceptional circumstances" and "due diligence". Formal approaches to courts for time extensions will be conducted by the Department of Justice.

§ 2101.14 Initial review period.

(a) A total of ten working days is available for submitting an initial response to requests.

(1) Time period allowed reviewing officers will be the maximum period consistent with time required for administrative processing and final review of recommendations and preparation of reply by Staff Secretary.

(2) Reviewing officers will be periodically reminded of approaching due dates in order to insure recommendations are received in a timely manner.

(b) Primary reviewing officers will delegate reviewing authority in the event they are unavailable to conduct reviews.

§ 2101.15 Initial reply to request.

(a) The Staff Secretary will review the recommendations of primary reviewing officers and approve initial replies.

(b) An initial response will always be made even if processing has not been completed.

(c) If processing has not been completed but an interim negative reply has been dispatched, processing will continue.

(d) Accurate record of replies will be maintained by Secretariat.

(e) If a negative or partial denial response is dispatched, requester will be notified of his right to appeal.

(f) If some or all material is approved for release, the Staff Secretary will insure it is expeditiously dispatched to the requestor or grant authority to NARS or other Agency to release the material.

§ 2101.16 Processing of appeals to "Head of Agency".

(a) Replies to appeals will be approved by the Assistant to the President for National Security Affairs, or the Deputy Assistant acting in the name of the Assistant to the President.

(b) The Staff Secretary will be responsible for preparing material required by the above appeal review officer in making a final determination.

(1) Views of primary reviewing officers will again be solicited.

(2) Opinion of Office of the White House Counsel and/or Department of Justice on legal ramifications will be solicited.

(c) Staff Secretary will insure replies to appeals are dispatched within 20 working days of receipt or before exhaustion of time of an authorized time extension.

§ 2101.17 Appeals to Federal District Courts.

(a) Staff Secretary will coordinate the NSC Staff's support (to include background data, affidavits, etc.) to USG lawyers defending against court appeals for denied NSC classified documents.

(b) If court judgment is against USG, Staff Secretary will arrange release of documents to litigant.

Subpart C—Schedule of Fees and Method of Payment for Services Rendered

§ 2101.21 Fees schedule.

(a) Fees schedule for the search and reproduction of information available under the Freedom of Information Act (5 U.S.C. 552), as amended:

(1) *Search for records.* $5.00 per hour when the search is conducted by a clerical employee. $8.00 per hour when the search is conducted by a professional employee. No charge for searches of less than 1 hour.

(2) *Duplication of records.* Records will be duplicated at a rate of $.25 per page for all copying of 4 pages or more. There is no charge for duplicating documents of 3 or less pages or the first three pages of documents of greater length.

(3) *Other.* When no specific fee has been established for a service, or the request for a service does not fall under one of the above categories due to the amount or type thereof, the Staff Secretary is authorized to establish an appropriate fee based on "direct costs" as provided in the Freedom of Information Act. Examples of services covered by this provision include searches involving computer time or special travel, transportation, or communications costs.

(b) If records requested under the Act are stored elsewhere than the headquarters of the National Security Council Staff at Washington, D.C., the special costs of returning such records to the headquarters for review will be added to the search costs. Search costs are due and payable even if the record which was requested cannot be located after all reasonable efforts have been made, or if the NSC Staff determines that a record which has been requested, but which is exempt from disclosure under the Act, is to be withheld. Processing of a request for records will not be undertaken until a requestor has paid in full for search and duplication charges for any previous document request under the Act.

(c) Where it is anticipated that the fees chargeable under this section will amount to more than $25, and the requestor has not indicated in advance

his willingness to pay fees as high as are anticipated, the requestor shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requestor to consult with knowledgeable NSC Staff personnel—designated by the Staff Secretary—in an attempt to reformulate the request in a manner which will reduce the fees and meet the needs of the requestor. Dispatch of such a notice or request shall suspend the running of the period for response by the NSC Staff until a reply is received from the requestor.

(d) Fees must be paid in full prior to issuance of requested copies.

§ 2101.22 Fee payments.

(a) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the Treasury of the United States and mailed to the Staff Secretary, National Security Council, Washington, D.C. 20506.

(b) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

(c) The Staff Secretary, National Security Council, may in accordance with the Freedom of Information Act, as amended, waive all or part of any fee provided for in this section when it is deemed to be in either the interest of the NSC Staff or of the general public.

Subpart D—Reports

§ 2101.31 Quarterly Index of Publications.

(a) The NSC Staff is required to publish and distribute to the public on a quarterly basis an index of the following material promulgated after July 4, 1967:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted and are not published in the FEDERAL REGISTER; and

(3) Administrative staff manuals and instructions to staff that affect a member of the public.

(b) A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent against a party other than an agency only if:

(1) It has been indexed and either made available or published as provided by the Act; or

(2) The party has actual and timely notice of the terms thereof.

(c) The legislative history of this requirement indicated that only material having "precedential significance" are to be included in the Index.

(d) Matters specifically excluded from release under the Freedom of Information Act are not required to be included in the Index. In the case of the NSC Staff, this particularly includes matters that are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order (see paragraph (d)(5) of this section);

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (see Part VII);

(4) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(5) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(e) Because of the considerations outlined under paragraph (c) and (d) of this section, it is anticipated that the NSC Staff will normally have little or nothing to report in its quarterly index.

§ 2101.32 Annual Report to Congress.

(a) On or before March 1st of each calendar year, a report of the NSC Staff's activities over the preceding calendar year relating to the Freedom of Information Act will be submitted to the Speaker of the House of Representatives and the President of the Senate.

(b) The above report will include:

(1) The number of determinations made by the NSC Staff not to comply with requests for records made to it under the Act and the reasons for each such determination;

(2) The number of appeals made by persons under the Act, the results of such appeals, and the reason for the action by the NSC Staff upon each appeal that results in a denial of information;

(3) The names and titles or positions of each person responsible for the denial of records requested under the Act, and the number of instances of participation for each;

(4) The results of each (Civil Service Commission) proceeding conducted pursuant to the Act, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) A copy of every rule made by the NSC Staff regarding the Act;

(6) A copy of the fee schedule and the total amount of fees collected by the NSC Staff for making records available under the Act; and

(7) Such other information as indicates efforts by the NSC Staff to administer fully the Act. (This should include, to the extent possible, data on the costs to the NSC Staff of administering the Act.)

(c) The NSC Staff, based in part on the information compiled for its annual report to Congress will provide—upon request—assistance to the Department of Justice in the preparation of its annual report (also due each March 1st) to Congress concerning judicial cases arising under the provisions of the Act.

Subpart E—Applicable Material

§ 2101.41 Primary review by NSC staff.

(a) The NSC Staff will have primary and authoritative review responsibility for Freedom of Information Act requests for the following types of classified material.

(1) Material originally classified by a properly authorized member of the NSC Staff and maintained under its control;

(2) Material produced for and processed by the NSC Staff even if not originally classified by an authorized member of the Staff;

(3) Material classified by a President, his White House Staff, the NSC Staff on his behalf, or special committee or commission appointed by him and which the Archivist of the United States has in his custody at any archival depository, including a Presidential Library, and which is concerned with "national defense or foreign policy" matters of "primary subject-matter interest" to the NSC Staff;

(4) Verbatim or extensively paraphrased NSC material appearing in documents originally classified by another agency.

(b) Requests received by other agencies for the material described above should be forwarded to the NSC Staff for action.

§ 2101.42 Recommendations to other agencies.

The NSC Staff will, at the request of another agency, make recommendations on the release of material concerning "national defense or foreign policy" originally classified by another agency but which is of significant subject-matter interest of the NSC Staff.

Subpart F—Declassification Criteria

§ 2101.51 Criteria for denying a request for release of classified material.

(a) The amended Freedom of Information Act does not apply to matters that are:

(1) Specifically authorized under criteria established by an Executive Order (E.O. 11652) to be kept secret in

the interest of national defense or foreign policy;

(2) Are in fact properly classified pursuant to (both procedural and substantive criteria contained in) such Executive Order;

(3) Or, are specifically exempted from disclosure by statute.

§ 2101.52 Procedural criteria under E.O. 11652.

(a) The material must have been classified by a properly authorized individual;

(b) The material must have been properly marked. For documents prepared after the effective date of Executive Order 11652 (June 1, 1972), this must especially include its classification, whether it is subject to or exempt from the General Declassification Schedule, and the highest level individual that authorized classification in each case. Documents prepared prior to June 1, 1972, must have been properly marked pursuant to the rules of the appropriate Executive Order then applicable.

§ 2101.53 Substantive criteria under E.O. 11652 for material under ten years old.

(a) Material must be classified "solely on the basis of national security considerations. In no case (may material be classified) in order to conceal inefficiency or administrative error, to prevent embarrassment to a person or Department, to restrain competition or independent initiative, or to prevent for any other reason the release of information which does not require protection in the interest of national security."

(b) To be classified "Top Secret," it must reasonably be expected that unauthorized disclosure of the material would "cause exceptionally grave damage to the national security." Examples are:

(1) Armed hostilities against the United States or its allies;

(2) Disruption of foreign relations vitally affecting the national security;

(3) The compromise of vital national defense plans or complex cryptologic and communications intelligence systems;

(4) The revelation of sensitive intelligence operations; and

(5) The disclosure of scientific or technological developments vital to the national security.

(c) To be classified "Secret," it must reasonably be expected that unauthorized disclosure of the material would "cause serious damage to the national security." Examples are:

(1) Disruption of foreign relations significantly affecting the national security;

(2) Significant impairment of a program or policy directly related to the national security;

(3) Revelation of significant military plans or intelligence operations; and

(4) Compromise of significant scientific or technological developments relating to national security.

(d) To be classified "Confidential," it must be reasonably expected that unauthorized disclosure of the material would "cause damage to the national security."

(e) Examples of material exempt from release because it is classified pursuant to a statute are:

(1) Restricted Data (42 U.S.C. 2162);

(2) Communication information (18 U.S.C. 798);

(3) Material relating to intelligence sources and methods (50 U.S.C. 403(d)(3) and (9)).

§ 2101.54 Substantive criteria under E.O. 11652 for material over ten years old.

(a) Classified information or material furnished by foreign governments or international organizations and held by the United States on the understanding that it be kept in confidence;

(b) Classified information or material specifically covered by statute, or pertaining to cryptography, or disclosing intelligence sources or methods;

(c) Classified information or material disclosing a system, plan, installation, project or specific foreign relations matter the continuing protection of which is essential to the national security;

(d) Classified information or material the disclosure of which would place a person in immediate jeopardy.

Subpart G—Partial Release

§ 2101.61 Release of "reasonably segregable portion" of requested classified material.

(a) The amended Freedom of Information Act requires that "any reasonably segregable portion of a record shall be provided * * * after deletion of the portions which are exempt."

(b) Determination of which portion(s) of classified material are to be released, and what portion(s) are to remain classified, will be made on the basis of the criteria outlined in Subpart F of this part.

§ 2101.62 Downgrading of classified material reviewed under the FOI Act.

(a) Classified material reviewed for release under the Freedom of Information Act which no longer meets the criteria established for its original classification should be recommended for downgrading to a lower classification if appropriate.

(b) Downgraded material which retains a classification will be exempted from release.

PART 2102—RULES AND REGULATIONS TO IMPLEMENT THE PRIVACY ACT OF 1974

Sec.

2102.1 Introduction.
2102.2 Purpose and scope.
2102.3 Definitions.
2102.4 Procedures for determining if an individual is the subject of a record.
2102.13 Requirements for access to a record.
2102.15 Requirements for requests to amend records.
2102.21 Procedures for appeal of determination to deny access to or amendment of requested records.
2102.31 Disclosure of record to persons other than the individual to whom it pertains.
2102.41 Fees.
2102.51 Penalties.
2102.61 Exemptions.

AUTHORITY: 5 U.S.C. 552a (f) and (k).

SOURCE: 40 FR 47746, Oct. 9, 1975, unless otherwise noted.

§ 2102.1 Introduction.

(a) Insofar as the Privacy Act of 1974 (5 U.S.C. 552a) applies to the National Security Council (hereafter NSC), it provides the American public with expanded opportunities to gain access to records maintained by the NSC Staff which may pertain to them as individuals. These regulations are the exclusive means by which individuals may request personally identifiable records and information from the National Security Council.

(b) The NSC Staff, in addition to performing the functions prescribed in the National Security Act of 1947, as amended (50 U.S.C. 401), also serves as the supporting staff to the President in the conduct of foreign affairs. In doing so the NSC Staff is acting not as an agency but as an extension of the White House Office. In that the White House Office is not considered an agency for the purposes of this Act, the materials which are used by NSC Staff personnel in their role as supporting staff to the President are not subject to the provisions of the Privacy Act of 1974. A description of these White House Office files is, nevertheless, appended to the NSC notices of systems of files and will be published annually in the FEDERAL REGISTER.

(c) In general, Records in NSC files pertain to individual members of the public only if these individuals have been (1) employed by the NSC, (2) have corresponded on a foreign policy matter with a member of the NSC or its staff, or (3) have, as a U.S. Government official, participated in an NSC meeting or in the preparation of foreign policy-related documents for the NSC.

§ 2102.2 Purpose and scope.

(a) The following regulations set forth procedures whereby individuals may seek and gain access to records concerning themselves and will guide the NSC Staff response to requests under the Privacy Act. In addition, they outline the requirements applicable to the personnel maintaining NSC systems of records.

(b) These regulations, published pursuant to the Privacy Act of 1974, Pub. L. 93-579, Section 552a (f) and (k), 5 U.S.C. (hereinafter the Act), advise of procedures whereby an individual can:

(1) Request notification of whether the NSC Staff maintains or has disclosed a record pertaining to him or her in any non-exempt system of records;

(2) Request a copy of such record or an accounting of that disclosure;

(3) Request an amendment to a record; and,

(4) Appeal any initial adverse determination of any request under the Act.

(c) These regulations also specify those systems of records which the NSC has determined to be exempt from certain provisions of the Act and thus not subject to procedures established by this regulation.

§ 2102.3 Definitions.

As used in these regulations:

(a) *Individual.* A citizen of the United States or an alien lawfully admitted for permanent residence.

(b) *Maintain.* Includes maintain, collect, use or disseminate. Under the Act it is also used to connote control over, and, therefore, responsibility for, systems of records in support of the NSC statutory function (50 U.S.C. 401, et seq.).

(c) *Systems of Records.* A grouping of any records maintained by the NSC from which information is retrieved by the name of the individual or by some other identifying particular assigned to the individual.

(d) *Determination.* Any decision made by the NSC or designated official thereof which affects the individual's rights, opportunities, benefits, etc. and which is based in whole or in part on information contained in that individual's record.

(e) *Routine Use.* With respect to the disclosure of a record, the use of such a record in a manner which is compatible with the purpose for which it was collected.

(f) *Disclosure.* The granting of access or transfer of a record by any means.

§ 2102.4 Procedures for determining if an individual is the subject of a record.

(a) Individuals desiring to determine if they are the subject of a record or system of records maintained by the NSC Staff should address their inquiries, marking them plainly as a *PRIVACY ACT REQUEST*, to:

Staff Secretary, National Security Council, Room 374, Old Executive Office Building, Washington, D.C. 20506.

All requests must be made in writing and should contain:

(1) A specific reference to the system of records maintained by the NSC as listed in the NSC Notices of Systems and Records (copies available upon request); or

(2) A description of the record or systems of records in sufficient detail to allow the NSC to determine whether the record does, in fact, exist in an NSC system of records.

(b) All requests must contain the printed or typewritten name of the individual to whom the record pertains, the signature of the individual making the request, and the address to which the reply should be sent. In instances when the identification is insufficient to insure disclosure to the individual to whom the information pertains in view of the sensitivity of the information, NSC reserves the right to solicit from the requestor additional identifying information.

(c) Responses to all requests under the Act will be made by the Staff Secretary, or by another designated member of the NSC Staff authorized to act in the name of the Staff Secretary in responding to a request under this Act. Every effort will be made to inform the requestor if he or she is the subject of a specific record or system of records within ten working days (excluding Saturdays, Sundays and legal Federal Holidays) of receipt of the request. Such a response will also contain the procedures to be followed in order to gain access to any record which may exist and a copy of the most recent NSC notice, as published in the FEDERAL REGISTER, on the system of records in which the record is contained.

(d) Whenever it is not possible to respond in the time period specified above, the NSC Staff Secretary or a designated alternate will, within ten working days (excluding Saturdays, Sundays and legal Federal Holidays), inform the requestor of the reasons for the delay (e.g., insufficient reques-

tor information, difficulties in record location, etc.), steps that need to be taken in order to expedite the request, and the date by which a response is anticipated.

§ 2102.13 Requirements for access to a record.

(a) Individuals requesting access to a record or system of records in which there is information concerning them must address a request in writing to the Staff Secretary of the NSC (see § 2102.1). Due to restricted access to NSC offices in the Old Executive Office Building where the files are located, requests cannot be made in person.

(b) All written requests should contain a concise description of the records to which access is requested. In addition, the requestor should include any other information which he or she feels would assist in the timely identification of the record. Verification of the requestor's identity will be determined under the same procedures used in requests for learning of the existence of a record.

(c) To the extent possible, any request for access will be answered by the Staff Secretary or a designated alternate within ten working days (excluding Saturdays, Sundays, and legal Federal holidays) of the receipt of the request. In the event that a response cannot be made within this time, the requestor will be notified by mail of the reasons for the delay and the date upon which a reply can be expected.

(d) The NSC response will forward a copy of the requested materials unless further identification or clarification of the request is required. In the event access is denied, the requestor shall be informed of the reasons therefore and the name and address of the individual to whom an appeal should be directed.

§ 2102.15 Requirements for requests to amend records.

(a) Individuals wishing to amend a record contained in the NSC systems of records pertaining to them must submit a request in writing to the Staff Secretary of the NSC in accordance with the procedures set forth herein.

(b) All requests for amendment or correction of a record must state concisely the reason for requesting the amendment. Such requests should include a brief statement which describes the information the requestor believes to be inaccurate, incomplete, or unnecessary and the amendment or correction desired.

(c) To the extent possible, every request for amendment of a record will be answered within ten working days (excluding Saturdays, Sundays, and legal Federal holidays) of the receipt of the request. In the event that a response cannot be made within this time, the requestor will be notified by mail of the reasons for the delay and the date upon which a reply can be expected. A final response to a request for amendment will include the NSC Staff determination on whether to grant or deny the request. If the request is denied, the response will include:

(1) The reasons for the decision;

(2) The name and address of the individual to whom an appeal should be directed;

(3) A description of the process for review of the appeal within the NSC; and

(4) A description of any other procedures which may be required of the individual in order to process the appeal.

§ 2102.21 Procedures for appeal of determination to deny access to or amendment of requested records.

(a) Individuals wishing to appeal an NSC Staff denial of a request for access or to amend a record concerning them must address a letter of appeal to the Staff Secretary of the NSC. The letter must be received within thirty days from the date of the Staff Secretary's notice of denial and, at a minimum, should identify the following:

(1) The records involved;

(2) The dates of the initial request and subsequent NSC determination; and

(3) A brief statement of the reasons supporting the request for reversal of the adverse determination.

(b) Within thirty working days (excluding Saturdays, Sundays and legal

Federal Holidays) of the date of receipt of the letter of appeal, the Assistant to the President for National Security Affairs (hereinafter the "Assistant"), or the Deputy Assistant to the President for National Security Affairs (hereinafter the "Deputy Assistant"), acting in his name, shall issue a determination on the appeal. In the event that a final determination cannot be made within this time period, the requestor will be informed of the delay, the reasons therefor and the date on which a final response is expected.

(c) If the original request was for access and the initial determination is reversed, a copy of the records sought will be sent to the individual. If the initial determination is upheld, the requestor will be so advised and informed of the right to judicial review pursuant to 5 U.S.C. 552a(g).

(d) If the initial denial of a request to amend a record is reversed, the records will be corrected and a copy of the amended record will be sent to the individual. In the event the original decision is upheld by the Assistant to the President, the requestor will be so advised and informed in writing of his or her right to seek judicial review of the final agency determination, pursuant to Section 552a(g) of Title 5, U.S.C. In addition, the requestor will be advised of his right to have a concise statement of the reasons for disagreeing with the final determination appended to the disputed records. This statement should be mailed to the Staff Secretary within ten working days (excluding Saturdays, Sundays, and legal Federal Holidays) of the date of the requestor's receipt of the final determination.

§ 2102.31 Disclosure of a record to persons other than the individual to whom it pertains.

(a) Except as provided by the Privacy Act, 5 U.S.C. 552a(b), the NSC will not disclose a record concerning an individual to another person or agency without the prior written consent of the individual to whom the record pertains.

§ 2102.41 Fees.

(a) Individuals will not be charged for:

(1) The first copy of any record provided in response to a request for access or amendment;

(2) The search for, or review of, records in NSC files;

(3) Any copies reproduced as a necessary part of making a record or portion thereof available to the individual.

(b) After the first copy has been provided, records will be reproduced at the rate of twenty-five cents per page for all copying of four pages or more.

(c) The Staff Secretary may provide copies of a record at no charge if it is determined to be in the interest of the Government.

(d) The Staff Secretary may require that all fees be paid in full prior to the issuance of the requested copies.

(e) Remittances shall be in the form of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the "United States Treasury" and mailed to the Staff Secretary, National Security Council, Washington, D.C. 20506.

(f) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

§ 2102.51 Penalties.

Title 18, U.S.C. Section 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of $10,000 or imprisonment for not more than five years or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. Section (i) (3) of the Privacy Act (5 U.S.C. 552a) makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Sections (i)(1) and (2) of 5 U.S.C. 552a provide penalties for violations by agency employees, of the Privacy Act or regulations established thereunder.

80-109 O—81——22

§ 2102.61 Exemptions.

Pursuant to subsection (k) of the Privacy Act (5 U.S.C. 552a), the Staff Secretary has determined that certain NSC systems of records may be exempt in part from Sections 553(c)(3), (d), (e)(1), (e)(4), (G), (H), (I), and (f) of Title 5, and from the provisions of these regulations. These systems of records may contain information which is classified pursuant to Executive Order 11652. To the extent that this occurs, records in the following systems would be exempt under the provision of 5 U.S.C. 552a(k)(1):

NSC 1.1—Central Research Index,
NSC 1.2—NSC Correspondence Files, and
NSC 1.3—NSC Meetings Registry.

PART 2103—REGULATIONS TO IMPLEMENT E.O. 12065—INCLUDING PROCEDURES FOR PUBLIC ACCESS TO DOCUMENTS THAT MAY BE DECLASSIFIED

Subpart A—Introduction

Sec.
2103.1 References.
2103.2 Purpose.
2103.3 Applicability.

Subpart B—Original Classification

2103.11 Basic policy.
2103.12 Level of original classification.
2103.13 Duration of original classification.
2103.14 Challenges to classification.

Subpart C—Derivative Classification

2103.21 Definition and application.

Subpart D—Declassification and Downgrading

2103.31 Declassification authority.
2103.32 Mandatory review for declassification.
2103.33 Downgrading authority.

Subpart E—Safeguarding

2103.41 Reproduction controls.

Subpart F—Implementation and Review

2103.51 Information Security Oversight Committee.
2103.52 Classification Review Committee.

AUTHORITY: E.O. 12065 and Information Security Oversight Office Directive No. 1.

SOURCE: 44 FR 2384, Jan. 11, 1979, unless otherwise noted.

Subpart A—Introduction

§ 2103.1 References.

(a) Executive Order 12065, "National Security Information," dated June 28, 1978.

(b) Information Security Oversight Office, Directive No. 1, "National Security Information," dated October 2, 1978.

§ 2103.2 Purpose.

The purpose of this Regulation is to ensure, consistent with the authorities listed in § 2103.1, that national security information processed by the National Security Council Staff is protected from unauthorized disclosure, but only to the extent, and for such period, as is necessary to safeguard the national security.

§ 2103.3 Applicability.

This Regulation governs the National Security Council Staff Information Security Program. In consonance with the authorities listed in § 2103.1, it establishes the policy and procedures for the security classification, downgrading, declassification, and safeguarding of information that is owned by, is produced for or by, or is under the control of the National Security Council Staff.

Subpart B—Original Classification

§ 2103.11 Basic policy.

It is the policy of the National Security Council Staff to make available to the public as much information concerning its activities as is possible, consistent with its responsibility to protect the national security.

§ 2103.12 Level of original classification.

Unnecessary classification, and classification at a level higher than is necessary, shall be avoided. If there is reasonable doubt as to which designation in section 1-1 of Executive Order 12065 is appropriate, or whether information should be classified at all, the less restrictive designation should be used, or the information should not be classified.

§ 2103.13 Duration of original classification.

Original classification may be extended beyond six years only by officials with Top Secret classification authority. This extension authority shall be used only when these officials determine that the basis for original classification will continue throughout the entire period that the classification will be in effect and only for the following reasons:

(a) The information is "foreign government information" as defined by the authorities in § 2301.1;

(b) The information reveals intelligence sources and methods;

(c) The information pertains to communication security;

(d) The information reveals vulnerability or capability data, the unauthorized disclosure of which can reasonably be expected to render ineffective a system, installation, or project important to the national security;

(e) The information concerns plans important to the national security, the unauthorized disclosure of which reasonably can be expected to nullify the effectiveness of the plan;

(f) The information concerns specific foreign relations matters, the continued protection of which is essential to the national security;

(g) Disclosure of the information would place a person's life in immediate jeopardy; or

(h) The continued protection of the information is specifically required by statute.

Even when the extension authority is exercised, the period of original classification shall not be greater than twenty years from the date or original classification, except that the original classification of "foreign government information" pursuant to paragraph (a) of this section may be for a period of thirty years.

§ 2103.14 Challenges to classification.

If holders of classified information believe that the information is improperly or unnecessarily classified, or that original classification has been extended for too long a period, they should discuss the matter with their immediate superiors or the classifier of the information. If these discussions do not satisfy the concerns of the challenger, the matter should be brought to the attention of the chairperson of the NSC Information Security Oversight Committee (see § 2103.51 of this part).

Subpart C—Derivative Classification

§ 2103.21 Definition and application.

Derivative classification is the act of assigning a level of classification to information that is determined to be the same in substance as information that is currently classified. Thus, derivative classification may be accomplished by any person cleared for access to that level of information, regardless of whether the person has original classification authority at that level.

Subpart D—Declassification and Downgrading

§ 2103.31 Declassification authority.

The Staff Secretary, Staff Counsel, and Director of Freedom of Information of the National Security Council Staff are authorized to declassify NSC documents after consultation with the appropriate NSC Staff members.

§ 2103.32 Mandatory review for declassification.

(a) *Receipt.* (1) Requests for mandatory review for declassification under section 3-501 of Executive Order 12065 must be in writing and should be addressed to :

National Security Council, ATTN: Staff Secretary (Mandatory Review Request), Old Executive Office Building, Washington, D.C. 20506.

(2) The requestor shall be informed of the date of receipt of the request. This date will be the basis for the time limits specified in paragraph (b) of this section.

(3) If the request does not reasonably describe the information sought, the requestor shall be notified that, unless additional information is provided or the request is made more specific, no further action will be taken.

(b) *Review.* (1) The requestor shall be informed of the National Security Council Staff determination within sixty days of receipt of the initial request.

(2) If the determination is to withhold some or all of the material requested, the requestor may appeal the determination. The requestor shall be informed that such an appeal must be made in writing within sixty days of receipt of the denial and should be addressed to the chairperson of the National Security Council Classification Review Committee.

(3) The requestor shall be informed of the appellate determination within thirty days of receipt of the appeal.

(c) *Fees.* (1) Fees for the location and reproduction of information that is the subject of a mandatory review request shall be assessed according to the following schedule:

(i) *Search for records.* $5.00 per hour when the search is conducted by a clerical employee; $8.00 per hour when the search is conducted by a professional employee. No fee shall be assessed for searches of less than one hour.

(ii) *Reproduction of documents.* Documents will be reproduced at a rate of $.25 per page for all copying of four pages or more. No fee shall be assessed for reproducing documents that are three pages or less, or for the first three pages of longer documents.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than $25, and the requestor has not indicated in advance a willingness to pay fees as high as are anticipated, the requestor shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25, an advance deposit may be required. Dispatch of such a notice or request shall suspend the running of the period for response by the NSC Staff until a reply is received from the requestor.

(3) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the Treasury of the United States and mailed to the Staff Secretary, National Security Council, Washington, D.C. 20506.

(4) [Reserved]

(5) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

(6) If a requestor fails to pay within thirty days for services rendered, further action on any other requests submitted by that requestor shall be suspended.

(7) The Staff Secretary, National Security Council may waive all or part of any fee provided for in this section when it is deemed to be in either the interest of the NSC Staff or of the general public.

§ 2103.33 Downgrading authority.

The Staff Secretary, Staff Counsel, and Director of Freedom of Information of the National Security Council Staff are authorized to downgrade NSC documents, after consultation with the appropriate NSC Staff members.

Subpart E—Safeguarding

§ 2103.41 Reproduction controls

The Staff Secretary shall maintain records to show the number and distribution of all Top Secret documents, of all documents covered by special access programs distributed outside the originating agency, and of all Secret and Confidential documents that are marked with special dissemination or reproduction limitations.

Subpart F—Implementation and Review

§ 2103.51 Information Security Oversight Committee

The NCS Information Security Oversight Committee shall be chaired by the Staff Counsel of the National Security Council Staff. The Committee shall be responsible for acting on all suggestions and complaints concerning the administration of the National Security Council information security program. The chairperson,

who shall represent the NSC Staff on the Interagency Information Security Committee shall also be responsible for conducting an active oversight program to ensure effective implementation of Executive Order 12065.

§ 2103.52 Classification Review Committee.

The NSC Classification Review Committee shall be chaired by the Staff Secretary of the National Security Council. The Committee shall decide appeals from denials of declassification requests submitted pursuant to section 3-5 of Executive Order 12065. The Committee shall consist of the chairperson, the NSC Director of Freedom of Information, and the NSC Staff member with primary subject matter responsibility for the material under review.

CHAPTER XXIV—OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Part		*Page*
2400	Regulations to implement E.O. 12065; Office of Science and Technology Policy information security program	334

PRECEDING PAGE BLANK-NOT FILMED

PART 2400—REGULATIONS TO IMPLEMENT E.O. 12065; OFFICE OF SCIENCE AND TECHNOLOGY POLICY INFORMATION SECURITY PROGRAM

Subpart A—General Provisions

Sec.
2400.1 References.
2400.2 Purpose.
2400.3 Applicability.
2400.4 Atomic Energy Material.

Subpart B—Original Classification

2400.5 Basic Policy.
2400.6 Level of Original Classification.
2400.7 Original Classification Authority.
2400.8 Limitations on Delegation of Classification Authority.
2400.9 Classification Requirements.
2400.10 Presumption of Damage.
2400.11 Classification Prohibitions.
2400.12 Duration of Classification.
2400.13 Effect of Open Publication.
2400.14 Challenges to Classification.

Subpart C—Derivative Classification

2400.15 Definition and Application.
2400.16 Classification Guides.
2400.17 Distribution of Classification Guides.

Subpart D—Declassification and Downgrading

2400.18 Policy.
2400.19 Declassification and Downgrading Authority.
2400.20 Exceptional Cases.
2400.21 Declassification by the Director of the Information Security Oversight Office.
2400.22 Systematic Review for Declassification.
2400.23 Systematic Review Guidelines and Procedures.
2400.24 Mandatory Review for Declassification.
2400.25 Prohibition.
2400.26 Downgrading.

Subpart E—Identification and Marking

2400.27 Designation.
2400.28 Exception.
2400.29 Identification and Marking.

Subpart F—Safeguarding

2400.30 Access.
2400.31 Access by Historical Researchers and Former Presidential Appointees.
2400.32 Storage of Classified Information.
2400.33 Dissemination of Classified Information.
2400.34 Accountability and Control.
2400.35 Reproduction of Classified Information.

Subpart G—Foreign Government Information

2400.36 Classification.
2400.37 Duration of Classification.
2400.38 Declassification.
2400.39 Mandatory Review.
2400.40 Protection of Foreign Government Information.

Subpart H—Security Education

2400.41 Responsibility and Objectives.

Subpart I—Office of Science and Technology Policy Information Security Program Management

2400.42 Responsibility.
2400.43 Office Review Committee.
2400.44 Security Officer.
2400.45 Heads of Offices.
2400.46 Custodians.

AUTHORITY: E.O. 12065 and Information Security Oversight Office Directive No. 1.

SOURCE: 44 FR 51577, Sept. 4, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 2400.1 References.

(a) Executive Order 12065 "National Security Information," dated June 28, 1978

(b) Information Security Oversight Office, Directive No. 1, "National Security Information," dated October 2, 1978

§ 2400.2 Purpose.

The purpose of this regulation is to ensure, consistent with the authorities of § 2400.1 that information of the Office of Science and Technology Policy (OSTP) relating to national security is protected from unauthorized disclosure, but only the extent and for such period as is necessary to safeguard the national security.

§ 2400.3 Applicability.

This Regulation governs the Office of Science and Technology Policy Information Security Program. In accordance with the provisions of para-

graphs (a) and (b) § 2400.1, it establishes, for uniform application throughout the Office of Science and Technology Policy, the policies and procedures for the security classification, downgrading, declassification and safeguarding of information that is owned by, produced for or by, or under the control of the Office of Science and Technology Policy.

§ 2400.4 Atomic Energy Material.

Nothing in this Regulation supersedes any requirement made by or under the Atomic Energy Act of 1954, as amended. "Restricted Data" and information designated as "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Department of Energy.

Subpart B—Original Classification

§ 2400.5 Basic Policy.

Except as provided in the Atomic Energy Act of 1954, as amended, Executive Order 12065, as implemented by reference (b) and this Regulation, provides the only basis for classifying information. The policy of the Office of Science and Technology Policy is to make available to the public as much information concerning its activities as is possible, consistent with its responsibility to protect the national security. Accordingly, security classification shall be applied only to protect the national security.

§ 2400.6 Level of Original Classification.

Unnecessary classification, and classification at a level higher than is necessary shall be scrupulously avoided. If there is reasonable doubt which designation of security classification in section 1-1 of Executive Order 12065 is appropriate, or whether information or material should be classified at all, the less restrictive designation should be used, or the information should not be classified.

§ 2400.7 Original Classification Authority

Authority for original classification of information as Top Secret shall be exercised within OSTP only by the Director and by such principal subordinate officials having frequent need to exercise such authority as the Director shall designate in writing. The Associate Director for National Security and International Affairs is delegated Top Secret Authority.

§ 2400.8 Limitations on Delegation of Classification Authority.

(a) Delegations of classification authority shall be held to an absolute minimum.

(b) Original classification authority shall not be delegated to OSTP personnel who only quote, restate, extract or paraphrase, or summarize classified information or who only apply classification markings derived from source material or as directed by a classification guide.

(c) Classification authority may not be redelegated.

§ 2400.9 Classification Requirements

Information may be classified *only* if it concerns one or more of the categories cited in Executive Order 12065, as subcategorized below, *and* an official having original classification authority determines that its unauthorized disclosure is presumed, or reasonably could be expected, to cause at least identifiable damage to the national security.

(a) Military plans, weapons or operations;

(b) Foreign government information;

(c) Intelligence activities, sources or methods;

(d) Foreign relations or foreign activities of the United States;

(e) Scientific, technological, or economic matters relating to the national security;

(f) United States Government programs for safe-guarding nuclear materials or facilities; or

(g) Other categories of information which are related to national security and which require protection against unauthorized disclosure as determined by the Director, Office of Science and Technology Policy. Each such deter-

mination shall be reported promptly to the Director of the Information Security Oversight Office.

§ 2400.10 Presumption of Damage.

Unauthorized disclosure of foreign government information or the identity of a confidential foreign source is presumed to cause at least identifiable damage to the national security.

§ 2400.11 Classification Prohibitions.

(a) Classification may not be used to conceal violations of law, inefficiency, or administrative error, to prevent embarrassment to a person, organization or agency, or to restrain competition.

(b) Basic scientific research information not clearly related to the national security may not be classified.

(c) A product of non-government research and development that does not incorporate or reveal classified information to which the producer or developer was given prior access may not be classified until and unless the government acquires a proprietary interest in the product. This prohibition does not affect the provisions of the Patent Secrecy Act of 1952 (35 U.S.C. 181-188).

(d) References to classified documents that do not disclose classified information may not be classified or used as a basis for classification.

(e) Classification may not be used to limit dissemination of information that is not classifiable under the provisions of Executive Order 12065 and this Regulation or to prevent or delay the public release of such information.

(f) No document originated on or after December 1, 1978 may be classified after receipt of a request for the document under the Freedom of Information Act or the Mandatory Review Provisions of this regulation unless such classification is consistent with this Regulation and is authorized by the Director, Office of Science and Technology Policy. Documents originated before December 1, 1978 and subject to such a request may not be classified unless such classification is consistent with this Regulation and is authorized by an official with Top Secret classification authority. Classification authority under this provision shall be exercised personally and on a document-by-document basis.

(g) Classification may not be restored to documents containing information declassified and released to the public under this or prior Regulations.

§ 2400.12 Duration of Classification.

(a) Information shall remain classified only as long as its unauthorized disclosure would result in at least identifiable damage to the national security. Any willful extension beyond that period is a violation of this Regulation. At the time information is classified, it shall be marked with the date or event on which automatic declassification or review for declassification should occur. *Except* as provided in paragraph (c) of this section, this date or event for automatic declassification, or review for declassification, shall be no more than six years from the date of original classification.

(b) Only the Director, OSTP or other Office officials having Top Secret original classification authority may prolong classification for more than six years. Originally classified information that is so designated shall be identified with the authority and reason for the extended classification, as provided in paragraph (c) of this section. In no case shall the date or event for automatic declassification or for review for declassification be set at more than 20 years, except that foreign government information may be classified for up to 30 years prior to declassification or review. Earlier dates for declassification or review shall be set whenever possible.

(c) Classification may be prolonged for more than six years only by officials designated as original Top Secret classification authorities. This authority shall be used only when such officials determine that the two conditions specified in § 2400.9 for original classification will continue throughout the entire period the classification will be in effect and only for the following reasons:

(1) The information is "foreign government information" as defined in references (a) and (b);

(2) The continuing protection of the information is specifically required by statute;

(3) The continuing protection of the information is essential to the national security because it reveals intelligence sources or methods which if lost cannot be regained or replaced promptly;

(4) The continuing protection of the information is essential to the national security because it pertains to communications security;

(5) The information reveals vulnerability or capability data the unauthorized disclosure of which can reasonably be expected to result in nullifying the effectiveness of a system, installation or project important to the national security;

(6) The information concerns plans important to national security the unauthorized disclosure of which can reasonably be expected to result in nullifying the effectiveness of the plan itself or impeding its orderly implementation;

(7) The information concerns specific foreign relations matters the continued protection of which is essential to the national security; or

(8) Disclosure of the information would place a person in immediate jeopardy.

§ 2400.13 Effect of Open Publication.

Appearance in the public domain of information currently classified or being considered for classification does not preclude initial or continued classification; however, such disclosures require immediate reevaluation of the information to determine whether the publication has so compromised the information that downgrading or declassification is warranted. Similar consideration must be given to related items of information in all programs, projects or items incorporating or pertaining to the compromised items of information. In these cases, if the release is shown to have been made or authorized by an official of the Executive Branch authorized to declassify and release such information. In these cases, if the release is shown to have been made or authorized by an official of the Executive Branch authorized to declassify and release such information, classification of clearly identified items shall no longer be continued. However, holders should continue classsification until advised to the contrary by a competent Government authority. Questions on the propriety or continued classification of information which has appeared in open publication should be referred to the Executive Officer, Office of Science and Technology Policy for further referral to the Agency having primary responsibility over the subject matter.

§ 2400.14 Challenges to Classification.

(a) Holders of classified information are encouraged to challenge classification in cases where there is reasonable cause to believe that information is classified unnecessarily, improperly or for an inappropriate period of time. They should discuss the matter with their immediate superiors or the classifier of the information. If these discussions do not satisfy the concerns of the challenger, the matter should be brought to the attention of the Executive Officer who shall, within 30 days, resolve the question of classification with the original classification authority and provide notification to the challenger of the results. When requested anonimity of the challenger shall be preserved.

(b) The fact that an employee of the Office of Science and Technology Policy has issued a challenge to classification shall not in any way result in or serve as a basis for adverse personnel action.

Subpart C—Derivative Classification

§ 2400.15 Definition and application.

Derivative classification is the act of assigning a level of classification to information that is determined to be the same in substance as information that is currently classified. Derivative application of classification markings is a responsibility of those who incorporate, paraphrase, restate, or generate in new form, information which is already classified or those who apply markings in accordance with guidance from an original classification authority. Persons who apply derivative classifications should take care to deter-

mine whether their paraphrasing, restating, or summarizing of classified information has removed all or part of the basis for classification. Thus, derivative classification may be accomplished by any person cleared for access to that level of information regardless of whether the person has original classification authority at that level. Persons who apply such derivative classification markings shall:

(a) Respect original classification decisions;

(b) Verify the information's current level of classification so far as practicable before applying the markings; and

(c) Carry forward to any newly created documents the assigned dates or events for declassification or review and any additional authorized markings. Where checks with originators or other appropriate inquiries show that no classification or a lower classification than originally assigned is appropriate, the information shall be marked accordingly.

§ 2400.16 Classification guides.

(a) OSTP shall issue and maintain classification guides to facilitate the proper and uniform classification of information. These guides shall be used to direct derivative classification.

(b) The classification guides shall be approved, in writing, by the Director or by officials having Top Secret original classification authority. Such approval constitutes an original classification decision.

(c) Each classification guide shall specify the information subject to classification in sufficient detail to permit its ready and uniform identification and shall set forth the classification level and duration in each instance as well as, where applicable, justification for any extension beyond six years.

(d) The classification guides shall be kept current and shall be fully reviewed at least every two years.

§ 2400.17 Distribution of classification guides.

The Executive Officer, Office of Science and Technology Policy shall receive and maintain the record copy of all approved classification guides and changes thereto. He will assist the originator in determining the required distribution.

Subpart D—Declassification and Downgrading

§ 2400.18 Policy.

Declassification of information shall be given emphasis comparable to that accorded classification. Information classified pursuant to Executive Order 12065 and prior orders shall be declassified as early as national security considerations permit. Decisions concerning declassification shall be based on the loss of sensitivity of the information with the passage of time or on the occurance of an event which permits declassification. When information is reviewed for declassification pursuant to this regulation, that information shall be declassified unless the designated declassification authority determines that the information continues to meet the classification requirements prescribed in § 2400.9 despite the passage of time.

§ 2400.19 Declassification and downgrading authority.

Authority to declassify and downgrade information classified under the provisions of references (a) and (b) shall be exercised by officials designated to exercise original classification. Further, the Director, Office of Science and Technology Policy shall designate additional officials at the lowest practicable echelons of supervision to exercise declassification and downgrading authority over classified information in their functional areas of interest.

§ 2400.20 Exceptional cases.

It is presumed that information that continues to meet the classification requirements of Subpart B requires continued protection. In some cases, however, the need to protect such information may be outweighed by the public interest in disclosure of that information and in such cases the information should be declassified. When such questions arise concerning Office of Science and Technology Policy information, they shall be referred to

the Director, Office of Science and Technology Policy, the Executive Officer of Science and Technology Policy acting as the official with responsibility for processing Freedom of Information Act requests or Mandatory Review requests under § 2400.24, an official with Top Secret classification authority, or in cases of classified Presidential information the Archivist of the United States. That Official, after consultation with other agenices having interest, shall determine whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure and, if so, declassify the information.

§ 2400.21 Declassification by the Director of the Information Security Oversight Office.

If the Director of the Information Security Oversight Office (ISOO) determines that information is classified in violation of Executive Order 12065, the Director, ISOO may require the activity that originally classified the information to declassify it. Any such decision by the Director, ISOO may be appealed through the Director, Office of Science and Technology Policy to the National Security Council. The information shall remain classified until the appeal is decided or until one year from the date of the determination by the Director, ISOO whichever comes first.

§ 2400.22 Systematic review for declassification.

The Director, Office of Science and Technology Policy shall designate experienced personnel to assist the Archivist of the United States in the systematic review of twenty-year old U.S. originated information and thirty-year old foreign government information accessioned into the National Archives of the United States, and conduct systematic declassification review of twenty-year old classified information in the possession and control of the Office of Science and Technology Policy. Such personnel shall:

(a) Provide guidance and assistance to National Archives employees in identifying and separating documents and specific categories of information within documents that are deemed to require continued classification;

(b) Submit to the Director, Office of Science and Technology Policy recommendations for, (1) continued classification that identify documents or specific categories of information so separated, and, (2) referrals to other agencies having classification jurisdiction over the information or material for resolution.

§ 2400.23 Systematic review guidelines and procedures.

(a) The Executive Officer, Office of Science and Technology Policy shall develop, in coordination with Office of Science and Technology Policy original classification authorities, guidelines for the systematic review for declassification of information under Office of Science and Technology Policy jurisdiction that has been classified twenty years or more (thirty years for foreign government information). The Director, Office of Science and Technology Policy, after consultation with the Archivist of the United States, shall promulgate these guidelines providing copies to the Information Security Oversight Office.

(b) All Office of Science and Technology Policy classified information transferred to the General Services Administration for accession into the Archives of the United States that is permanently valuable and more than twenty years old will be systematically reviewed for declassification by the Archivist of the United States with the assistance of the Office of Science and Technology Policy personnel designated for the purpose pursuant to § 2400.22. Such information shall be downgraded or declassified by the Archivist of the United States in accordance with Executive Order 12065, the directives of the Information Security Oversight Office, and Office of Science and Technology Policy guidelines.

(c) All twenty-year old Office of Science and Technology Policy classified permanent records that are in the possession or control of Office of Science and Technology Policy shall be systematically reviewed for declassification by personnel designated pursuant

to § 2400.22. Classified nonpermanent records that are scheduled to be retained for more than twenty years need not be systematically reviewed but shall be reviewed for declassification upon request.

(d) The Director, Office of Science and Technology Policy shall determine personally and in writing which category(ies) of information shall remain classified and the date for automatic declassification or subsequent review. The Archivist of the United States shall be notified in writing of this decision.

(e) Classified information over which Office of Science and Technology Policy does not exercise exclusive or final original classification authority may be declassified only in accordance with the systematic review guidelines, promulgated pursuant to reference (b), of the agency responsible for the classification. If such guidelines are not available or authorized for use by Office of Science and Technology Policy personnel, the information shall be referred to the responsible agency.

§ 2400.24 Mandatory review for declassification.

(a) A mandatory review for declassification under Section 3-501 of Executive Order 12065 shall be initiated upon receipt of a request by a member of the public or a government employee or agency to declassify and release information. Requests shall be in writing and reasonably describe the information sought to enable the Office of Science and Technology Policy to identify documents containing that information. Requests should be addressed to:

Executive Officer,
Office of Science and Technology Policy,
Executive Office of the President,
Washington, D.C. 20500.

(b) The Executive Officer, Office of Science and Technology Policy shall inform the requestor of the date and receipt of the request. This date will be the basis for the time limits specified in paragraph (d) of this section.

(c) If the request does not reasonably describe the information sought to allow identification of documents containing such information, the requestor shall be notified that unless additional information is provided or the request is made more specific, no further action will be taken.

(d) The requestor shall be informed of the Office of Science and Technology Policy determination within sixty days of receipt of the original request (or within sixty days of the receipt of the required amplifying information in accordance with paragraph (c) of this section).

(e) If the information may not be released in whole or in part, the requestor shall be given a brief statement as to the reasons for denial, and notice of the right to appeal the determination in writing within sixty days to the chairperson of the Office of Science and Technology Policy Review Committee. If appealed, the requestor shall be informed of the appellate determination within thirty days of receipt of the appeal.

(f) When a request is received for information classified by another agency, the Executive Officer, Office of Science and Technology Policy shall:

(1) Forward the request to such agency for review together with a copy of the document containing the information requested, where practicable, and where appropriate, with the Office of Science and Technology Policy recommendation to withhold or declassify and release any of the information;

(2) Notify the requestor of the referral unless the agency to which the request is referred objects to such notice on grounds that its association with the information requires protection; and

(3) Request, when appropriate that the agency notify the Office of Science and Technology Policy of its determination.

(g) If the request requires the rendering of services for which fees may be charged under Title 5 of the Independent Offices Appropriation Act, 31 U.S.C. 483a the Executive Officer, Office of Science and Technology Policy may calculate the anticipated amount of fees to be charged.

(1) Fees for the location and reproduction of information that is the subject of a mandatory review request

shall be assessed according to the following schedule:

(i) Search for records. $5.00 per hour when the search is conducted by a clerical employee; $8.00 per hour when the search is conducted by a professional employee. No fee shall be assessed for searches of less than one hour.

(ii) Reproduction of documents. Documents will be reproduced at a rate of $.25 per page for all copying of four pages or more. No fee shall be assessed for reproducing documents that are three pages or less, or for the first three pages of longer documents.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than $25, and the requestor has not indicated in advance a willingness to pay fees as high as are anticipated, the requestor shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25, an advance deposit may be required. Dispatch of such a notice or request shall suspend the running of the period for response by OSTP until a reply is received from the requestor.

(3) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the Treasury of the United States and mailed to the Executive Officer, Office of Science and Technology Policy, Executive Office of the President, Washington, D.C. 20500.

(4) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

(5) If a requestor fails to pay within thirty days for services rendered, further action on any other requests submitted by that requestor shall be suspended.

(6) The Executive Officer, Office of Science and Technology Policy may waive all or part of any fee provided for in this section when it is deemed to be in either the interest of the OSTP or the general public.

§ 2400.25 Prohibition.

In response to a request under the Freedom of Information Act or this Section, the Office of Science and Technology Policy, if in possession of a document, shall not refuse to confirm the existence or non-existence of the document, unless the fact of its existence or non-existence would itself be classified under this Regulation.

§ 2400.26 Downgrading.

(a) When it will serve a useful purpose, original classification authorities may, at the time of original classification, specify that downgrading of the assigned classification will occur on a specified date or upon the occurrence of a stated event.

(b) Classified information marked for automatic downgrading is downgraded accordingly without notification to holders.

(c) Classified information not marked for automatic downgrading may be assigned a lower classification designation by the originator or by an official authorized to declassify the same information. Prompt notice of such downgrading shall be provided to known holders of the information.

Subpart E—Identification and Marking

§ 2400.27 Designation.

Subject to the exception in § 2400.28, information determined to require classification protection under the provisions of this Regulation shall be so designated. Designation by physical marking, notation, or other means serves to warn the holder about the classification of the information involved; to indicate the degree of protection that is required; and to facilitate downgrading and declassification actions.

§ 2400.28 Exception.

No article which has appeared, in whole or in part, in newspapers, magazines or elsewhere in the public domain, or any copy thereof, that is being reviewed and evaluated to compare its content with classified information that is being safeguarded in

the Office of Science and Technology Policy by security classification, may be marked with any security classification, control or other kind of restrictive marking. The results of the review and evaluation, if classified, shall be separate from the article in question.

§ 2400.29 Identification and marking.

(a) At the time of classification, the following shall be shown on the face of originally or derivatively classified documents:

(1) The identity of the original classification authority, or a source document or classification guide. If classification is derived from more than one source, the phrase "multiple sources" will be shown and the identification of each source will be maintained with the file or record copy of the document;

(2) The office of origin;

(3) The date of classification;

(4) The overall classification of the document;

(5) The date or event for automatic declassification or for review for declassification;

(6) Documents classified for more than six years shall also be marked with the identity by title of the TOP SECRET classification authority who authorized prolonged classification, unless that official also is the signer or approver, and annotated with the reasons the classification is expected to remain necessary despite the passage of time; and

(7) Any downgrading action to be taken and the date thereof.

(b) The overall classification of a document, whether or not permantly bound, or any copy or reproduction thereof, shall be conspicuously marked, stamped or affixed permanently at the top and bottom on the outside of the front cover (if any), on the title page (if any), on the first page, and on the outside of the back cover (if any). Each interior page shall be marked top and bottom according to its content. Alternatively, the overall classification of the document may be conspicuously marked or stamped at the top and bottom of each interior page when such marking is necessary to achieve production efficiency and particular information to which classification is assigned is otherwise sufficiently identified consistent with the intent of § 2400.29(c). In any case, the classification marking of a page shall not supersede the classification marking of portions (§ 2400.29(c)) of the page marked with lower levels of classification.

(c) Each section, part, paragraph, subparagraph, or similar portion of a classified document shall be marked to show the level of classification of the information contained in or revealed by it, or that it is unclassified. Portions of documents shall be marked in a manner that eliminates doubt as to which of its portions contains or reveals classified information.

Subpart F—Safeguarding

§ 2400.30 Access.

(a) No person may have access to classified information unless that person has been determined to be trustworthy and unless access is necessary for the performance of official duties. A personnel security clearance is an indication that the trustworthiness decision has been made. Procedures shall be established by the head of each office to prevent unnecessary access to classified information. There shall be a demonstrable need for access to classified information before a request for a personnel security clearance can be initiated. The number of people cleared and granted access to classified information shall be maintained at the minimum number that is consistent with operational requirements and needs. No one has a right to have access to classified information solely by virtue of rank or position. The final responsibility for determining whether an individual's official duties require possession of or access to any element or item of classified information, and whether the individual has been granted the appropriate security clearance by proper authority, rests upon the individual who has authorized possession, knowledge, or control of the information and not upon the prospective recipient. These principles are equally applicable if the prospective recipient is an organizational entity,

other Federal Agencies, contractors, foreign governments, and others.

(b) When access to a specific classification category is no longer required for the performance of an individual's assigned duties, the security clearance will be administratively adjusted, without prejudice to the individual, to the classification category, if any, required.

§ 2400.31 Access by historical researchers and former Presidential appointees.

Classified information may be made available to historical researchers and former Presidential appointees. The Director, Office of Science and Technology Policy shall determine, prior to the release of classified information, the propriety of such action in the interest of national security and assurance of the recipient's trustworthiness and need-to-know. Access will be limited to specific categories of information over which the Office of Science and Technology Policy has classification jurisdiction. OSTP shall maintain custody of classified information and obtain the recipient's written agreement to safeguard the information and to authorize a review of any notes and manuscript for determination that no classified information is contained therein.

§ 2400.32 Storage of classified information.

Whenever classified information is not under the personal control and observation of an authorized person, it will be guarded or stored in a locked security container approved for the storage and protection of the appropriate level of classified information.

§ 2400.33 Dissemination of classified information.

Heads of OSTP offices shall establish procedures consistent with this Regulation for the dissemination of classified material. The originating official may prescribe specific restrictions on dissemination of classified information when necessary.

§ 2400.34 Accountability and control.

(a) Each item of Top Secret and Secret information is subject to control and accountability requirements. Confidential information normally is not formally controlled in OSTP, however, it still must be properly safeguarded. Confidential information may be controlled when, in the judgment of the originator or recipient, it requires stringent access or accountability controls. Department of State material designated "LIMITED OFFICIAL USE" will be handled as Confidential information.

(b) The Security Officer will serve as Top Secret Control Officer (TSCO) for the Office of Science and Technology Policy and will be responsible for the supervision of the Top Secret control program. He will be assisted by an Assistant Top Secret Control Officer to effect the Controls prescribed herein for all Top Secret material.

(c) Records shall be maintained to show the number and distribution of reproduced copies of all Top Secret documents, of all classified documents covered by special access programs, and of all Secret and Confidential documents which are marked with special dissemination and reproduction limitations.

(d) Top Secrets Documents and material will be accounted for by a continuous chain of receipts.

(e) The Security Officer will develop procedures for the accountability and control of Secret information.

§ 2400.35 Reproduction of classified information.

Documents or portions of documents and materials that contain Top Secret information shall not be reproduced without the consent of the originator or higher authority. Any stated prohibition against reproduction shall be strictly observed. Copying of documents containing classified information at any level shall be minimized. Specific reproduction equipment shall be designated for the reproduction of classified information and rules for reproduction of classified information shall be posted on or near the designated equipment. Notices prohibiting reproduction of classified information shall be posted on equipment used only for the reproduction of unclassified information. All copies of classified documents reproduced for any

80-109 O—81——23

purpose including those incorporated in a working paper are subject to the same controls prescribed for the document from which the reproduction is made.

Subpart G—Foreign Government Information

§ 2400.36 Classification.

(a) Foreign government information classified by a foreign government or international organization of governments shall retain its original classification designation or be assigned a United States classification designation that will ensure a degree of protection equivalent to that required by the government or organization that furnished the information. Original classification authority is not required for this purpose.

(b) Foreign government information that was not classified by a foreign entity but was provided with the expectation, expressed or implied, that it be held in confidence must be classified because Executive Order 12065 (reference (a)) states a presumption of a least identifiable damage to the national security in the event of unauthrorized disclosure of such information.

§ 2400.37 Duration of Classification.

(a) Foreign government information is exempt from the automatic declassification and twenty year systematic review requirements of Subpart D.

(b) Foreign government information shall not be assigned a date or event for automatic declassification unless specified or agreed to by the foreign entity.

(c) Foreign government information classified on or after December 1, 1978 shall be assigned a date for review for declassification at thrity years from the time the information was originated by the foreign entity, or acquired or classified by the Office of Science and Technology Policy, whichever is earlier.

§ 2400.38 Declassification.

In weighing the need to protect information against the possible public interest in disclosure as prescribed in § 2400.20, officials shall respect the intent of this Regulation to protect foreign government information and confidential foreign sources.

§ 2400.39 Mandatory Review.

Requests for mandatory review for declassification of foreign government information shall be processed and acted upon in accordance with the provisions of Subpart D of this part, except that foreign government information will be declassified only in accordance with the guidelines developed for such purpose and after necessary consultation with other government agencies with subject matter interest. In cases where these guidelines cannot be applied to the foreign government information requested, or in the absence of such guidelines, consultation with the foreign originator through appropriate channels normally should be effected prior to final action on the request. When the responsible OSTP official is knowlegeable of the foreign originator's view toward declassification or continued classification of the types of information requested, consultation with the foreign originator may not be necessary.

§ 2400.40 Protection of Foreign Government Information.

Classified foreign government information shall be protected as is prescribed by this Regulation for United States classified information of a comparable level.

Subpart H—Security Education

§ 2400.41 Responsibility and Objectives.

The OSTP Security Officer shall establish a security education program for OSTP personnel. The program shall stress the objectives of classifying less information, declassifying more, and improving protection of information that requires it while maintaining the interest of the Government in protecting the national security.

Subpart I—Office of Science and Technology Policy Information Security Program Management

§ 2400.42 Responsibility.

The Director, OSTP is the senior OSTP official having authority and responsibility to ensure effective and uniform compliance with and implementation of Executive Order 12065 and its implementing Directive (references (a) and (b)). As such, the Director, OSTP shall have primary responsibility for providing guidance, oversight and approval of policy and procedures governing the OSTP Information Security Program. The Director, OSTP may approve waivers or exceptions to the provisions of this Regulation to the extent such action is consistent with references (a) and (b).

§ 2400.43 Office Review Committee.

The Office of Science and Technology Policy Review Committee (hereinafter referred to as the Office Review Committee) is hereby established and will be responsible for the continuing review of the administration of this Regulation with respect to the classification and declassification of information or material originated or held by the Office of Science and Technology Policy. The Office Review Committee shall be composed of the Associate Director, National Security and International Affairs who shall serve as Chairperson, the Associate Director, National Resources and Commercial Sciences, and the Security Officer.

§ 2400.44 Security Officer.

Under the general direction of the Director, the Executive Officer will serve as the Security Officer and will supervise the administration of this Regulation. He will develop programs, in particular a Security Education Program, to insure effective compliance with and implementation of the Information Security Program. Specifically he also shall:

(a) Maintain a current listing by title and name of all persons who have been designated in writing to have original Top Secret, Secret, and Confidential Classification authority. Listings will be reviewed by the Director on an annual basis.

(b) Maintain the record copy of all approved OSTP classification guides.

(c) Maintain a current listing of OSTP officials designated in writing to have declassification and downgrading authority.

(d) Develop and maintain systematic review guidelines.

§ 2400.45 Heads of Offices.

The Associate Director of each unit is responsible for the administration of this Regulation within his area. These responsibilities include:

(a) Insuring the national security information is properly classified and protected;

(b) Exercising a continuing review to downgrade and declassify information;

(c) Issuing appropriate internal security instructions and maintaining the prescribed control and accountability records on classified information under their jurisdiction.

§ 2400.46 Custodians.

Custodians of classified material shall be responsible for providing protection and accountability for such material at all times and particularly for locking classified material in approved security equipment whenever it is not in use or under direct supervision of authorized persons. Custodians shall follow procedures which insure that unauthorized persons do not gain access to classified information or material by sight or sound, and classified information shall not be discussed with or in the presence of unauthorized persons.

CHAPTER XXVII—OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS

Part		*Page*
2700	Security information regulations	348

PRECEDING PAGE BLANK-NOT FILMED

PART 2700—SECURITY INFORMATION REGULATIONS

Subpart A—Introduction

Sec.
2700.1 References.
2700.2 Purpose.
2700.3 Applicability.

Subpart B—Original Classification

2700.11 Basic Policy.
2700.12 Criteria for and level of original classification.
2700.13 Duration of original classification.
2700.14 Challenges to classification.

Subpart C—Derivative Classification

2700 21 Definition and application.
2700.22 Classification guides.

Subpart D—Declassification and Downgrading

2700.31 Declassification authority.
2700.32 Declassification general.
2700.33 Mandatory review for declassification.
2700.34 Downgrading authority.

Subpart E—Safeguarding

2700.41 General restrictions on access.
2700.42 Responsibility for safeguarding classified information.
2700.43 Reproduction controls.
2700.44 Administrative sanctions.

Subpart F—Implementation and Review

2700.51 Information Security Oversight Committee.
2700.52 Classification Review Committee.

AUTHORITY: E.O. 12065, National Security Regulation of June 28, 1978 (43 FR 28949, July 31, 1978); Information Security Oversight Office Directive No. 1 (43 FR 46280, October 5, 1978).

SOURCE: 44 FR 51574, Sept. 4, 1979; 44 FR 51990, Sept. 4, 1979, unless otherwise noted.

Subpart A—Introduction

§ 2700.1 References.

(a) Executive Order 12065, "National Security Information," June 28, 1978, (hereinafter E.O. 12065).

(b) Information Security Oversight Office, Directive No. 1, "National Security Information," October 2, 1978, (hereinafter ISOO Directive No. 1).

§ 2700.2 Purpose.

The purpose of this Regulation is to ensure, consistent with the authorities listed in § 2700.1, that national security information originated and/or held by the Office for Micronesian Status Negotiations (OMSN), which includes the Status Liaison Office, Saipan, Northern Mariana Islands (SLNO), is protected. To ensure that such information is protected, but only to the extent and for such period as is necessary, this regulation identifies the information to be protected and prescribes certain classification, declassification and safeguarding procedures to be followed.

§ 2700.3 Applicability.

This Regulation supplements E.O. 12065 within OMSN with regard to National Security Information. In consonance with the authorities listed in § 2700.1, it establishes general policies and certain procedures for the classification, declassification and safeguarding of information which is owned by, is produced for or by, or is under the control of OMSN.

Subpart B—Original Classification

§ 2700.11 Basic Policy.

(a) *General.* It is the policy of OMSN to make available to the public as much information concerning its activities as is possible, consistent with its responsibility to protect the national security.

(b) *Safeguarding national security information.* Within the Federal Government there is some information which because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be subject to some constraints for the security of our nation.

(c) *Balancing test.* To balance the public's interest in access to government information with the need to protect certain national security information from disclosure, these regulations indentify the information to be protected, prescribe classification, downgrading, declassification, and safeguarding procedures to be followed, and establish education, moni-

toring and sanctioning systems to insure their effectiveness. When questions arise as whether the need to protect information may be outweighed by the public interest in disclosure of the information, they shall be referred to OMSN pursuant to § 2700.32(b) for a determination whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure.

§ 2700.12 Criteria for and level of original classification.

(a) *General Policy.* Documents or other material are to be classified only when protecting the national security requires that the information they contain be withheld from public disclosure. Information may not be classified to conceal violations of law, inefficiency, or administrative error, or to prevent embarrassment to a person, organization or agency, or to restrain competition. No material may be classified to limit dissemination, or to prevent or delay public release, unless its classification is consistent with E.O. 12065.

(b) *Criteria.* To be eligible for classification, information must meet two requirements:

(1) First, it must deal with one of the criteria set forth in Section 1-301 of E.O. 12065;

(2) Second, the President's Personal Representative for Micronesian Status Negotiations or his delegate who has original classification authority must determine that unauthorized disclosure of the information or material can reasonably be expected to cause at least identifiable harm to the national security.

(c) *Classification designations.* Only three designations of classification are authorized—"Top Secret," "Secret," "Confidential." No other classification designation is authorized or shall have force.

(d) Unnecessary classification, and classification at a level higher than is necessary, shall be avoided. If there is reasonable doubt as to which designation in section 1-1 of E.O. 12065 is appropriate, or whether information should be classified at all, the less restrictive designation should be used, or the information should not be classified.

§ 2700.13 Duration of original classification.

(a) Information or material which is classified after December 1, 1978, shall be marked at the time of classification with the date or event for declassification or a date for review for declassification. This date or event shall be as early as national security permits and shall be no more than six years after original classification except as provided in paragraph (b) of this section.

(b) Only the President's Personal Representative for Micronesian Status Negotiations may authorize a classification period exceeding six years. Originally classified information that is so designated shall be identified with the authority and reason for extension. This authority shall be used sparingly. In those cases where extension of classification is warranted, a declassification date or event, or a date for review shall be set. This date or event shall be early as national security permits and shall be no more than twenty years after original classification except that for foreign information the date or event may be up to thirty years after original classification.

§ 2700.14 Challenges to classification.

If holders of classified information believe the information is improperly or unnecessarily classified, or that original classification has been extended for too long a period, they should discuss the matter with their immediate superiors or the classifier of the information. If these discussions do not satisfy the concerns of the challenger, the matter should be brough to the attention of the chairman of the OMSN Information Security Oversight Committee, established pursuant to § 2700.51. Action on such challenges shall be taken within 30 days from date of receipt and the challenger shall be notified of the results. When requested, anonymity of the challenger shall be preserved.

Subpart C—Derivative Classification

§ 2700.21 Definition and application.

Derivative classification is the act of assigning a level of classification to information which is determined to be the same in substance as information which is currently classified. Thus, derivative classification may be accomplished by any person cleared for access to that level of information, regardless of whether the person has original classification authority at that level.

§ 2700.22 Classification guides.

OMSN shall issue classification guides pursuant to Section 2-2 of E.O. 12065. These guides, which shall be used to direct derivative classification, shall identify the information to be protected in specific and uniform terms so that the information involved can be readily identified. The classification guides shall be approved in writing by the President's Personal Representative for Micronesian Status Negotiations. Such approval constitutes an original classification decision. The classification guides shall be kept current and shall be reviewed at least every two years.

Subpart D—Declassification and Downgrading

§ 2700.31 Declassification authority.

The Director, OMSN, is authorized to declassify OMSN originated documents after consultation with the appropriate OMSN staff members.

§ 2700.32 Declassification general.

Declassification of classified information shall be given emphasis comparable to that accorded to classification. The determination to declassify information shall not be made on the basis of the level of classification assigned, but on the loss of the sensitivity of the information with the passage of time, and with due regard for the public interest in access to official information. At the time of review, any determination not to declassify shall be based on a determination that despite the passage of time since classification, release of information reasonably could still be expected to cause at least identifiable damage to the national security.

§ 2700.33 Mandatory review for declassification.

(a) *General.* All information classified under the Order or prior orders, except as provided for in Section 3-503 of E.O. 12065 shall be subject to review for declassification upon request of a member of the public, a government employee, or an agency.

(b) *Receipt.* (1) Requests for mandatory review for declassification under Section 3-501 of E.O. 12065 must be in writing and should be addressed to: Office for Micronesian Status Negotiations, ATTN: Security Officer (Mandatory Review Request), Room 3356, Department of the Interior, Washington, D.C. 20240.

(2) The requestor shall be informed of the date of receipt of the request at OMSN. This date will be the basis for the time limits specified in paragraph (c) of this section.

(3) If the request does not reasonably describe the information sought, the requestor shall be notified that, unless additional information is provided or the request is made more specific, no further action will be taken.

(4) Subject to paragraph (b)(7) of this section, if the information requested is in the custody of and under the exclusive declassification authority of OMSN, OMSN shall determine whether the information or any reasonably segregable portion of it no longer requires protection. If so, OMSN shall promptly make such information available to the requester, unless withholding it is otherwise warranted under applicable law. If the information may not be released, in whole or in part, OMSN shall give the requester a brief statement of the reasons, a notice of the right to appeal the determination to the agency review committee, and notice that such an appeal must be filed with the review committee within 60 days.

(5) When OMSN receives a request for information in a document which is in its custody, but which was classified by another agency, it shall refer the request to the appropriate agency

for review, together with a copy of the document containing the information requested, where practicable. OMSN shall also notify the requester of the referral, unless the association of the reviewing agency with the information requires protection. The reviewing agency shall review a document in coordination with any other agency involved with the classification or having a direct interest in the subject matter. The reviewing agency shall respond directly to the requester in accordance with the pertinent procedures described above and, if requested, shall notify OMSN of its determination.

(6) Requests for declassification of classified documents originated by OMSN or another agency but in the possession and control of the Administrator of General Services, pursuant to 44 U.S.C 2107 or 2107 Note, shall be referred by the Archivist to the agency of origin for processing and for direct response to the requests. The Archivist will inform requesters of such referrals.

(7) In the case of requests for documents containing foreign government information, OMSN, if it is also the agency which initially received the foreign government information, shall determine whether the foreign government information in the document may be declassified and released in accordance with agency policies or guidelines, consulting with other agencies of subject matter interest as necessary. If OMSN is not the agency which received the foreign government information, it shall refer the request to the latter agency, which shall take action on the request. In those cases where available agency policies or guidelines do not apply, consultation with the foreign originator through appropriate channels may be advisable prior to final action on the request.

(8) If any agency makes a request on behalf of a member of the public, the request shall be considered as a request by that member of the public and handled accordingly.

(c) *Review.* (1) Within sixty days from its receipt, OMSN shall inform the requestor of the determination of the mandatory review for declassification.

(2) If the determination is to withhold some or all of the material requested, the requestor may appeal the determination. The requestor shall be informed that an appeal must be made in writing within sixty days of receipt of the denial and should be addressed to the chairperson of the OMSN Classification Review Committee established pursuant to § 2700.52.

(3) No agency in possession of a classified document may, in response to a request for the document made under the Freedom of Information Act (5 U.S.C. 552) or under Section 3-5 of E.O. 12065, refuse to confirm the existence or non-existence of the document, unless the fact of its existence or non-existence would itself be classifiable.

(4) The requestor shall be informed of the appellate determination within thirty days of receipt of the appeal.

(5) In considering requests for mandatory review, OMSN may decline to review again any request for material which has been recently reviewed and denied, except insofar as the request constitutes an appeal under paragraph (f) of this section.

(d) *Processing of Requests.* The processing of requests by OMSN shall be as follows:

(1) The Security Officer or his designee shall record the request, and arrange for search and review of the documents. The documents will be reviewed for declassification in accordance with these regulations or any applicable guidelines. If the documents remain classified and are not to be released, in whole or in part, the reviewing office will also prepare a letter informing the requester as described in paragraph (b)(4) of this section. The letter to the requester shall be signed by the President's Personal Representative for Micronesian Status Negotiations, his Deputy or the Status Liaison Officer. The Security Officer or his designee shall record disposition of the case and forward the letter of denial to the requester.

(2) If any request requires obtaining the views of other agencies, the receiving office shall arrange coordination of review with such other agencies.

(3) When all documents involved in the request are declassified and re-

leased, the receiving office will send a release statement, to the requester, and shall inform the requester of any fees due before releasing documents.

(4) In the case of documents of agency origin requested by a Presidential Library on behalf of a member of the public, if there is a partial denial, the letter will advise the requester as described in paragraph (b)(4) of this section, but the requester will be referred to the Archivist for copies of the released document, with portions excised. The receiving office will transmit such documents, with portions marked to be excised, to Archives which will transmit them with portions excised to the Presidential Library for its records and for use in the case of further similar requests.

(5) The Security Officer or his designee shall also coordinate requests from other agencies seeking the views of OMSN as to declassification of documents originated by such other agencies but involving information of primary subject matter interest to OMSN. The Security Officer or his designee will transmit the documents to the reviewing individual for a determination as to declassification and will coordinate the reply of OMSN to the requesting agency.

(e) *Appeals.* (1) The President's Personal Representative for Micronesian Status Negotiations shall receive appeals for denial of documents by OMSN. Such appeals shall be addressed to President's Personal Representative for Micronesian Status Negotiations, Suite 3356, Interior Department Building, Washington, D.C. 20240. The appeal must be received in OMSN within 60 days of the date of the original denial letter or the final release of documents, whichever is later.

(2) Appeals shall be decided within 30 days of their receipt.

(f) *Fees.* (1) Fees for the location and reproduction of information which is the subject of a mandatory review request shall be assessed according to the following schedule:

(i) Search for records: $5.00 per hour when the search is conducted by a clerical employee; $8.00 per hour when the search is conducted by a professional employee. No fee shall be assessed for searches of less than one hour.

(ii) Reproduction of documents: Documents will be reproduced at a rate of $.25 per page for all copying of four pages or more. No fee shall be assessed for reproducing documents which are three pages or less, or for the first three pages of longer documents.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than $25.00, and the requestor has not indicated in advance a willingness to pay fees as high as are anticipated, the requestor shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25.00, an advance deposit may be required. Dispatch of such a notice or request shall suspend the running of the period for response by OMSN until a reply is received from the requestor.

(3) Remittance shall be in the form either of a personal check or bank draft on a bank in the United States, or a postal money order. Remittance shall be made payable to Treasurer of the United States and mailed to the address noted in paragraph (b)(1) of this section.

(4) A receipt for fees paid will be provided only upon request. Refund of fees for services actually rendered will not be made.

(5) OMSN may waive all or part of any fee provided for in this section when it is deemed to be in either the interest of OMSN or of the general public.

§ 2700.34 Downgrading authority.

The Security Officer, OMSN is authorized to downgrade OMSN originated documents after consultation with the staff member who is charged with functional responsibility for the subject matter under question.

Subpart E—Safeguarding

§ 2700.41 General restrictions on access.

(a) *Determination of need-to-know.* Classified information shall be made available to a person only when the possessor of the classified information

establishes in each instance, except as provided in Section 4-3 of E.O. 12065, that access is essential to the accomplishment of official Government duties or contractual obligations.

(b) *Determination of Trustworthiness.* A person is eligible for access to classified information only after a showing of trustworthiness as determined by the President's Personal Representative for Micronesian Status Negotiations based upon appropriate investigations in accordance with applicable standards and criteria.

§ 2700.42 Responsibility for safeguarding classified information.

(a) *General Policy.* The specific responsibility for the maintenance of the security of classified information rest with each person having knowledge or physical custody therof, no matter how obtained. The ultimate responsibility for safeguarding classified information rests on each supervisor to the same degree that supervisor is charged with functional responsibility.

(b) *Security and Top Secret Control Officers.* The Director, OMSN, and the Status Liaison Officer, Saipan, are assigned specific security responsibilities as Security Officer and Top Secret Control Officer.

(c) *Handling.* All documents bearing the terms "Top Secret," "Secret" and "Confidential" shall be delivered to the Top Secret Control Officer or his designee immediately upon receipt. All potential recipients of such documents shall be advised of the names of such designees and updated information as necessary. In the event that the Top Secret Control Officer or his designees are not available to receive such documents, they shall be turned over to the office supervisor and secured, unopened, in a designated combination safe located in OMSN or SLNO, as appropriate until the Top Secret Control Officer is available. All materials not immediately deliverable to the Top Secret Control Officer shall be delivered at the earliest opportunity. Under no circumstances shall classified material that cannot be delivered to the Top Secret Control Officer be stored other than in the designated safe.

(d) *Storage.* All classified documents shall be stored in the designated combination safe or safes located in OMSN or SLNO as appropriate. The combination shall be changed as required by ISOO Directive No. 1, Section IV F (5) (a). The combinations shall be known only to the Security Officer and his designees with the appropriate security clearance.

(e) *Security Education Program.* The Security Officer shall establish a program of briefings to familiarize personnel with the provisions of E.O. 12065 and implementing directives. Such briefings shall be held once per year, or more frequently. Before any new or newly assigned employee enters on duty, he shall be given instruction in sufficient detail in security procedures and practices to inform him of his responsibilities arising from his access to classified data.

(f) *Access by Historical Researchers and Former Presidential Appointees.* In keeping with provisions 4-301 and 4-302 of E.O. 12065, the President's Personal Representative for Micronesian Status Negotiations shall designate appropriate officials to determine, prior to granting access to classified information, the propriety of such action in the interest of national security and assurance of the recipient's trustworthiness and need-to-know.

§ 2700.43 Reproduction controls.

OMSN and SLNO shall maintain records to show the number and distribution of all OMSN originated classified documents. Reproduction of classified material shall take place only in accordance with Section 4-4 of E.O. 12065 and any limitations imposed by the originator. Should copies be made, they are subject to the same controls as the original document. Records showing the number of distribution of copies shall be maintained by the Office Supervisor and the log stored with the original documents. These measures shall not restrict reproduction for the purposes of mandatory review.

§ 2700.44 Administrative sanctions.

Officers and employees of the United States Government assigned to

OMSN shall be subject to appropriate administrative sanctions if they knowingly and willingly commit a violation under Section 5-5 of E.O. 12065. These sanctions may include reprimand, suspension without pay, removal, termination of classification authority, or other sanction in accordance with applicable law or the applicable regulations of the agency from which they are assigned to OMSN.

Subpart F—Implementation and Review

§ 2700.51 Information Security Oversight Committee.

The OMSN Information Security Oversight Committee shall be chaired by the Security Officer, OMSN. The Committee shall be responsible for acting on all suggestions and complaints concerning the administration of the OMSN information security program. The chairperson shall also be responsible for conducting an active oversight program to ensure effective implementation of E.O. 12065.

§ 2700.52 Classified Review Committee.

The OMSN Classification Review Committee shall be chaired by the President's Personal Representative for Micronesian Status Negotiations. The Committee shall decide appeals from denials of declassification requests submitted pursuant to Section 3-5 of E.O. 12065. The Committee shall consist of the President's Personal Representative, Department of Defense/Legal Advisor and Political/Economic Advisor.

CHAPTER XXVIII—OFFICE OF THE VICE PRESIDENT OF THE UNITED STATES

Part		*Page*
2800	Security procedures	356

PART 2800—SECURITY PROCEDURES

Sec.
2800.1 Purpose.
2800.2 Guiding directives.
2800.3 Policy.
2800.4 General information.
2800.5 Policies.
2800.6 Delegation of classification and declassification authority.
2800.7 Designation of chairperson for Ad Hoc Committees.

Attachment 1—Employment Agreement & Indoctrination Statement
Attachment 2—Security Termination Statement
Attachment 3—Sample

AUTHORITY: EO 12065, 43 FR 28949, 3 CFR, 1978 Comp., p. 190; (Information Security Oversight Office, Directive No. 1, 43 FR 46280, 32 CFR Chapter II.

SOURCE: 44 FR 66591, Nov. 20, 1979, unless otherwise noted.

§ 2800.1 Purpose.

To establish procedures and provide guidance for the security of classified information and material within the Office of the Vice President.

§ 2800.2 Guiding directives.

(a) Executive Order 12065, June 28, 1978, Subject: National Security Information.

(b) Information Security Oversight Office, Directive No. 1, October 2, 1978, Subject: National Security Information.

§ 2800.3 Policy.

The classification, declassification, safeguarding and handling of classified information within the Office of the Vice President will comply with the letter and spirit of those directives listed in § 2800.2. All personnel of the Office of the Vice President are responsible individually for complying with the provisions of these regulations are in all respects. The provisions of these regulations applicable to all personnel assigned or detailed to the Office of the Vice President.

§ 2800.4 General information.

(a) *Staff Security Officer/Top Secret Control Officer.* A Vice Presidential Staff Security Officer and Assistant Staff Security Officer will be assigned to perform the duties as outlined in these regulations. They will normally be on the staff of the Assistant to the Vice President for National Security Affairs. The Staff Security Officer and Assistant Staff Security Officer will serve as Top Secret Control Officer and Assistant Top Secret Control Officer and custodians of classified material for the Office of the Vice President respectively, and will be responsible for the overall supervision of the Top Secret Control program. They will maintain positive control over the movement of all Top Secret material under their jurisdiction.

(b) *Custodian, Office of the Assistant to the Vice President for Congressional Relations.* The Assistant to the Vice President for Congressional Relations, Office of the President of the Senate, will be designated as Custodian of classified material for that office. He will be responsible for compliance with the instructions contained herein. In this capacity, he will be charged with safeguarding classified material necessary to the operation of the office.

(c) *National Security Classifications.* Classifications of National Security Information are defined in Executive Order 12065, Sections 1-102 through 1-104.

(d) *Prohibited Markings.* (1) The caveats "FOR OFFICIAL USE ONLY" and "ADMINISTRATIVELY RESTRICTED" are used within the Office of the Vice President to designate certain unclassified information which requires control. These caveats will under no circumstances be applied to information which qualifies as classified information. Further, neither they nor other terms will be used in conjunction with the prescribed security classifications of CONFIDENTIAL, SECRET and TOP SECRET.

(2) Unclassified information bearing either of the foregoing administrative designations cannot be protected from release under the national security exemption of the Freedom of Information Act (although other exemptions may be available).

(e) *Security Clearances.* No person shall be given access to classified information or material unless a favorable background investigation has been completed determining that the individual is trustworthy and that access

is necessary for the performance of official duties.

(1) *Security Clearance Procedures.* (i) The Counsel to the Vice President will:

(A) Be responsible for the processing of full field investigations for personnel assigned to the Vice President's staff. Department of Defense detailees are processed by the Defense Investigative Service.

(B) Inform the Staff Security Office of individuals whose full field investigations have been satisfactorily completed and approved and of any subsequent changes.

(C) Notify the Staff Security Office as soon as he/she is aware that a staff member is planning to terminate his/her employment.

(ii) The Staff Security Office will provide newly cleared persons with a security orientation briefing covering policy and procedures for handling classified information and material. After the briefing individuals will sign a Statement of Understanding of Security Procedures (Attachment 1). This statement will be kept on file by the Staff Security Office.

(iii) There is no such thing as an "Interim Security Clearance" for persons employed by or detailed to the Office of the Vice President. Under *no* circumstances will uncleared persons be given access to classified material. Access to classified material will be denied until the individual has had a satisfactorily completed background investigation, has received the security orientation briefing and signed the Statement of Understanding of Security Procedures.

(iv) The Staff Security Office, as part of an individual's departure debriefing, will remind them of their continuing responsibilities to protect classified information to which they have had access during the performance of their official duties. After being debriefed, the individual will sign a Security Termination Statement acknowledging his responsibilities (Attachment 2).

(2) Satisfactory completion of a background investigation does not in itself grant an individual access to classified information. Individual clearances for access to classified information or material will be controlled by the Staff Security Office and certified in writing on an individual basis.

(f) *Access to Classified Material.* Each member of the staff who has custody or possession of classified information is responsible for providing the required degree of protection from unauthorized disclosure at all times.

(1) Classified information and material will only be disclosed to an individual after it has been determined that the individual possesses the required clearance and has a valid "need to know." Persons releasing the information shall be responsible in every case for determining the recipient's eligibility for access.

(2) Access to Sensitive Compartmented Intelligence Information will be controlled by the Assistant to the Vice President for National Security Affairs.

(g) *Custody and safekeeping of Classified Material.* (1) Classified material addressed to the Office of the Vice President will normally be delivered to and receipted for by the Staff Security Office where it will be entered into the classified material control system.

(i) Staff members receiving classified material from any source by any means will personally deliver such material to the Staff Security Office for appropriate entry into the classified control system.

(ii) Conversely, members of the staff desiring to transmit classified material will deliver the material to the Staff Security Office for handling in accordance with paragraph (h)(5) of this section.

(2) *Storage of Classified Material.* (i) Classified material will be stored only in accordance with the provisions of ISOO Directive No. 1, paragraph IV-F-1 through 4.

(ii) Filing of unclassified material in security containers is prohibited except where the unclassified material is an integral part of a file which contains classified material. If extenuating circumstances necessitate the use of a security container for storing only unclassified material, the container will be marked with a sign stating "This container is not used to store

classified material" or "Do not store classified material in this container."

(3) *Record of safe locations.* The Staff Security Office will assign numbers to all security containers used to store classified material in the Office of the Vice President. A record of safe numbers, locations and date of last combination change will be maintained in the Staff Security Office.

(4) *Changing of lock combinations.* Combinations of security containers will be changed by the Staff Security Office or the Secret Service. This service may be requested by contacting the Staff Security Office. Combinations will be changed in accordance with the provisions of ISOO Directive No. 1, paragraph IV-F-5.

(5) *Records of combinations.* Records of combinations shall be maintained by the Staff Security Office. Whenever a combination is changed, the new combination and other required information will be recorded on GSA Optional Form 63. The sealed envelope will then be delivered to the Staff Security Office for retention in the vault safe.

(6) *Custodians.* Each container used for storage of classified material within the Office of the Vice President will have assigned a primary and alternate custodian. Responsibility for security of these containers shall rest with those persons, and their names shall be affixed on the outside of the top drawer of each container positioned so as to be readily discernible. Optional Form 63 shall be used for this purpose.

(h) *Handling of Classified Material.*—(1) *Use of cover sheets.* A separate cover sheet indicating the classification of the material will be fastened to the top page of cover of each CONFIDENTIAL, SECRET or TOP SECRET document.

(2) *Unattended documents.* Classified material will be under the direct supervision of a person with an appropriate security clearance and a verified need-to-know at all times when in use. Special care will be taken to insure that classified material is not left unsecured or unattended in an office.

(3) *Working papers.* Working papers are documents, including drafts, photographs, etc., created to assist in the formulation and preparation of finished papers. Working papers containing classified information will be marked with the appropriate classification and provided the same degree of protection as that given to other documents of an equal category of classification.

(4) *Communications security.* Classified information shall not be discussed over any voice communications device except as authorized over *approved* secure communications circuits. This restriction also applies to electrical transmission of classified material via any unsecure circuitry involving teletypes, DEX equipment or other systems of a like nature. Appropriate secure facilities for the discussion or transmittal of classified material may be arranged by contacting the Staff Security Office.

(5) *Transmittal of Classified Material.*—(i) *Outside the Office of the Vice President and the White House Complex.* The Staff Security Office is responsible for transmitting or transferring all classified material outside the Office of the Vice President and the White House Complex in accordance with the provisions of ISOO Directive No. 1, paragraphs I, G and H.

(ii) *Within the Office of the Vice President and the White House Complex.* Transfer or movement of classified material will be accomplished only by properly cleared persons handcarrying the material to the recipient. The material shall be carried in an envelope marked with the appropriate classification. *Use of see through messenger envelopes is not authorized.* Recipients will sign a receipt (GSA Optional Form 112) for all material classified SECRET and TOP SECRET. Whenever TOP SECRET material is transferred, the Staff Security Office will be notified in order to maintain accurate accountability of the material. Classified material will never be delivered to an uncleared person, left in an unoccupied office, or sent through unclassified mail delivery/distribution systems.

(iii) Staff members requiring the use of classified material at conferences or meetings held outside the Washington, D.C. Metropolitan area and who intend to use commercial transporta-

tion shall provide the material to the Staff Security Office far enough in advance to assure that the material will be available on or before the date needed. This requirement does not apply when utilizing government/military transportation. In this case, material may be handcarried. The Staff Security Office will brief each staff member prior to departure concerning security requirements or arrangements needed to safeguard the material while away from his office. For meetings or conferences within the Washington, D.C. Metropolitan area, members may handcarry classified material. Use of classified material during a conference or meeting requires increased awareness and precautionary handling to avoid security violations and/or compromises. Staff members using classified material during a meeting or conference are responsible for ensuring that the material is properly protected at all times, and that personnel present posses appropriate clearances for the material being presented.

(iv) *Visits to foreign countries.* Special precautions must be taken when visiting foreign countries to ensure classified material is protected at all times. For all visits to foreign countries a member of the staff will be appointed as custodian for all classified material reqired for the success of the mission. This individual will be the holder of a diplomatic passport which exempts him from customs inspections. Individual so designated will coordinate with United States embassy personnel in the country to be visited for securing of classified material within the embassy compound or other appropriate secure area during the course of the visit.

(6) *Preparation and marking of Classified Material.* All classified material originating within the office of the Vice President will be prepared and marked by properly authorized and cleared personnel in accordance with ISOO Directive No. 1, paragraphs I, G, and H. A sample letter is attached for your guidance (Attachment 3). Derivitive information will be prepared and classified in accordance with ISOO Directive No. 1, paragraphs II A through C. Questions concerning procedures should be directed to the Staff Security Office.

(7) *Reproduction of Classified Material.* (i) Reproduction of classified material will be accomplished only by properly cleared persons.

(ii) Reproduction of TOP SECRET material will be accomplished only by a member of the Staff Security Office or a designated representative of that office.

(iii) Accountability of reproduced classified material will be maintained by informing the Staff Security Office of the reproduction of SECRET and TOP SECRET material, the number of copies reproduced and their disposition.

(iv) Reproduction machines can retain the imagery of material passed through them. Therefore, to avoid inadvertent disclosure of classified information through subsequent use of machines, staff members will *always* run machines through four cycles (four blank pages) after the last page of the classified material has been reproduced. These pages will be destroyed in the same manner as classified material.

(8) *Destruction of Classified Material.* (i) SECRET and TOP SECRET material will be given to the Staff Security Office for destruction to insure destruction is properly recorded and destroyed material is removed from the classified control system.

(ii) CONFIDENTIAL material may be destroyed in the holder's office by tearing lengthwise and placing in a "Burn Bag" specifically designated for classified material.

(iii) Classified waste material will be separated from other office waste material and placed in "Burn Bags." Classified waste material includes working papers, notes, drafts of classified correspondence, carbon paper, typewriter ribbons and any other material containing information requiring destruction. "Burn Bags" will be collected daily by a member of the White House Executive Protective Service who will then dispose of the bags in a secure facility.

(iv) *Typewriter ribbons.* Classified material can be reproduced from imprints on used typewriter ribbons. Therefore, ribbons which are used in

80-109 O—81——24

the preparation of classified material must be safeguarded accordingly, i.e., they will be stored in a safe at the close of business, destroyed as classified waste when no longer serviceable, etc.

(9) *Inventories.* The Staff Security Office will conduct inventories of all TOP SECRET material charged to the Office of the Vice President at least annually to determine adequacy of control procedures and accountability.

(i) *Loss or compromise.* Any person who has knowledge of loss of possible compromise of classified information shall promptly report the circumstances to the Staff Security Office for appropriate action in accordance with ISOO Directive No. 1, paragraph IV, H.

(j) *Penalties.* Any individual breach of security may warrant penalties up to and including the separation of the individual from his employment or criminal prosecution.

(k) *Special access.* Special access authority is required for release of Sensitive Compartmented Intelligence Information. The names of personnel cleared for access to this category of information are on file in the Staff Security Office.

§ 2800.5 Policies.

(a) *Basic policy.* Except as provided in the Atomic Energy Act of 1943, as amended, Executive Order 12065, as implemented by ISOO Directive No. 1, provides the only basis for classifying information. It is the policy of this office to make available to the public as much information concerning its activities as possible consistent with the need to protect the national security. Accordingly, security classification shall be applied only to protect the national security.

(b) *Duration of classification.* Classification shall not be continued longer than necessary for the protection of national security. Each decision to classify requires a simultaneous determination of the duration such classification must remain in effect. For further guidance, refer to Sections 1-401 and 1-402, E.O. 12065.

(c) *Declassification.* Declassification of information shall be given emphasis comparable to that accorded to classification. Decisions concerning declassification shall be based on the loss of the information's sensitivity with the passage of time or upon the occurrence of a declassification event. For further guidance, refer to Sections 3-102, 3-103 and 3-104 of E.O. 12065.

(d) *Systematic review for declassification.* Systematic review for declassification will be in accordance with Sections 3-204, 3-401 and 3-503 of E.O. 12065.

(e) *Mandatory review requests.* Requests from a member of the public, a government employee, or an agency, to declassify and release information will be acted upon within 60 days provided the request reasonably identifies the information. After review, the information or any reasonably segregable portion thereof that no longer requires protection, shall be declassified and released, except as provided in Section 3-503, E.O. 12065, unless withholding is otherwise warranted under applicable law.

(f) *Classification guides.* The Chief Counsel, National Security Council, has determined that, in view of the limited amount of material originally classified by this office, the preparation and publication of classification guides is not required.

(g) *Access to Classified Information by historical researchers and former Presidential appointees.* Access may be granted under the provisions of Section 4-3 of E.O. 12065; however, access is permissive and not mandatory.

§ 2800.6 Delegation of classification and declassification authority.

Pursuant to the provisions of Sections 1-201 and 3-103 of E.O. 12065 of June 28, 1978, the following officials within the Office of the Vice President, are designated to originally classify and declassify information as "SECRET" and/or "CONFIDENTIAL":

(a) Chief of Staff to the Vice President.

(b) Counsel to the Vice President.

(c) Executive Assistant to the Vice President.

(d) Assistant to the Vice President for National Security Affairs.

(e) Assistant to the Vice President for Issues Development and Domestic Policy.

(f) Additionally, the following individuals are designated to declassify "SECRET" and/or "CONFIDENTIAL" information in accordance with Section 3-103 of E.O. 12065:

(i) Staff Security Officer/Top Secret Control Officer.

(ii) Assistant Staff Security Officer/Assistant Top Secret Control Officer.

§ 2800.7 Designation of Chairperson for Ad Hoc Committees.

The Counsel to the Vice President is designated as the responsible official to chair Ad Hoc Committees as necessary to act on all suggestions and complaints with respect to the administration of the information security program.

Attachment 1



OFFICE OF THE VICE PRESIDENT

WASHINGTON

EMPLOYMENT AGREEMENT & INDOCTRINATION STATEMENT

As consideration for employment with the Office of the Vice President and as a condition for continued employment I hereby declare that I intend to be governed by and I will comply with the following provisions:

1. By virtue of the performance of my official duties while employed by or assigned to the Office of the Vice President, I expect to be the recipient of classified information, materials, plans or intelligence data which concern the national defense and foreign relations of the United States and which are the property of the United States Government. I have been furnished and I understand the provisions of (a) the Espionage Act, Title 18, USC, Section 793 and 794, concerning the disclosure of information relating to the national defense of the United States and the penalties provided for violations thereof; (b) Title 18, USC, Section 1001, concerning the making of false statements; and (c) Executive Order 12065 entitled "National Security Information."

2. I understand that one of the obligations of my employment by or assignment to the Office of the Vice President is strict compliance with the provisions of Federal laws, directives and regulations with respect to the safeguarding of classified information of the United States Government from unauthorized disclosure.

3. I agree that in the course of my employment by or assignment to the Vice President's staff and subsequent thereto, I will not divulge, publish or reveal by any means any classified information, intelligence data or knowledge which I may acquire by virtue of such employment, except as authorized by competent authority pursuant to the provisions of Federal statutes, regulations and directives. Should an attempt be made by any unauthorized person to obtain classified information from me I will report such incident to the Staff Security Officer for the Office of the Vice President, the nearest office of the Federal Bureau of Investigation or to the nearest U.S. Embassy, Consulate or U.S. Military Command.

4. I understand that upon the termination of my employment by or assignment to the Vice President's staff, none of the classified information or material to which I have access or which I have originated in the course of that employment or assignment may be removed or retained by me, except as authorized by competent authority.

5. I understand that a change in my assignment or employment will not relieve me of my obligations under this statement, and that the provisions of this statement will remain binding upon me after termination of my service with the Office of the Vice President and my services with the United States Government.

_____
Signature

Witnessed and accepted in behalf of the Vice President of the United States on

_____, 19__, by _____

Attachment 2



OFFICE OF THE VICE PRESIDENT

WASHINGTON

SECURITY TERMINATION STATEMENT

On the occasion of the termination of my employment by or assignment to the staff of the Office of the Vice President, I hereby state that:

1) I am not retaining possession of or taking with me any document or other material containing classified information affecting the national defense or foreign relations of the United States.

2) I will not hereafter in any manner reveal or divulge any such classified information of which I have gained knowledge during my employment by or assignment to the Office of the Vice President, except as authorized by competent authority pursuant to the provisions of Federal statutes, regulations and directives. Should an attempt be made by any unauthorized person to obtain such classified information from me, I will report the incident to the Staff Security Officer of the Office of the Vice President, the nearest office of the Federal Bureau of Investigation, or the nearest U.S. Embassy, Consulate, or U.S. Military Command.

3) I have read and understand the provisions of the Espionage Act, Title 18, USC, Sections 793 and 794, concerning unlawful disclosure of information affecting the national defense, and the provisions of Title 18, USC, Section 1001, regarding the making of false statements. With this understanding, I state that the information I have given herein is, to the best of my knowledge and belief, correct and complete and is being furnished to the U.S. Government for purposes of protection of classified information which affects the national defense, or foreign relations, of the United States.

_____ date

_____ signature

_____ WITNESS

_____ name (typed or printed)

SAMPLE

TOP SECRET

Attachment 3

OFFICE OF THE VICE PRESIDENT
WASHINGTON

January 25, 1979

MEMORANDUM FOR The Vice President

FROM: A. Staff Member

SUBJECT: Classified Markings (U)

Xxxx xxxxxxx xx x xxxxxxxxxx xxxxxxxx xxxxx xx xxxxxx xx xxxxxxxx xxx xxxxxxx xxxxxxxxxxxxxx xx xxxxxxxxxx xx xxxxxxx. Xxxx xxxxxxx, xxxx xxxxxxxxx xx xxxxxx xx xx xx xxxxxxxxx xxxxxxxxxxx xxxxxxxxxxx xx xxxxxx xx. (C)

Xxxx xxxxxxx xxxxxxx xx xxxx xxxx xxxxxxxx xxxxx xxxxxxxx xxxxxxxx xxx xxx xxxxxxxxxx xxxxxxxxx. Xxxx xxx-xxxx xxxxx xxxxx xx xxxxxxxxxx xxxxxxxxx xx xxxxxxxxxx xxxxxxxxx xxxxxx xxxxxxxxx xxxxxxx. (S)

Xxxxx xxxxxxxxx xxxxx xx xxxxxxx xx xxxxxxxxxx xxxxxxx xxxxxxxxx xx xxx xxxxxx. (U)

X xx xxxxxxxx xxx xxxxxxxxx xxxxxxxx xx xx xxxxx xxxxxxx xxxx xxx xxxx xxxxxx xxxxx xxxxxxxxx xx xxx xxx xxxxxxxx xx xxxxxx. Xxxxxxx xx xxx xxx xxxxxx xxxxxxxxxxx xxxxxxxx xxx xxxx xxxxxx xxxxx xxxxxxxxx xxx xxxxxxx xxxxx xxx xxx xxxxxxx xxxxxxxxx x xxxxxxx. Xxxxxx xxxxx xxxx xxxxxxxx xxxxx. (TS)

Classified by Director, XXX
Declassify on January 24, 1984
Review for Declassification on January 24, 1984
Downgrade to_____on_____

} Enter appropriate terminology

SAMPLE

TOP SECRET

SAMPLE

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised semiannually January 1 and July 1.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected

PRECEDING PAGE BLANK-NOT FILMED

Table of CFR Titles and Chapters

(As of June 19, 1981)

Title 1—General Provisions

Chap.

I Administrative Committee of the Federal Register (Parts 1-49)

II Office of the Federal Register (Parts 50-299)

III Administrative Conference of the United States (Parts 300-399)

IV Miscellaneous Agencies (Parts 400-499)

Title 2—[Reserved]

Title 3—The President

Proclamations

Executive Orders

Presidential Documents Other Than Proclamations and Executive Orders

I Executive Office of the President (Parts 100-199)

Title 4—Accounts

I General Accounting Office (Parts 1-99)

II Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100-299)

III General Accounting Office (CASB) (Parts 300-499)

Title 5—Administrative Personnel

I Office of Personnel Management (Parts 0-1199)

II Merit Systems Protection Board (Parts 1200-1299)

III Office of Management and Budget (Parts 1300-1399)

IV Advisory Committee on Federal Pay (Parts 1400-1499)

V The International Organizations Employees Loyalty Board (Parts 1500-1599)

VII Advisory Commission on Intergovernmental Relations (Parts 1700-1799)

IX Appalachian Regional Commission (Parts 1900-1999)

XI United States Soldiers' and Airmen's Home (Parts 2100-2199)

XIV Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400-2499)

XV Office of Administration, Executive Office of the President (Parts 2500-2599)

[illegible] PAGE BLANK-NOT FILMED

Title 6—Economic Stabilization

Chap.

VI Assistant Secretary for Administration, Department of the Treasury (Parts 600-699)

VII Council on Wage and Price Stability (Parts 700-799)

Title 7—Agriculture

SUBTITLE A—Office of the Secretary of Agriculture (Parts 0-25a)

SUBTITLE B—Regulations of the Department of Agriculture

I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 26-209)

II Food and Nutrition Service, Department of Agriculture (Parts 210-299)

III Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300-399)

IV Federal Crop Insurance Corporation, Department of Agriculture (Parts 400-499)

V Agricultural Research Service, Department of Agriculture (Parts 500-599)

VI Soil Conservation Service, Department of Agriculture (Parts 600-699)

VII Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700-799)

VIII Federal Grain Inspection Service, Department of Agriculture (Parts 800-899)

IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900-999)

X Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000-1199)

XI Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200-1299)

XII Statistical Reporting Service (Agricultural Statistics), Department of Agriculture (Parts 1300-1399)

XIV Commodity Credit Corporation, Department of Agriculture (Parts 1400-1499)

XV Foreign Agricultural Service, Department of Agriculture (Parts 1500-1599)

XVI Rural Telephone Bank, Department of Agriculture (Parts 1600-1699)

XVII Rural Electrification Administration, Department of Agriculture (Parts 1700-1799)

XVIII Farmers Home Administration, Department of Agriculture (Parts 1800-2099)

Title 7—Agriculture—Continued

Chap.

XXI Foreign Economic Development Service, Department of Agriculture (Parts 2100-2199)

XXIV Board of Contract Appeals, Department of Agriculture (Parts 2400-2499)

XXV Office of the General Sales Manager, Department of Agriculture (Parts 2500-2599)

XXVI Office of the Inspector General, Department of Agriculture (Parts 2600-2699)

XXVIII Food Safety and Quality Service, Department of Agriculture (Parts 2800-2899)

XXIX Office of Energy, Department of Agriculture (Parts 2900-2999)

XXX Office of Operations and Finance, Department of Agriculture (Parts 3000-3099)

XXXI Office of Environmental Quality, Department of Agriculture (Parts 3100-3199)

Title 8—Aliens and Nationality

I Immigration and Naturalization Service, Department of Justice (Parts 1-499)

Title 9—Animals and Animal Products

I Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1-199)

II Agricultural Marketing Service (Packers and Stockyards), Department of Agriculture (Parts 200-299)

III Food Safety and Quality Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300-399)

Title 10—Energy

I Nuclear Regulatory Commission (Parts 0-199)

II Department of Energy (Parts 200-699)

III Department of Energy (Parts 700-999)

X Department of Energy (General Provisions) (Parts 1000-1099)

XV Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500-1599)

Title 11—Federal Elections

I Federal Election Commission (Parts 1-9099)

Title 12—Banks and Banking

I Comptroller of the Currency, Department of the Treasury (Parts 1-199)

II Federal Reserve System (Parts 200-299)

III Federal Deposit Insurance Corporation (Parts 300-399)

IV Export-Import Bank of the United States (Parts 400-499)

Title 12—Banks and Banking—Continued

Chap.

V Federal Home Loan Bank Board (Parts 500-599)

VI Farm Credit Administration (Parts 600-699)

VII National Credit Union Administration (Parts 700-799)

VIII Federal Financing Bank (Parts 800-899)

XI Federal Financial Institutions Examination Council (Parts 1100-1199)

XII Depository Institutions Deregulation Committee (Parts 1200-1299)

Title 13—Business Credit and Assistance

I Small Business Administration (Parts 1-199)

III Economic Development Administration, Department of Commerce (Parts 300-399)

IV Chrysler Corporation Loan Guarantee Board (Parts 400-499)

V Regional Action Planning Commissions (Parts 500-599)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 1-199)

II Civil Aeronautics Board (Parts 200-399)

V National Aeronautics and Space Administration (Parts 1200-1299)

Title 15—Commerce and Foreign Trade

SUBTITLE A—Office of the Secretary of Commerce (Parts 0-19)

SUBTITLE B—Regulations Relating to Commerce and Foreign Trade

I Bureau of the Census, Department of Commerce (Parts 20-199)

II National Bureau of Standards, Department of Commerce (Parts 200-299)

III International Trade Administration, Department of Commerce (Parts 300-399)

IV Foreign-Trade Zones Board (Parts 400-499)

V United States Metric Board (Parts 500-599)

VI Bureau of Industrial Economics, Department of Commerce (Parts 600-699)

VIII Bureau of Economic Analysis, Department of Commerce (Parts 800-899)

IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900-999)

XII United States Travel Service, Department of Commerce (Parts 1300-1399)

XIII East-West Foreign Trade Board (Parts 1300-1999)

Title 15—Commerce and Foreign Trade—Continued

SUBTITLE C—Regulations Relating to Foreign Trade Agreements

Chap.

XX Office of the United States Trade Representative (Parts 2000-2099)

SUBTITLE D—Regulations Relating to Telecommunications and Information

XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300-2399)

Title 16—Commercial Practices

I Federal Trade Commission (Parts 0-999)

II Consumer Product Safety Commission (Parts 1000-1799)

Title 17—Commodity and Securities Exchanges

I Commodity Futures Trading Commission (Parts 1-199)

II Securities and Exchange Commission (Parts 200-399)

Title 18—Conservation of Power and Water Resources

I Federal Energy Regulatory Commission, Department of Energy (Parts 1-399)

III Delaware River Basin Commission (Parts 400-499)

IV Office of Water Resources Research, Department of the Interior (Parts 500-599)

VI Water Resources Council (Parts 700-799)

VIII Susquehanna River Basin Commission (Parts 800-899)

XIII Tennessee Valley Authority (Parts 1300-1399)

Title 19—Customs Duties

I United States Customs Service, Department of the Treasury (Parts 1-199)

II United States International Trade Commission (Parts 200-299)

III International Trade Administration, Department of Commerce (Parts 300-399)

Title 20—Employees' Benefits

I Office of Workers' Compensation Programs, Department of Labor (Parts 1-199)

II Railroad Retirement Board (Parts 200-399)

III Social Security Administration, Department of Health and Human Services (Parts 400-499)

IV Employees' Compensation Appeals Board, Department of Labor (Parts 500-599)

V Employment and Training Administration, Department of Labor (Parts 600-699)

VI Employment Standards Administration, Department of Labor (Parts 700-799)

VII Benefits Review Board, Department of Labor (Parts 800-899)

VIII Joint Board for the Enrollment of Actuaries (Parts 900-999)

Title 21—Food and Drugs

Chap.

I Food and Drug Administration, Department of Health and Human Services (Parts 1-1299)

II Drug Enforcement Administration, Department of Justice (Parts 1300-1399)

Title 22—Foreign Relations

I Department of State (Parts 1-199)

II Agency for International Development, International Development Cooperation Agency (Parts 200-299)

III Peace Corps (Parts 300-399)

IV International Joint Commission, United States and Canada (Parts 400-499)

V International Communication Agency (Parts 500-599)

VI United States Arms Control and Disarmament Agency (Parts 600-699)

VII Overseas Private Investment Corporation (Parts 700-799)

VIII Employee-Management Relations Commission (Parts 800-899)

IX Foreign Service Grievance Board (Parts 900-999)

X Inter-American Foundation (Parts 1000-1099)

XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100-1199)

XII United States International Development Cooperation Agency (Parts 1200-1299)

XIII Board for International Broadcasting (Parts 1300-1399)

XIV Foreign Service Labor Relations Board;Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400-1499)

Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 1-999)

II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200-1299)

Title 24—Housing and Urban Development

SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0-99)

SUBTITLE B—Regulations Relating to Housing and Urban Development

I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100-199)

Title 24—Housing and Urban Development—Continued

Chap.

II Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200-299)

III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300-399)

IV Office of Assistant Secretary for Housing Management, Department of Housing and Urban Development (Parts 400-499)

V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500-599)

VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600-699)

VII New Community Development Corporation, Department of Housing and Urban Development (Parts 700-799)

VIII Low-Income Housing, Department of Housing and Urban Development (Parts 800-899)

IX Office of Interstate Land Sales Registration, Department of Housing and Urban Development (Parts 1700-1799)

X Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (Parts 1800-1899)

XV Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700-2799)

XX Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, Department of Housing and Urban Development (Parts 3200-3699)

XXV Neighborhood Reinvestment Corporation (Parts 4100-4199)

Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1-299)

II Indian Arts and Crafts Board, Department of the Interior (Parts 300-399)

IV Navajo and Hopi Indian Relocation Commission (Parts 700-799)

Title 26—Internal Revenue

I Internal Revenue Service, Department of the Treasury (Parts 1-699)

Title 27—Alcohol, Tobacco Products and Firearms

I Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1-299)

Title 28—Judicial Administration

I Department of Justice (Parts 0-199)

III Federal Prison Industries, Department of Justice (Parts 300-399)

V Bureau of Prisons, Department of Justice (Parts 500-599)

80-109 O—81——25

Title 29—Labor

SUBTITLE A—Office of the Secretary of Labor (Parts 0-99)

SUBTITLE B—Regulations Relating to Labor

Chap.

I National Labor Relations Board (Parts 100-199)

II Office of the Assistant Secretary for Labor-Management Relations, Department of Labor (Parts 200-299)

III National Railroad Adjustment Board (Parts 300-399)

IV Office of Labor-Management Standards Enforcement, Department of Labor (Parts 400-499)

V Wage and Hour Division, Department of Labor (Parts 500-899)

IX Construction Industry Collective Bargaining Commission (Parts 900-999)

X National Mediation Board (Parts 1200-1299)

XII Federal Mediation and Conciliation Service (Parts 1400-1499)

XIV Equal Employment Opportunity Commission (Parts 1600-1699)

XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900-1999)

XX Occupational Safety and Health Review Commission (Parts 2200-2499)

XXV Pension and Welfare Benefit Programs, Department of Labor (Parts 2500-2599)

XXVI Pension Benefit Guaranty Corporation (Parts 2600-2699)

XXVII Federal Mine Safety and Health Review Commission (Parts 2700-2799)

Title 30—Mineral Resources

I Mine Safety and Health Administration, Department of Labor (Parts 1-199)

II Geological Survey, Department of the Interior (Parts 200-299)

III Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300-399)

VI Bureau of Mines, Department of the Interior (Parts 600-699)

VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700-999)

Title 31—Money and Finance: Treasury

SUBTITLE A—Office of the Secretary of the Treasury (Parts 0-50)

SUBTITLE B—Regulations Relating to Money and Finance

I Monetary Offices, Department of the Treasury (Parts 51-199)

II Fiscal Service, Department of the Treasury (Parts 200-399)

IV Secret Service, Department of the Treasury (Parts 400-499)

V Office of Foreign Assets Control, Department of the Treasury (Parts 500-599)

Title 31—Money and Finance: Treasury—Continued

Chap.

VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600-699)

VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700-799)

Title 32—National Defense

SUBTITLE A—Department of Defense

I Office of the Secretary of Defense (Parts 1-499)

V Department of the Army (Parts 500-699)

VI Department of the Navy (Parts 700-799)

VII Department of the Air Force (Parts 800-1099)

SUBTITLE B—Other Regulations Relating to National Defense

XII Defense Logistics Agency (Parts 1200-1299)

XVI Selective Service System (Parts 1600-1699)

XIX Central Intelligence Agency (Parts 1900-1999)

XX Information Security Oversight Office (Parts 2000-2099)

XXI National Security Council (Parts 2100-2199)

XXIV Office of Science and Technology Policy (Parts 2400-2499)

XXVII Office for Micronesian Status Negotiations (Parts 2700-2799)

XXVIII Office of the Vice President of the United States (Parts 2800-2899)

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Transportation (Parts 1-199)

II Corps of Engineers, Department of the Army (Parts 200-399)

IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400-499)

Title 34—Education

SUBTITLE A—Office of the Secretary, Department of Education (Parts 1-99)

SUBTITLE B—Regulations of the Offices of the Department of Education

I Office for Civil Rights, Department of Education (Parts 100-199)

II Office of Elementary and Secondary Education, Department of Education (Parts 200-299)

III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300-399)

IV Office of Vocational and Adult Education, Department of Education (Parts 400-499)

V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500-599)

VI Office of Postsecondary Education, Department of Education (Parts 600-699)

Title 34—Education—Continued

Chap.

VII Office of Educational Research and Improvement, Department of Education (Parts 700-799)

VIII Office of Education for Overseas Dependents, Department of Education (Parts 800-899)

Title 35—Panama Canal

I Panama Canal Regulations (Parts 1-299)

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1-199)

II Forest Service, Department of Agriculture (Parts 200-299)

III Corps of Engineers, Department of the Army (Parts 300-399)

IV American Battle Monuments Commission (Parts 400-499)

V Smithsonian Institution (Parts 500-599)

VII Library of Congress (Parts 700-799)

VIII Advisory Council on Historic Preservation (Parts 800-899)

IX Pennsylvania Avenue Development Corporation (Parts 900-999)

X Commission of Fine Arts (Parts 1000-1099)

XI Architectural and Transportation Barriers Compliance Board (Parts 1100-1199)

XII Heritage Conservation and Recreation Service, Department of the Interior (Parts 1200-1299)

Title 37—Patents, Trademarks, and Copyrights

I Patent and Trademark Office, Department of Commerce (Parts 1-199)

II Copyright Office, Library of Congress (Parts 200-299)

III Copyright Royalty Tribunal (Parts 300-399)

Title 38—Pensions, Bonuses, and Veterans' Relief

I Veterans Administration (Parts 0-99)

Title 39—Postal Service

I United States Postal Service (Parts 1-999)

III Postal Rate Commission (Parts 3000-3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1-799)

IV Low-Emission Vehicle Certification Board (Parts 1400-1499)

V Council on Environmental Quality (Parts 1500-1599)

Title 41—Public Contracts and Property Management

SUBTITLE A—Federal Procurement Regulations System

Chap.

1 Federal Procurement Regulations (Parts 1-1—1-99)

3 Department of Health and Human Services (Parts 3-1—3-99)

4 Department of Agriculture (Parts 4-1—4-99)

5 General Services Administration (Part 5-1—5-99)

5A Office of Acquisition Policy, General Services Administration (Parts 5A-1—5A-99)

5B Office of Acquisition Policy, General Services Administration (Parts 5B-1—5B-99)

6 Department of State (Parts 6-1—6-99)

7 Agency for International Development, International Development Cooperation Agency (Parts 7-1—7-99)

8 Veterans Administration (Parts 8-1—8-99)

9 Department of Energy (Parts 9-1—9-99)

10 Department of the Treasury (Parts 10-1—10-99)

12 Department of Transportation (Parts 12-1—12-99)

13 Department of Commerce (Parts 13-1—13-99)

14 Department of the Interior (Parts 14-1—14-99)

14H Bureau of Indian Affairs, Department of the Interior (Parts 14H-1—14H-99)

14R Office of Water Research and Technology, Department of the Interior (Parts 14R-1—14R-99)

15 Environmental Protection Agency (Parts 15-1—15-99)

18 National Aeronautics and Space Administration (Parts 18-1—18-99)

19 International Communication Agency (Parts 19-1—19-99)

20 Nuclear Regulatory Commission (Parts 20-1—20-99)

22 Community Services Administration (Parts 22-1—22-99)

23 United States Arms Control and Disarmament Agency (Parts 23-1—23-99)

24 Department of Housing and Urban Development (Parts 24-1—24-99)

25 National Science Foundation (Parts 25-1—25-99)

28 Department of Justice (Parts 28-1—28-99)

29 Department of Labor (Parts 29-1—29-99)

34 Department of Education (Parts 34-1—34-99)

44 Federal Emergency Management Agency (Parts 44-1—44-99)

SUBTITLE B—Other Provisions Relating to Public Contracts

50 Public Contracts, Department of Labor (Parts 50-201—50-99)

51 Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1—51-99)

60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-99)

Title 41—Public Contracts and Property Management—Continued

SUBTITLE C—Federal Property Management Regulations System

Chap.

101 Federal Property Management Regulations (Parts 101-1—101-99)

105 General Services Administration (Parts 105-1—105-999)

109 Department of Energy (Parts 109-1—109-99)

114 Department of the Interior (Parts 114-1—114-99)

115 Environmental Protection Agency (Parts 115-1—115-99)

128 Department of Justice (Parts 128-1—128-99)

SUBTITLE D—Other Provisions Relating to Property Management [Reserved]

Title 42—Public Health

I Public Health Service, Department of Health and Human Services (Parts 1-199)

III Saint Elizabeths Hospital, Department of Health and Human Services (Parts 300-399)

IV Health Care Financing Administration, Department of Health and Human Services (Parts 400-499)

Title 43—Public Lands: Interior

SUBTITLE A—Office of the Secretary of the Interior (Parts 1-199)

SUBTITLE B—Regulations Relating to Public Lands

I Water and Power Resources Service, Department of the Interior (Parts 200-499)

II Bureau of Land Management, Department of the Interior (Parts 1600-9999)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency (Parts 0-399)

IV Department of Commerce and Department of Transportation (Parts 400-499)

Title 45—Public Welfare

SUBTITLE A—Department of Health and Human Services (Parts 1-99)

SUBTITLE B—Regulations Relating to Public Welfare

II Office of Family Assistance (Assistance Programs), Department of Health and Human Services (Parts 200-299)

III Office of Child Support Enforcement (Child Support Enforcement Program), Department of Health and Human Services (Parts 300-399)

IV Office of Refugee Resettlement, Department of Health and Human Services (Parts 400-499)

V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500-599)

VI National Science Foundation (Parts 600-699)

Title 45—Public Welfare—Continued

Chap.

VII Commission on Civil Rights (Parts 700-799)

VIII Office of Personnel Management (Parts 800-899)

X Community Services Administration (Parts 1000-1099)

XI National Foundation on the Arts and the Humanities (Parts 1100-1199)

XII ACTION (Parts 1200-1299)

XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300-1399)

XVI Legal Services Corporation (Parts 1600-1699)

XVII National Commission on Libraries and Information Science (Parts 1700-1799)

XVIII Harry S. Truman Scholarship Foundation (Parts 1800-1899)

XIX National Commission on the Observance of International Women's Year (Parts 1900-1999)

XXI Commission of Fine Arts (Parts 2100-2199)

Title 46—Shipping

I Coast Guard, Department of Transportation (Parts 1-199)

II Maritime Administration, Department of Commerce (Parts 200-399)

III Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400-499)

IV Federal Maritime Commission (Parts 500-599)

Title 47—Telecommunication

I Federal Communications Commission (Parts 0-199)

II Office of Science and Technology Policy and National Security Council (Parts 200-299)

Title 48—[Reserved]

Title 49—Transportation

SUBTITLE A—Office of the Secretary of Transportation (Parts 1-99)

SUBTITLE B—Other Regulations Relating to Transportation

I Research and Special Programs Administration, Department of Transportation (Parts 100-199)

II Federal Railroad Administration, Department of Transportation (Parts 200-299)

III Federal Highway Administration, Department of Transportation (Parts 300-399)

IV Coast Guard, Department of Transportation (Parts 400-499)

V National Highway Traffic Safety Administration, Department of Transportation (Parts 500-599)

VI Urban Mass Transportation Administration, Department of Transportation (Parts 600-699)

Title 49—Transportation—Continued

Chap.

VIII National Transportation Safety Board (Parts 800–899)

IX United States Railway Association (Parts 900–999)

X Interstate Commerce Commission (Parts 1000–1399)

Title 50—Wildlife and Fisheries

I United States Fish and Wildlife Service, Department of the Interior (Parts 1–199)

II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200–299)

III International Regulatory Agencies (Fishing and Whaling) (Parts 300–399)

IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400–499)

V Marine Mammal Commission (Parts 500–599)

VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600–699)

CFR Index and Finding Aids

Subject/Agency Index

List of CFR Titles, Chapters, Subchapters, and Parts

Parallel Tables of Statutory Authorities and Rules

Acts Requiring Publication in the Federal Register

Alphabetical List of Agencies Appearing in the CFR

(As of June 19, 1981)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Acquisition Policy, Office of	41, 5A, 5B
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
Agency for International Development	22, II; 41, 7
Agricultural Marketing Service	7, I, IX, X, XI; 9, II
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI; 9, II
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Animal and Plant Health Inspection Service	7, III; 9, I, III
Commodity Credit Corporation	7, XIV
Contract Appeals, Board of	7, XXIV
Energy, Office of	7, XXIX
Environmental Quality, Office of	7, XXXI
Farmers Home Administration	7, XVIII
Federal Crop Insurance Corporation	7, IV
Federal Grain Inspection Service	7, VIII
Federal Procurement Regulations System	41, 4
Food and Nutrition Service	7, II
Food Safety and Quality Service	7, XXVIII; 9, III
Foreign Agricultural Service	7, XV
Foreign Economic Development Service	7, XXI
Forest Service	36, II
General Sales Manager, Office of	7, XXV
Inspector General, Office of	7, XXVI
Operations and Finance, Office of	7, XXX
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Secretary of Agriculture, Office of	7, Subtitle A
Soil Conservation Service	7, VI
Statistical Reporting Service	7, XII
Air Force Department	32, VII
Alaska Natural Gas Transportation System, Office of the Federal Inspector	10, XV
Alcohol, Tobacco and Firearms, Bureau of	27, I
American Battle Monuments Commission	36, IV
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI
Arms Control and Disarmament Agency, U.S.	22, VI; 41, 23
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Benefits Review Board	20, VII

Agency	CFR Title, Subtitle or Chapter
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind and Other Severely Handicapped, Committee for Purchase from	41, 51
Board for International Broadcasting	22, XIII
Budget, Office of Management and	5, III
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Chrysler Corporation Loan Guarantee Board	13, IV
Civil Aeronautics Board	14, II
Civil Rights Commission	45, VII
Civil Rights, Office for (Education Department)	34, I
Claims Collection Standards, Federal	4, II
Coast Guard	33, I; 46, I, III; 49, IV
Commerce Department	
Census Bureau	15, I
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Endangered Species Committee	50, IV
Federal Procurement Regulations System	41, 13
Fishery Conservation and Management	50, VI
Industrial Economics, Bureau of	15, VI
International Trade Administration	15, III; 19, III
Maritime Administration	46, II
National Bureau of Standards	15, II
National Defense	44, IV
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, IV
National Telecommunications and Information Administration	15, XXIII
Patent and Trademark Office	37, I
Secretary of Commerce, Office of	15, Subtitle A
United States Travel Service	15, XII
Commission on the Review of the National Policy Toward Gambling	1, IV
Committee for Purchase from Blind and Other Severely Handicapped	41, 51
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services Administration	41, 22; 45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	16, II
Contract Appeals, Board of	7, XXIV
Copyright Office	37, II
Copyright Royalty Tribunal	37, III
Council on Environmental Quality	40, V
Council on Wage and Price Stability	6, VII
Customs Service, United States	19, I
Defense Department	32, Subtitle A
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III
Defense Civil Preparedness Agency	32, XVIII
Engineers, Corps of	33, II; 36, III
Navy Department	32, VI
Secretary of Defense, Office of	32, I
Defense Logistics Agency	32, XII
Defense Manpower Commission	1, IV
Delaware River Basin Commission	18, III
Depository Institutions Deregulation Committee	12, XII
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Analysis, Bureau of	15, VIII

Agency	CFR Title, Subtitle or Chapter
Economic Development Administration	13, III
Education, Department of	
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Education for Overseas Dependents, Office of	34, VIII
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Procurement Regulations System	41, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Education for Overseas Dependents, Office of	34, VIII
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employee Benefits Security, Office of	29, XXV
Employee-Management Relations Commission	22, VIII
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	10, II, III, X; 41, 109
Federal Energy Regulatory Commission	18, I
Federal Procurement Regulations System	41, 9
Energy, Office of, Department of Agriculture	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 15, 115
Environmental Quality, Office of (Agriculture Department)	7, XXXI
Equal Employment Opportunity	41, 60
Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	12, VI
Farmers Home Administration	7, XVIII
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I
Federal Contract Compliance, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	41, 44; 44, I
Federal Energy Regulatory Commission	18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Bank Board	12, V
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22,XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries	28, III
Federal Procurement Regulations	41, I
Federal Procurement Regulations System	41, Subtitle A

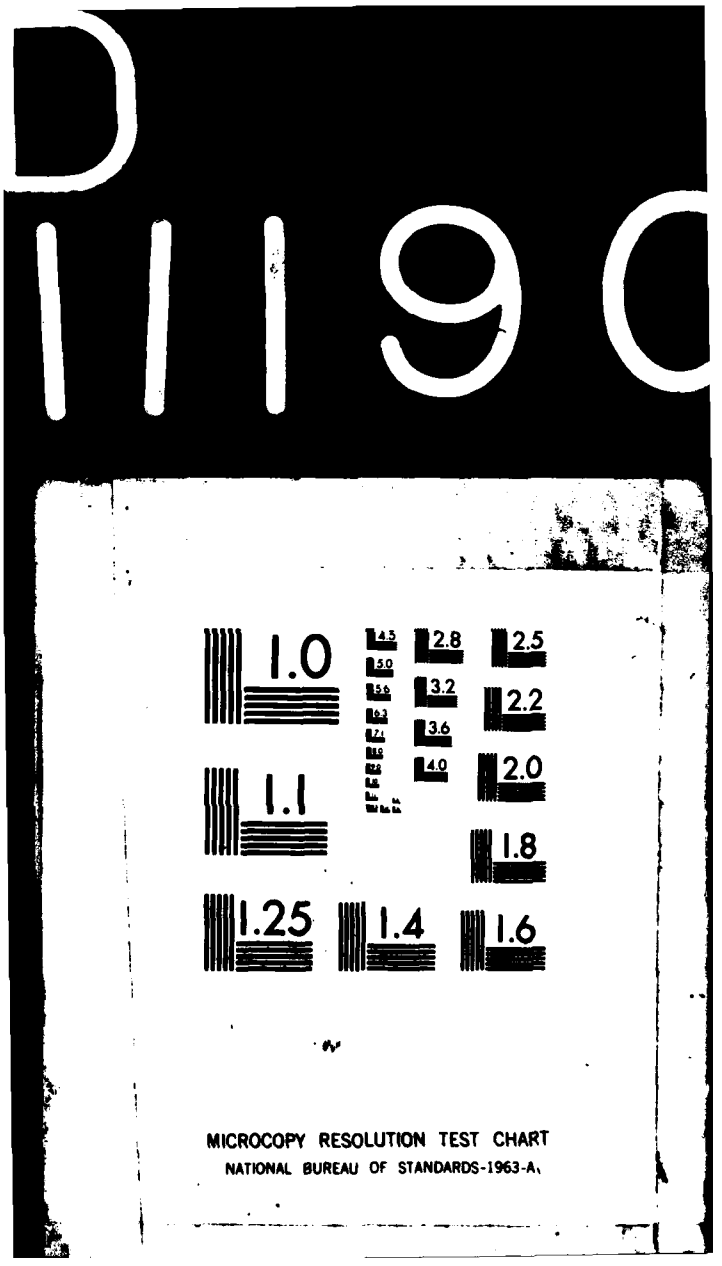
Agency	CFR Title, Subtitle or Chapter
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Federal Services Impasses Panel	5, XIV
Federal Trade Commission	16, I
Fine Arts Commission	36, X; 45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Quality Service,	7, XXVIII; 9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II, III
General Sales Manager, Office of	7, XXV
General Services Administration	41, 5
Acquisition Policy, Office of	41, 5A, 5B
Federal Procurement Regulations System	41, 1, 5A, 5B
Federal Property Management Regulations System	41, 101, 105
Geological Survey	30, II
Government National Mortgage Association	24, III
Great Lakes Pilotage	46, III
Harry S Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Family Assistance, Office of	45, II
Federal Procurement Regulations System	41, 3
Food and Drug Administration	21, I
Harry S Truman Scholarship Foundation	45, XVIII
Health Care Financing Administration	42, IV
Human Development Office	45, XIII
Public Health Service	42, I
Refugee Resettlement Office	45, IV
St. Elizabeths Hospital	42, III
Social Security Administration	20, III
Health Care Financing Administration	42, IV
Heritage Conservation and Recreation Service	36, XII
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Procurement Regulations System	41, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II
Housing Management, Office of Assistant Secretary for	24, IV
Interstate Land Sales Registration, Office of	24, IX
Low-Income Housing	24, VIII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
Neighborhoods, Voluntary Associations and Consumer Protection, Office of Assistant Secretary for	24, XX
New Community Development Corporation	24, VII
Secretary, Office of	24, Subtitle A
Solar Energy and Energy Conservation Bank	24, X

AD-A111 908 NATIONAL ARCHIVES AND RECORDS SERVICE WASHINGTON DC O--ETC F/G 5/4
CODE OF FEDERAL REGULATIONS 32. PARTS 1000 TO END.(U)
JUL 81

UNCLASSIFIED NL



END
DATE FILMED
4 82
DTIC


1.0
1.1
1.25
1.4
1.6
1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0
4.5
5.0
5.6
6.3
7.1
8.0
9.0
MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

Agency	CFR Title, Subtitle or Chapter
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II
Housing Management, Office of Assistant Secretary for	24, IV
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I
Indian Affairs, Bureau of	25, I; 41, 14H
Indian Arts and Crafts Board	25, II
Industrial Economics, Bureau of, Commerce Department	15, VI
Information Agency, United States	22, V; 41, 19
Information Security Oversight Office	32, XX
Inspector General, Office of, Agriculture Department	7, XXVI
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Procurement Regulations System	41, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, II
Heritage Conservation and Recreation Service	36, XII
Indian Affairs, Bureau of	25, I; 41, 14H
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Mines, Bureau of	30, VI
National Park Service	36, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
United States Fish and Wildlife Service	50, I, IV
Water and Power Resources Service	43, I
Water Research and Technology, Office of	41, 14R
Water Resources Research, Office of	18, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Communication Agency	22, V; 41, 19
International Development, Agency for	22, II; 41, 7
International Development Cooperation Agency	22, II; 41, 7
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Interstate Land Sales Registration, Office of	24, IX
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Drug Enforcement Administration	21, II
Federal Claims Collection Standards	4, II
Federal Prison Industries	28, III
Federal Procurement Regulations System	41, 28
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Contract Compliance, Office of	41, 60
Federal Procurement Regulations System	41, 29, 50
Labor-Management Relations, Office of the Assistant Secretary	29, II
Labor-Management Standards Enforcement, Office of	29, IV

Agency	CFR Title, Subtitle or Chapter
Labor Department—Continued	
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefit Programs	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Wage and Hour Division	29, V
Worker's Compensation Programs, Office of	20, I
Labor Management Relations, Office of Assistant Secretary	29, II
Labor-Management Standards Enforcement, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Low-Emission Vehicle Certification Board	40, IV
Low-Income Housing, Department of Housing and Urban Development	24, VIII
Management and Budget, Office of	5, III
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Mines, Bureau of	30, VI
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 41, 18
National Bureau of Standards	15, II
National Commission on Libraries and Information Science	45, XVII
National Commission on the Observance of International Women's Year	45, XIX
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II; 49, V
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Science Foundation	45, VI; 41, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI
Neighborhood Reinvestment Corporation	24, XXV
Neighborhoods, Voluntary Associations and Consumer Protection, Office of Assistant Secretary for	29, XX
New Community Development Corporation	24, VII
Nuclear Regulatory Commission	10, I; 41, 20
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Overseas Private Investment Corporation	22, VII
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XXVI
Pension and Welfare Benefit Programs, Department of Labor	29, XXV

Agency	CFR Title, Subtitle or Chapter
Personnel Management, Office of	5, I; 45, VIII
Postal Rate Commission	39, III
Postal Service, United States	39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Privacy Protection Study Commission	1, IV
Procurement Regulations System, Federal	41, Subtitle A
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II
Railway Association, United States	49, IX
Refugee Resettlement Office	45, IV
Regional Action Planning Commissions	13, V
Research and Special Programs Administration	49, I
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Elizabeths Hospital	42, III
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I
Smithsonian Institution	36, V
Social Security Administration	20, III
Soil Conservation Service	7, VI
Solar Energy and Energy Conservation Bank, Department of HUD	24, X
Soldiers' and Airmen's Home, United States	5, XI
Special Education and Rehabilitative Services, Office of	34, III
Special Representative for Trade Negotiations, Office of	15, XX
State Department	22, I
Federal Procurement Regulations System	41, 6
Statistical Reporting Service, Agriculture Department	7, XII
Surface Mining and Reclamation Appeals, Board of	30, II
Susquehanna River Basin Commission	[illegible]
Tennessee Valley Authority	[illegible]
Trade Representative, United States, Office of	15, XX
Transportation, Department of	
Coast Guard	33, I; 46, I, III; 49, IV
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Procurement Regulations System	41, 12
Federal Railroad Administration	49, II
Highway Safety Program Standards	23, II
National Defense	44, IV
National Highway Traffic Safety Administration	23, II; 49, V
Research and Science Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary, Office of	49, Subtitle A
Urban Mass Transportation Administration	49, VI
Travel Service, United States	15, XII
Treasury Department	
Administration, Assistant Secretary for	6, VI
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Law Enforcement Training Center	31, VII
Federal Procurement Regulations System	41, 10
Fiscal Service	31, II

Agency	CFR Title, Subtitle or Chapter
Treasury Department—Continued	
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Truman, Harry S, Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI; 41, 23
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Metric Board	15, V
United States Postal Service	39, I
United States Railway Association	49, IX
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Administration	38, I; 41, 8
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water and Power Resources Service	43, I
Water Research and Technology, Office of	41, 14R
Water Resources Council	18, VI
Water Resources Research, Office of	18, IV
Welfare-Pension Reports, Office of Labor-Management and	29, IV
Workers' Compensation Programs, Office of	20, I

List of CFR Sections Affected

All sections in this volume of the Code of Federal Regulations which were affected by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages.

For the period before January 1, 1964, see the "List of CFR Sections Affected, 1949-1963," and 1964-1972 published in three separate volumes.

1973

32 CFR — 38 FR Page

Chapter VII

1003.508
(Subpart E) added 15506
1006.551
(b) amended 15506
1006.603-4
(Subpart F) removed 15506
1007.5101—1007.5105-9
(Subpart Q) removed 15506
1011.352
Removed 15506
1011.354
(b)(3) corrected 15506
1011.354-1
(f) and (g) revised; (h) and (i) added 15506
1016.102-1—1016.103
(Subpart A) added 15507
1017.203
Revised 15507
1030
Revised 15507

Chapter XIV

1460.13 Revised 6390
1461.2 (b)(1) amended 10085
1461.3 Amended 10085
1464.1 Subpart Heading Added 16640
1464.21—1464.90 Subpart B added 16640
1464.90 Redesignated 1464.18 16640
1464.91 Redesignated 1464.19 16640
1470 (h) revised 16643
1471.2 (e) removed 16644
(f) redesignated (e) 16644
1472.5 (a) amended 4577
1474.6 (c)(4) revised 10085

32 CFR—Continued — 38 FR Page

Chapter XIV—Continued

1475.6 (d) amended 10085
1499.2-18 Amended 16644
1499.2-20 Added 9017

Chapter XVI

1604.25 Revised 8739
1604.55 Revised 8739
1604.59 Revised 12742
1604.61 Removed 731
1604.62 Removed 731
1611.1 (d) added 10153
1611.2 (d) revised 16059
1611.5 Removed 16059
1612.11 Removed 16059
1612.21 Removed 16059
1612.22 Removed 16059
1612.23 Removed 16059
1612.24 Removed 16059
1613.2 Revised 8739
1621.14 Revised 731
1622.2 Revised 732, 15626
1622.11 Existing text designated as (a); (b) added 10153
1622.14 Existing text designated as (a); (b) added 10153
1622.15 Added 732
1622.18 Revised 733
1622.20 Removed 15626
1622.21 Removed 15626
1622.23 Removed 15626
1622.23a Removed 15626
1622.24 Removed 15626
1622.25 (a) revised 733
1622.26 Revised 733
Existing text designated as (a); (b) added 10153
1622.28 Added 15626

99-139 O—81——28

32 CFR—Continued

38 FR Page

Chapter XVI—Continued

1622.30 Revised 731, 15626
1622.44 (a) revised 731
1623.1 (b) revised 732, 16059
1623.2 Revised 733, 15626
1623.4 (a) revised 15627
1623.7 Revised 14251
1625.2 Revised 731
1628.1 (c) removed 731
1628.2 Removed 731
1628.3 Removed 731
1628.4 Removed 731
1628.5 Removed 731
1628.6 (c) removed 14251
1630.1 (a) revised 733
1631.3 Amended 733
1631.4 (b) removed 733
1631.6 (b)(2) revised 732
(b), (c), and (d) revised; (e) removed 13485
1641.6 (a) revised 14252
1641.7 Corrected 3599
1660.4 (c) revised 734
(d) added 15627
1660.7 (a) removed 15627
1661.10 (a)(2) corrected 6279
1680 Added 733
1680.11 Added 10153
1690.3 Amended 16867
1690.11 Revised 16867

Chapter XVII

1705 Revised 1927
1709.2 (d), (e), and (f) removed 6177
1710.8 (h)(3)(i) revised 2333
1710.32 Revised 12919

Chapter XVIII

1800 Removed 16775
1804 Removed 16775
1812 Revised 16775

1973–1974

(Regulations published from July 1, 1973 through June 30, 1974)

32 CFR

38 (39*) FR Page

Chapter XII

1280
*Revised 19470
1285
Added 24206

NOTE: Asterisk (*) identifies changes published in 1974.

32 CFR—Continued

38 (39*) FR Page

Chapter XIV

1453.3 (d)(2)(i) amended 24210
1455.4 *(b)(1) amended 3677
1464.7 (b) amended 28259
1464.26 *(a) CFR correction 12865
1466.1 *(c)(1) amended 4571
1466.2 *Amended 4571
1472.2 *(c) amended 13649
1472.3 *(h), (k)(4) (i) and (iii), and (m) (1) and (3) amended 13649
1472.4 *(c) (1) and (3) amended 13649
1472.6 (e)(2) amended 29466
1472.6 *(e)(2) amended 4571
1472.5 *(d) amended 13650
1473.2 *(a) and (b) amended 13650
1473.3 *Amended 13650
1474.3 *(b) and (c) amended 13650
1474.4 *Amended 13650
1475.2 *Amended 13650
1475.3 *Amended 13650
1475.4 *Amended 13650
1477.3 *Revised 13650
1480.5 *(a) (16), (17), and (18) added; closing text of (a) revised 13650
1499.2–8 *(d)(2) (iii) and (iv) redesignated as (d)(2) (iv) and (v); new (d)(2)(iii) added; (g) (1) revised 3677

Chapter XVI

1604.28 Revised 29219
1604.60 Added 34731
1613.11–1613.43 *Removed; CFR correction 17539
1623.3 Removed 35463
1628.6 (c) added 35463
1631.6 (b) revised 35463
1631.7 Removed 35464
1632.1 (d) added 35464
1641.2 Removed 34731
1641.8 Removed 35464

Chapter XVII

1704 Added 17961
1709 *Recodified as 24 CFR Part 2200 6697
1710 *Recodified as 24 CFR Part 2201 6705

Chapter XVIII

1808.3 Removed; new 1808.3 added 31526

32 CFR—Continued

38 (39*) FR Page

Chapter XVIII—Continued

1812.1 Amended 28660
1812.2 Revised 28660
1812.3 Amended 18372
1812.16 Revised 28660

Chapter XX

Establishment of chapter 22624
2000 Added 22624

1974–1975

(Regulations published from July 1, 1974 through June 30, 1975)

32 CFR

39 (40†) FR Page

Chapter XII

1285
Revised ..... †7282

Chapter XIV

1453.3 (d)(2)(i) amended 35165
1459.1 (b) (1) through (7) removed; (b)(8) redesignated as (b)(9); new (b) (1) through (8) added 44450
(b) corrected ..... †1240
1466.1 (c)(1) amended 38376
1466.2 Amended 38376
1470.3 (c)(2) added 44452
1480.2 (a) and (d) revised ..... †14311
1480.3 Revised ..... †14311
1480.5 (b) added; (d) amended ..... †14311
1480.6 Revised ..... †14311
1480.7 Revised ..... †14312
1480.9 (a) (1) and (7) revised ..... †14312
1480.12 Revised ..... †14312

Chapter XVI

1602.1 Revised 44015
1602.4 Removed 44015
1602.6 Removed 44015
1602.10 Revised 44015
1603.3 Revised 44015
1604.25 Revised 44018
1604.26 Revised 44018
1604.31 Revised 44015
1604.55 Revised 44019
1604.56 Revised 44019
1608 Revised ..... †7298
1608.6 Removed 44019
1608.12 (d) and (f) (1) revised 44019

32 CFR—Continued

39 (40†) FR Page

Chapter XVI—Continued

1608.13 (b) revised 44019
1608.17 Revised 44019
1613.4 Revised 44019
1622.2 Introductory text revised 44015
1622.11 Revised 44015
1622.14 Revised 44015
1622.15 (a) revised 44015
1622.17 Added 44015
1622.19 Added 44015
1622.26 (a) revised 44015
1622.40 (a) revised 44015
1622.42 Heading, (a) and (c) revised 44016
1622.44 Revised 44016
1622.46 Revised 44016
1622.47 Added 44016
1623.2 Revised 44016
1623.7 Removed 44016
1624.1 (b) revised 44016
1625.14 Revised 44017
1631.6 (b) revised 44017
1632.1 (e) added 44017
1632.12 Revised 44017
1632.15 Removed 44017
1632.20 Removed 44017
1632.21 Removed 44017
1632.30 Removed 44017
1632.31 Removed 44017
1641.1 Revised 44017
1641.6 Revised 44017
1641.7 Removed 44017
1643 Removed 44017
1660.9 (b) through (f) revised 44019
1660.10 Revised 44020
1660.11 Revised 44020
1661.1 (a) and (b) (4) revised 44017
1661.2 Revised 44017
1661.3 Heading revised 44017
1661.4 Heading revised 44017
1661.5 Heading revised 44017
1661.6 (a) revised 44017
1661.9 (i) revised 44017
1661.10 Revised 44018
1680.5 (b) amended; (c) added 44018
1680.9 Revised 44018
1680.11 Revised 44018
1690.2 (b), (c), and (d) removed 43721
1690.4 Revised 43721
1690.5 Removed 43721
1690.6 Removed 43721
1690.7 Removed 43721
1690.8 Revised 43721
1690.12 Revised 43721
1690.13 (b) revised 43721

NOTE: Symbol (*) refers to 1974 page numbers.
NOTE: Symbol (†) refers to 1975 page numbers.

32 CFR—Continued

39 (40†) FR Page

Chapter XVI—Continued
1690.15 Revised 43721
1690.16 Revised 43721
1690.17 Removed 43721
1690.20 Removed 43721

Chapter XVIII
1803 Revised ..... † 16314
1805 Removed 41709
1810.4 (a) amended ..... † 27446
1811 Revised ..... † 3212
1811.2 (a) revised ..... † 6205
1813 Revised ..... † 10457

Chapter XIX
1900 Revised ..... † 7294
1900.35 (a) amended; (b) added ..... †24897

Chapter XXI
Chapter added ..... † 7316
2101 Added ..... † 7316

Chapter XXII
Chapter added ..... †7303
2200 Added ..... †7303

1975–1976

(Regulations published from July 1, 1975 through June 30, 1976)

32 CFR

40 (41Δ) FR Page

Chapter XII
Subchapter A (Parts 1201—1250) Revised Δ9093
1201 Revised Δ9093
1202 Revised Δ9105
1203 Revised Δ9106
1204 Added Δ9110
1205 Revised Δ9110
1206 Revised Δ9112
1207 Revised Δ9114
1208 Revised Δ9115
1209 Revised Δ9116

32 CFR—Continued

40 (41Δ) FR Page

Chapter XII—Continued
1210 Revised Δ9116
1212 Revised Δ9116
1213 Revised Δ9117
1214 Revised Δ9118
1215 Revised Δ9119
1216 Revised Δ9119
1217 Revised Δ9123
1219 Revised Δ9123
1220 Revised Δ9124
1221 Revised Δ9124
1225 Revised Δ9125
1250 Revised Δ9125
1250.702—1250.708-3 Added (correction) Δ13920
1250 Appendix E added (correction) Δ13920
1285.3 (b)(2)(i), (d)(2)(ii)(*a*), (iii)(c) and (iv)(*a*) amended; (d)(2)(iv)(*e*) added Δ13921
(d)(2)(v) (*c*) and (d) redesignated as (*d*)(2)(v)(*c*) added Δ13921
1285.4 (a)(2) amended Δ13921
1285.6 (a)(2)(iii) revised Δ13921
1285.7 (b)(3) and (b)(15)(iv) amended; (b)(15)(i)(*b*) and (c)(2)(iv) revised; (b)(15)(i)(*c*) removed; (b)(15)(i)(d) redesignated as (b)(15)(i)(*c*) and amended Δ13922
1285.8 (b)(6) redesignated as (c) and revised Δ13922
1285 Appendix A corrected 53999
Appendix A amended Δ13922
1286 Added Δ18836
Appendix A corrected Δ25897

Chapter XIV
1450.735-42 (a) through (e) revised; (i) amended Δ21448

NOTE: Symbol (†) refers to 1975 page numbers.
NOTE: Symbol (Δ) refers to 1976 page numbers.

32 CFR—Continued

40 (41Δ) FR Page

Chapter XIV—Continued
1453.3 (d)(2) amended 51413
1460.5 (c) revised 46102
1472.4 (b)(2) amended Δ21449
1472.6 (d)(1) revised: (d)(2) amended Δ21449
1480.5 (a)(13) amended Δ21449
1480.7 (b) and (d) (1), (2), and (4), and (f) amended Δ21449
1481 Added Δ5095

Chapter XVI
1608 Revised 44496
1622.2 Correctly revised 45436

Chapter XVII
Chapter heading revised 53011
1700 Redesignated from 2 CFR Part 200 53011
1712 Removed 28599

Chapter XVIII
1801.7 Revised 36328
1801.9 (a) amended 30114
1807.9 (b) amended 30114
1808.1 Amended 42736
1808.3 (a) revised 42736
1808.4 Revised 42736
1808.5 Revised 42738
1808.6 (a)(2) revised 42738
1808.7 Revised 42738
1812.13 Amended 30114
1814 Added 46056

Chapter XIX
1901 Added 45322
1901.15 (a) through (f) redesignated as (b) through (g); new (a) added Δ19105
1901.17 (a) and (b) removed; new (a) added; (c) and (d) redesignated as (b) and (c) Δ19105
1901.21 (d)(1) revised Δ19105
1901.23 (a) and (e) revised Δ19105

Chapter XX
2000 Revised Δ6068
Corrected Δ22268

Chapter XXI
2102 Added 47746

NOTE: Symbol (Δ) refers to 1976 page numbers.

1976–1977

(Regulations published from July 1, 1976 through June 30, 1977

32 CFR

41 (42*) FR Page

Chapter VII
1008
Added 34962
1008.3
(a)(11) correction 47431

Chapter XII
Chapter heading revised *9664
Nomenclature changes *9664
1281
Removed *11835
1286
Appendix C amended 39315

Chapter XIV
1453.3 (d)(2) amended 46600
1482 Added ..... * 12856

Chapter XVI
1608.4 (c) revised; (i) added 44169
1608.5 (b) revised; (d) added 44169
1608.9 (b) revised 44170
1608.13 Revised 44170
1608.18 Revised 44170
1611 Revised 56803
1631.1 Revised 56803

Chapter XIX
1900.3 (g) introductory text amended; (g)(4) and (5) removed *24049
1900.11 (d) revised *24049
1900.43 (c) added *24049

Chapter XX
2000.1 (b) revised *2680
2000.10–2000.17 (Subpart B) Revised *2680
2000.30–2000.31 (Subpart D) Revised *2680

1977–1978

(Regulations published from July 1, 1977 through June 30, 1978)

32 CFR

42 (43†) FR Page

Chapter XII
1201—1250 (Subchapter A) Heading revised ..... † 18993

NOTE: Symbol (*) refers to 1977 page numbers.

32 CFR—Continued

42 (43†) FR Page

Chapter XII—Continued

1201
Revised ..... †18993
1202
Revised ..... †19008
1203
Revised ..... †19011
1204
Revised ..... †19015
1205
Revised ..... †19016
1206
Revised ..... †19018
1207
Revised ..... †19023
1208
Revised ..... †19023
1209
Revised ..... †19024
1210
Revised ..... †19025
1212
Revised ..... †19025
1213
Revised ..... †19026
1214
Revised ..... †19026
1215
Revised ..... †19028
1216
Revised ..... †19028
1217
Revised ..... †19033
1219
Revised ..... †19033
1220
Revised ..... †19034
1221
Revised ..... †19034
1225
Revised ..... †19035
1250
Revised ..... †19036
1286
Revised 45908
1287
Added 37204
1288
Added 36997

Chapter XIV

1453.5 (b)(3)(ii) revised; (b) (2) and (3) note removed ..... †4014

32 CFR—Continued

42 (43†) FR Page

Chapter XVIII

1800 Added 34877
1801.2 Revised ..... †25093
1801.3 Revised ..... †25093
1801.4 Revised ..... †25093
1801.5 Removed ..... †25094
1801.6 Revised ..... †25094
1801.7 Amended ..... †25094
1801.8 Revised ..... †25094
1801.9 Revised ..... †25094
1801.10 Removed ..... †25094
1801.11 (a) amended ..... †25094
1802 Removed ..... †6229
1806 Revised ..... †26568

Chapter XIX

1900.51 (a) amended ..... †24527

1978–1979

(Regulations published from July 1, 1978 through June 30, 1979)

32 CFR

43 (44Δ) FR Page

Chapter XII

1201.104–51 Revised Δ27096
Effective date 4–6–79 ..... Δ31976
1201.105–50 Revised Δ27096
Effective date 4–6–79 ..... Δ31976
1201.107 (b) revised Δ27096
(b) effective date 4–6–79 ..... Δ31976
1201.307–50 Introductory text revised Δ27096
Introductory text effective date 4–6–79 ..... Δ31976
1201.312 Added Δ27096
Effective date 4–6–79 ..... Δ31976
1201.314 (f) revised Δ27097
(f) effective date 4–6–79 ..... Δ31976
1201.332–6 Added Δ27097
Effective date 4–6–79 ..... Δ31976
1201.452–2 (a)(5) revised Δ27097
(a)(5) effective date 4–6–79 ..... Δ31976
1201.452–3 Amended Δ27097
Effective date 4–6–79 ..... Δ31976
1201.452–9 (b)(5) and (6) redesignated as (c) and (d) and revised Δ27097
(c) and (d) effective date 4–6–79 ..... Δ31976
1201.452–10 (c)(8) added Δ27097
(c)(8) effective date 4–6–79 ..... Δ31976
1201.452–12 Amended Δ27097
Effective date 4–6–79 ..... Δ31976

Note: Symbol (Δ) refers to 1979 page numbers.

32 CFR—Continued

43 (44Δ) FR Page

Chapter XII—Continued

1201.705-5 (c)(1)(iii)(B)(7) added....Δ27097
(c)(1)(iii)(B)(7) effective date 4-6-79....Δ31976
1201.707-4 Added....Δ27097
Effective date 4-6-79....Δ31976
1201.805—1201.805-4 (Subpart H) Added....Δ27097
Effective date 4-6-79....Δ31976
1201.903 Added....Δ27097
Effective date 4-6-79....Δ31976
1203.604-52 Added....Δ27097
Effective date 4-6-79....Δ31976
1203.807-2 (b)(5) added....Δ27098
(b)(5) effective date 4-6-79....Δ31976
1203.807-5 Redesignated from 1203.807-6 and revised....Δ27098
Effective date 4-6-79....Δ31976
1203.807-6 Redesignated as 1203.807-5 and revised....Δ27098
Redesignation eff. 4-6-79....Δ31976
1203.807-7 Added....Δ27098
Effective date 4-6-79....Δ31976
1203.1201 Added....Δ27098
Effective date 4-6-79....Δ31976
1203.1204 Revised....Δ27098
Effective date 4-6-79....Δ31976
1203.1210 Revised....Δ27099
Effective date 4-6-79....Δ31976
1203.1300-3 Added....Δ27099
Effective date 4-6-79....Δ31976
1212.101-3 Amended....Δ27099
Effective date 4-6-79....Δ31976
1212.107 Amended....Δ27099
Effective date 4-6-79....Δ31976
1214.101-5 (Subpart A) Added....Δ27099
Effective date 4-6-79....Δ31976
1214.305-1 Added....Δ27099
Effective date 4-6-79....Δ31976
1214.305-2 (b)(5) added....Δ27099
(b)(5) effective date 4-6-79....Δ31976
1214.306 (c) introductory text and (1) revised; (c)(2) amended....Δ27099
(c) introductory text, (1) and (2) effective date 4-6-79....Δ31976
1216.850-2 Revised....Δ27099
Effective date 4-6-79....Δ31976
1216.850-3 Revised....Δ27100
Effective date 4-6-79....Δ31976
1220.703-50 Revised....Δ27100
Effective date 4-6-79....Δ31976
1220.703-51 Added....Δ27100
Effective date 4-6-79....Δ31976

NOTE: Symbol (Δ) refers to 1979 page numbers.

32 CFR—Continued

43 (44Δ) FR Page

Chapter XII—Continued

1220.703-52 Added....Δ27100
Effective date 4-6-79....Δ31976
1220.703-53 Added....Δ27100
Effective date 4-6-79....Δ31976
1220.704 Added....Δ27100
Effective date 4-6-79....Δ31976
1221.201 Amended....Δ27100
Effective date 4-6-79....Δ31976
1250.705-1 (a) amended....Δ27100
(a) effective date 4-6-79....Δ31976
1200—1250 (Subchapter A) Appendix E amended....Δ27101
Appendix E effective date 4-6-79....Δ31976
1288 Revised....40806

Chapter XIV

Chapter removed....Δ32681
1421-1499 Removed....Δ32681
1453.3 (d)(2)(i) amended....Δ6716
1466.1 (c)(1) amended....35280
1466.2 Amended....Δ35280

Chapter XVIII

1804 Added....39777

Chapter XX

Chapter heading revised....Δ34129
Chapter XX Directive No. 1 added....46280
Chapter XX Directive No. 1 designated as Part 2001; authority citation added....Δ34129
2000 Removed....Δ34129
2001 Designated from Directive No. 1; authority citation added....Δ34129

Chapter XXI

2103 Added....Δ2384

1979–1980

(Regulations published from October 1, 1979 through September 30, 1980)

32 CFR

44 (45*) FR Page

Chapter XII

1201.325-50 Heading and text amended....52199
1203.805-1 (b) and (c) redesignated as (c) and (d); new (b) added....52199
1214.305-2 Amended....52199

NOTE: Symbol (*) refers to 1980 page numbers.

32 CFR—Continued

44 (45*) FR Page

Chapter XII—Continued
1214.307 Added....52199
1216.850-1216.850-4 revised....52199
1216.850-4 Heading revised....52199
1289 Added....38461
1290 Added....55859

Chapter XVI
1611 Removed; eff. 7-18-80...*40577, *48130
1612 Removed; eff. 7-18-80...*40577, *48130
1613 Removed; eff. 7-18-80...*40577, *48130
1615 Added; eff. 7-18-80...*40577, *48130
1617 Removed; eff. 7-18-80...*40578, *48130
1619 Removed; eff. 7-18-80...*40578, *48130
1621.2 Removed; eff. 7-18-80...*40578, *48130
1621.3 Removed; eff. 7-18-80...*40578, *48130

Chapter XVII
Chapter removed....*21634
1700 Removed....*21634

Chapter XVIII
Chapter Removed and regulations transferred to 44 CFR Chapter I, Subchapter E....56173
1800 Redesignated as 44 CFR Part 310 and amended....56173
Corrected....62517
1801 Redesignated as 44 CFR Part 301....56173
1803 Redesignated as 44 CFR Part 303....56173
1804 Redesignated as 44 CFR Part 304....56173
1806 Redesignated as 44 CFR Part 306....56173
1807 Redesignated as 44 CFR Part 302....56173
1808 Redesignated as 44 CFR Part 308....56173
1809 Redesignated as 44 CFR Part 305....56173
1810 Removed....39390
1811 Redesignated as 44 CFR Part 307....56173
1812 Redesignated as 44 CFR Part 309....56173
1813 Removed....56173

NOTE: Symbol (*) refers to 1980 page numbers.

32 CFR—Continued

44 (45*) FR Page

Chapter XVIII—Continued
1814 Removed....56173

Chapter XIX
1900.49 (c) added....*6781

Chapter XX
2002 Added....*19551

Chapter XXIV
Chapter established....51577
2400 Added....51577

Chapter XXV
Chapter established....50039
Chapter removed....*20453
2500 Added....50039
Redesignated as 5 CFR Part 2500....*20453

Chapter XXVI
Chapter established....64077
Chapter removed....*17137
2600 Added....64077
Redesignated as 22 CFR Part 1303....*17137

Chapter XXVII
Chapter established....51574
Corrected....51990
2700 added (incorrectly designated as 2400)....51574
Corrected....51990

Chapter XXVIII
Chapter established....66591
2800 Added....66591

1980–1981

(Regulations published from July 1, 1980 through June 30, 1981)

32 CFR

45 (46†) FR Page

Chapter XII
1285 Revised....†20541
1292 Added....13216

Chapter XVI
1611 Removed; eff. 7-18-80....48130
1612 Removed; eff. 7-18-80....48130
1613 Removed; eff. 7-18-80....48130
1615 Added; eff. 7-18-80....48130
1617 Removed; eff. 7-18-80....48131
1619 Removed; eff. 7-18-80....48131
1621.2 Removed; eff. 7-18-80....48131
1621.3 Removed; eff. 7-18-80....48131
1690 Removed....72119

NOTE: Symbol (†) refers to 1981 page numbers.

32 CFR—Continued

	45 (46†) FR Page
Chapter XIX	
1900.25 Revised	74920
1900.51 (a) revised	50329
1900.61 (a) revised	48131
1902 Added	64174
1902.13 Added	64175

NOTE: Symbol (†) refers to 1981 page numbers.

32 CFR—Continued

	45 (46†) FR Page
Chapter XXII	
2200 Removed	†11659

1981

(Regulation published July 1, 1981)

Chapter XXII	
Chapter Removed	†34328