

BUDOCKS 11011.38

8 July 1959

BUDOCKS INSTRUCTION 11011.38 w/ ch 1

From: Chief, Bureau of Yards and Docks  
To: Distribution List

Subj: Leasing of non-excess Federal Real Property Under  
Jurisdiction of the Department of the Navy

Ref: (a) SECNAV INSTRUCTION 11011.18A of 14 November 1958  
(b) 10 U.S.C. 2667

Encl: (1) Agricultural Lease, NavDocks Form 2595(6-59)  
(2) Grazing Lease, NavDocks Form 2596(6-59)  
(3) General Purpose Lease, Part I, NavDocks Form 2597(6-59)  
(4) General Purpose Lease, Part II, General Provisions,  
NavDocks Form 2597A(6-59)

1. PURPOSE. This Instruction prescribes the operating procedures to be followed in implementation of reference (a), establishing policies and procedures to govern the leasing of certain Federal real property under the control of the Department of the Navy, and redelegates certain of the authority delegated by reference (a).

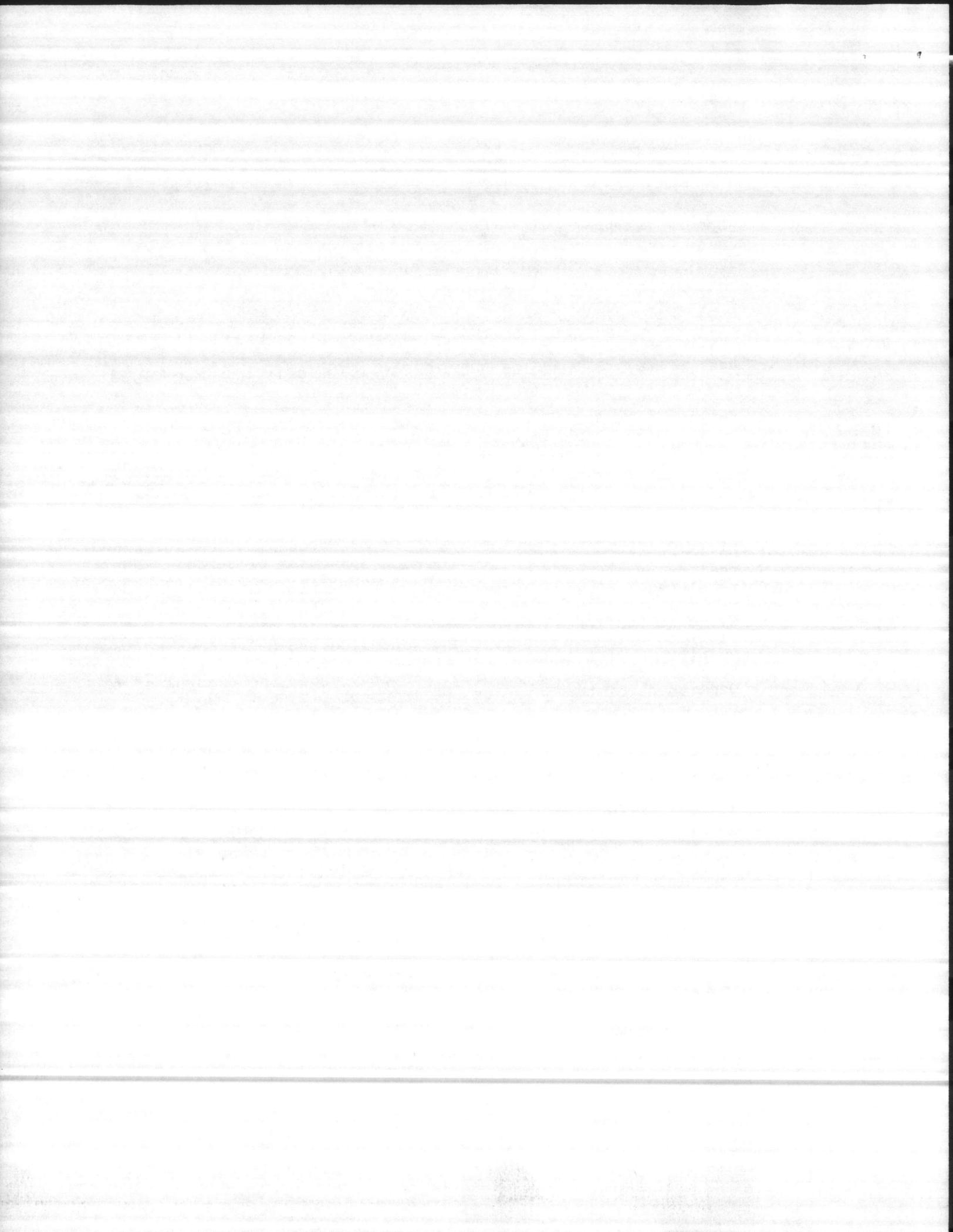
2. CANCELLATIONS. Reference (a) superseded SECNAV INSTRUCTION 11011.18 of 13 August 1956 and cancelled the provisions of Navy Property Redistribution and Disposal Regulation No. 2 applicable to the outleasing of any real property under the control of the Department of the Navy, except industrial reserve property.

3. SCOPE. This Instruction applies to the granting, administration and termination of any lease of real property under the control of the Department of the Navy authorized by reference (b), except leases of industrial reserve property.

4. DEFINITIONS. (as used in this Instruction).

(a). "Real Property" means any right, title or interest in land, and/or any buildings, fixed improvements, utilities or other permanent additions to land, and shall also include any item of personal property located in or on such real property which is either (i) an integral and necessary part thereof, or (ii) essential to the use or productive capacity thereof.

(b). "Lease" means any agreement by which the Navy grants the right of possession and use of any real property under its jurisdiction and control to any individual or organization for a specified period of time and for a specified consideration.



(c). "District Public Works Officer" means any District Public Works Officer, any Area Public Works Officer, the Director of the Pacific Division, Bureau of Yards and Docks, the Director of the Atlantic Division, Bureau of Yards and Docks, and the Officer in Charge of Construction, Bureau of Yards and Docks Contracts, Marianas.

5. REDELEGATION OF AUTHORITY. There is hereby redelegated to the District Public Works Officer all of the authority to grant, administer and terminate leases of real property falling within the scope of this Instruction delegated to the Chief of the Bureau of Yards and Docks by reference (a); Provided, that in the granting of any new lease all of the following conditions shall be satisfied:

(a) The property shall have been approved for retention by the Assistant Secretary of the Navy (Material).

(b) The property shall not have been determined to be excess to the needs of the Management Bureau.

(c) The property shall have been determined not to be required for public use in accordance with the provisions of paragraph 6 hereof.

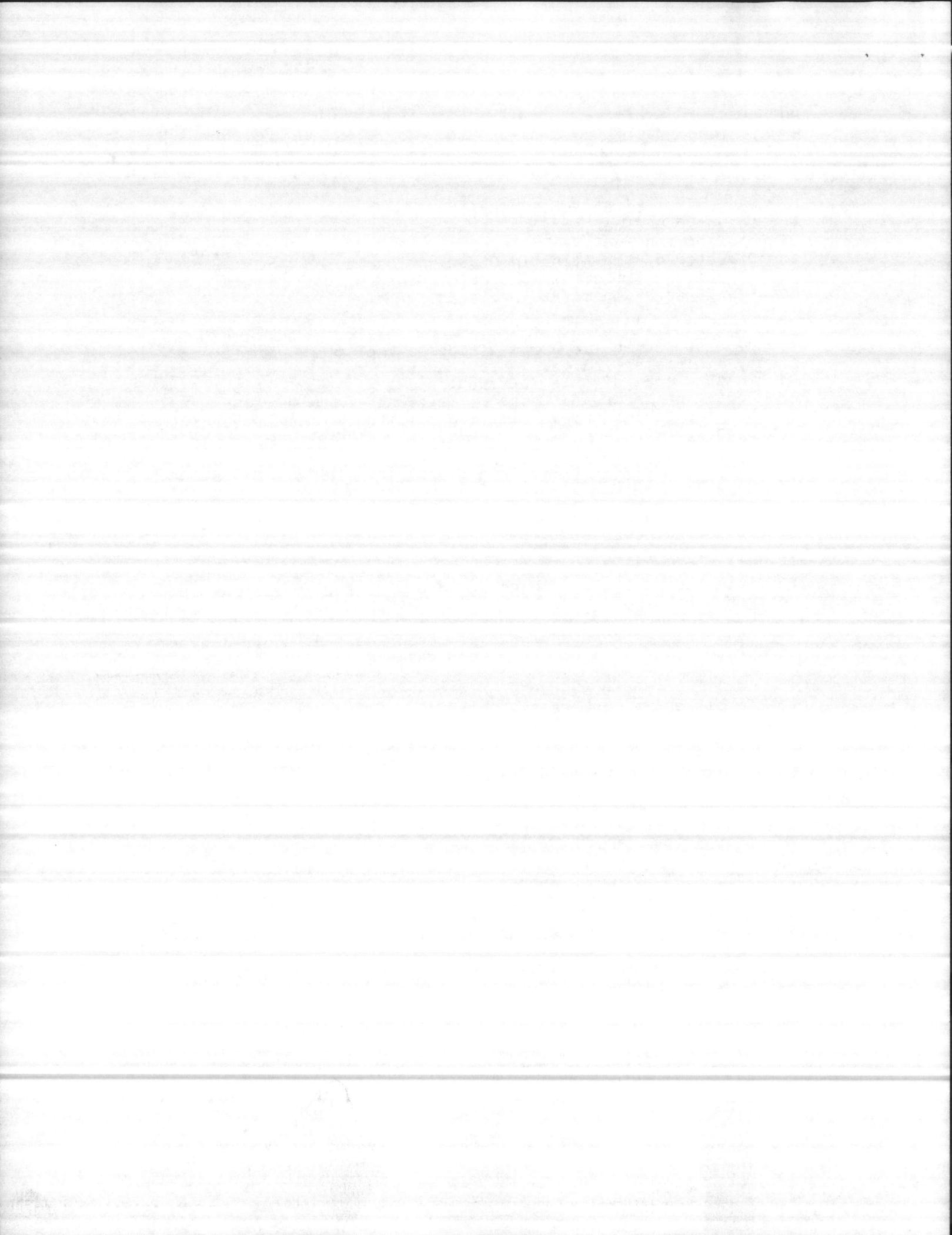
(d) All approvals of the proposed leasing required by paragraph 7 hereof shall have been obtained.

(e) The property has been advertised for leasing on a sealed bid basis, unless the Chief, Deputy Chief, or an Assistant Chief of the Bureau of Yards and Docks shall have determined either that only one lessee is available, or that leasing to a selected lessee is in the best interest of the Government, in which instance a lease may be negotiated.

(f) For property advertised for leasing, the proposed lease is with the highest responsible bidder, and under a negotiated lease the consideration is not less than the appraised fair market rental of the property; Provided, however, that prior to entrance into any lease hereunder, it must be found that a substantial benefit will accrue to the Government therefrom, in the form of reduced maintenance costs, and/or cash rental, and/or improved property management.

In any lease entered into hereunder on either an advertised or negotiated basis, the amount of consideration payable as cash rent may be reduced from the total consideration established by the high bid or by negotiation by:

(1) The amount of any maintenance obligation assumed by the lessee in a specific dollar amount; and/or



(ii) The estimated premium cost of insurance required to be procured and maintained by the lessee on the leased property, except third party liability insurance.

(g) The terms and conditions of the proposed lease shall conform without deviation to those specified in enclosure (1), (2), (3) or (4) hereto, as shall be appropriate; except as to the provisions governing:

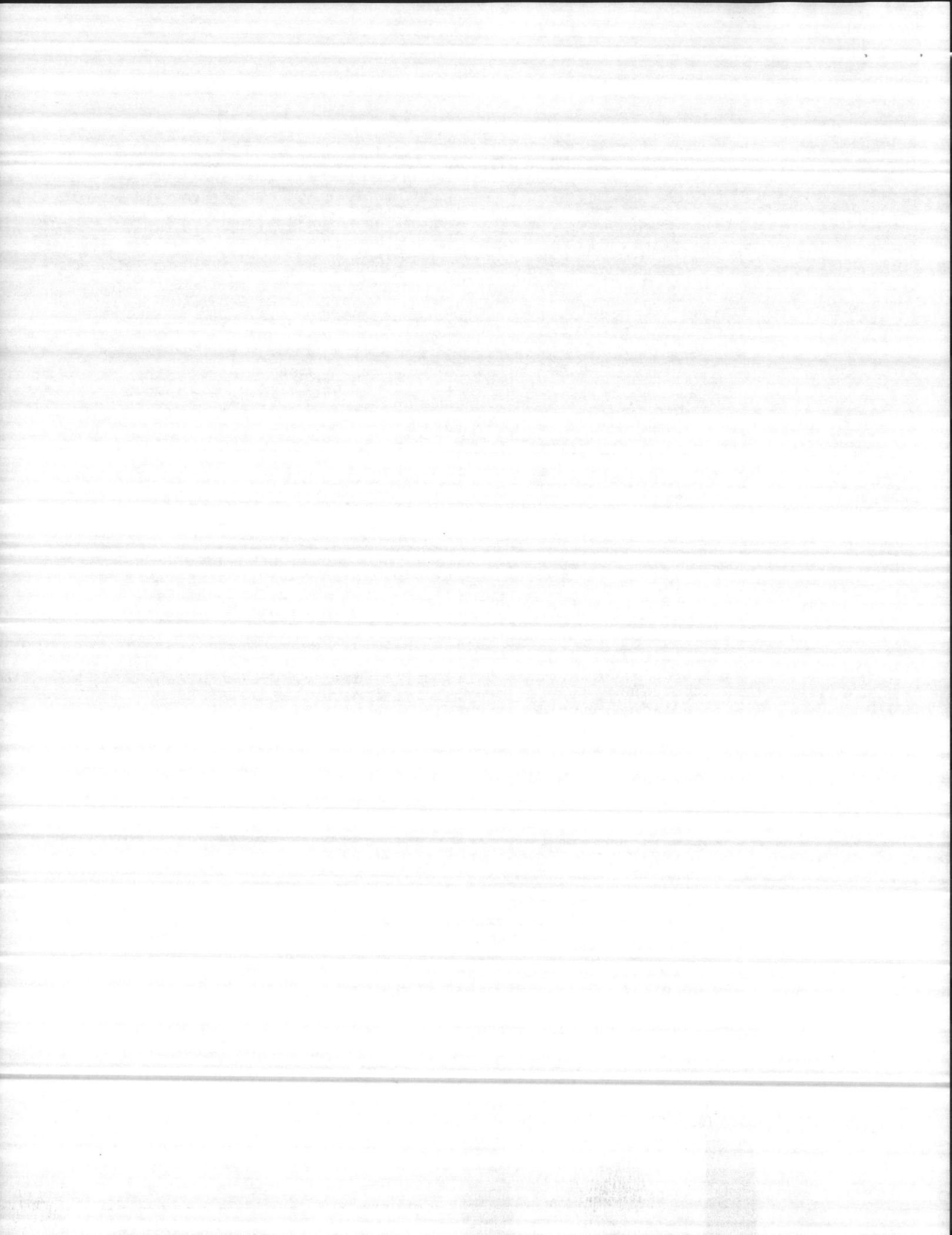
- (i) Use and Term, which shall be determined on the basis of advertisement or negotiation in accordance with subparagraph 5(e) above;
- (ii) The amounts and types of consideration, which shall be determined on the basis set forth in subparagraph 5(f) above;
- (iii) The amounts and types of insurance required, which shall be determined on the basis set forth in paragraph 9 hereof; and
- (iv) The amount and type of any security for performance required, which shall be determined on the basis set forth in paragraph 10 hereof;

Provided; however, that in agricultural leases of property located outside the Continental United States and the Commonwealth of Puerto Rico, Article 9A(1) may be deleted from enclosure (1) in accordance with the provisions of paragraph 13 of this Instruction; Provided; further, the District Public Works Officer may impose such lease conditions, in addition to those specified, as he shall consider necessary to protect the interests of the Government, so long as the additional conditions effect no reduction of the Government's rights or lessee's obligation established or imposed by the specified conditions.

(h) The term of the proposed lease, including all rights of renewal, does not exceed five (5) years.

(i) Total consideration for the proposed lease in the form of cash rent and/or fixed maintenance obligation assumed by the lessee does not exceed \$25,000.00 per annum.

6. CIRCULARIZATION OF AVAILABILITY FOR PUBLIC USE. Prior to the making of the determination of non-requirement for public use specified in subparagraph 5(c) above, the District Public Works Officer shall, unless he determines that because of special circumstances involved no useful purpose will be served thereby, circularize advice of the availability of the property



proposed to be leased to such of the following as may, in his opinion, have some use therefor: (1) other activities of the Department of the Navy; (2) the other military departments; and (3) the local regional office of the General Services Administration.

All circularization considered to be necessary or appropriate shall be effected concurrently. In all such circularization the activities contacted shall be advised that it will be presumed no requirement for the use of the property exists unless a request for such use is received within 30 days.

If such circularization shall reflect another Federal requirement for the use of the property, the request for such use shall be processed in accordance with applicable instructions.

#### 7. APPROVALS.

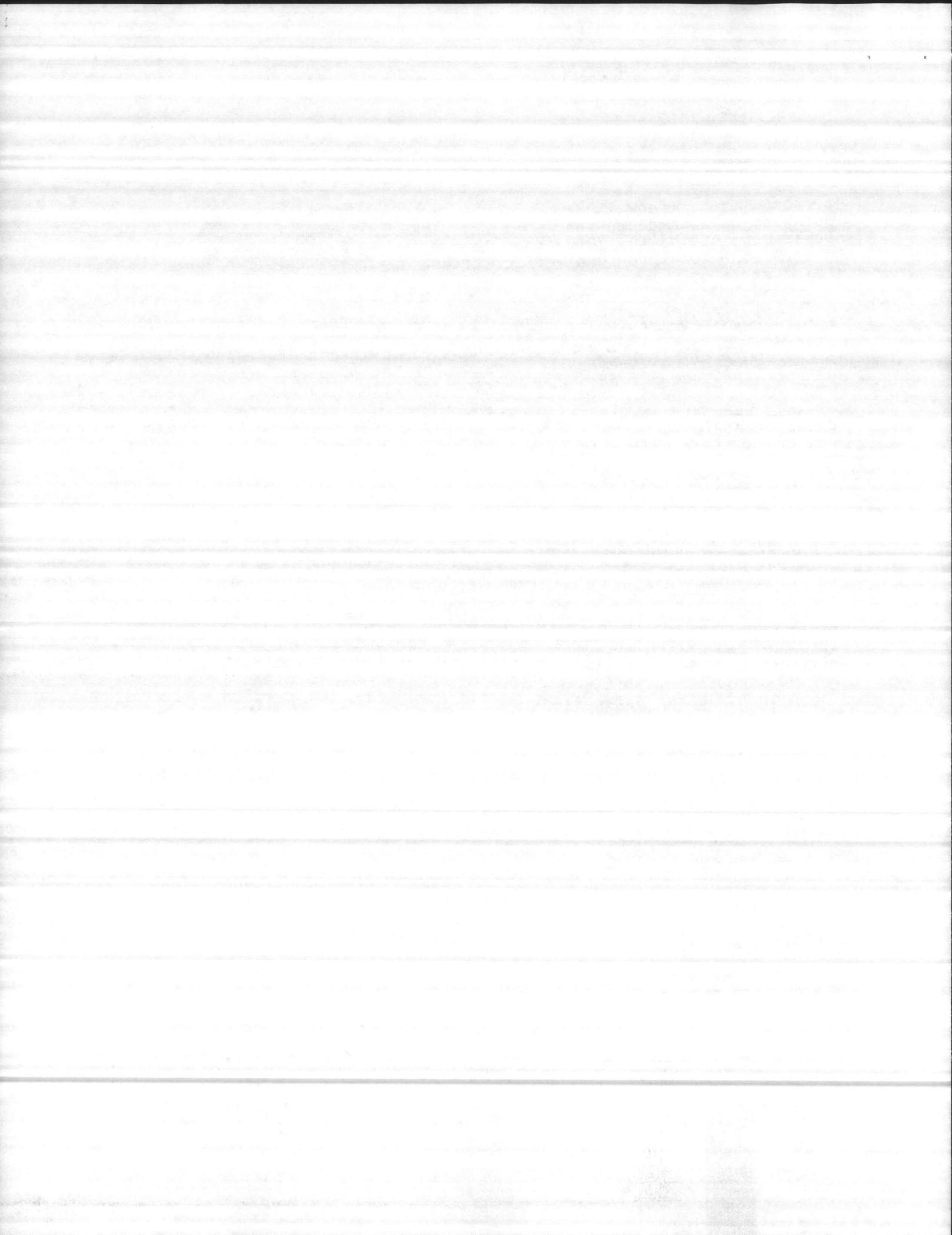
(a). Prior to the granting of any lease under the authority re delegated by paragraph 5 hereof, the District Public Works Officer shall obtain the approval of the head of the activity of which the premises proposed to be leased form a part, and of either the District Commandant or the local representative of the Marine Corps, as shall be appropriate, as to the military features of the proposed lease. Such approvals shall contain a determination that the proposed use under lease will not render the property unsuitable for its planned future military use; will not interfere with the current or planned use of adjacent property; and will not represent a hazard to the property being outleased.

(b). In connection with any lease involving the diversion of storage and/or warehousing space to any other use, the District Public Works Officer shall, prior to the entrance into same, obtain, in addition to the approvals required in subparagraph (a), above, such additional approvals as are required by paragraph 28025, Volume II, BUSANDA Manual.

#### 8. PROCEDURES.

(a). Upon the satisfaction of all of the conditions specified in paragraph 5 hereof, the District Public Works Officer shall exercise the authority re delegated thereby to grant any proposed lease.

(b). Whenever the approval specified in subparagraph 5(a) has not yet been obtained, or the determination required by subparagraph 5(e) has not yet been made, or any deviation from the



insurance requirements of paragraph 9 hereof is desired, the District Public Works Officer will forward a request therefor to the Bureau, together with such information as may be considered necessary in support thereof. The Bureau will take the necessary continuing action on such request and advise the District Public Works Officer of the result. On receipt of advice that the requisite approval or determination has been made the District Public Works Officer shall proceed to exercise the authority redelegated by paragraph 5 hereof to grant the proposed lease.

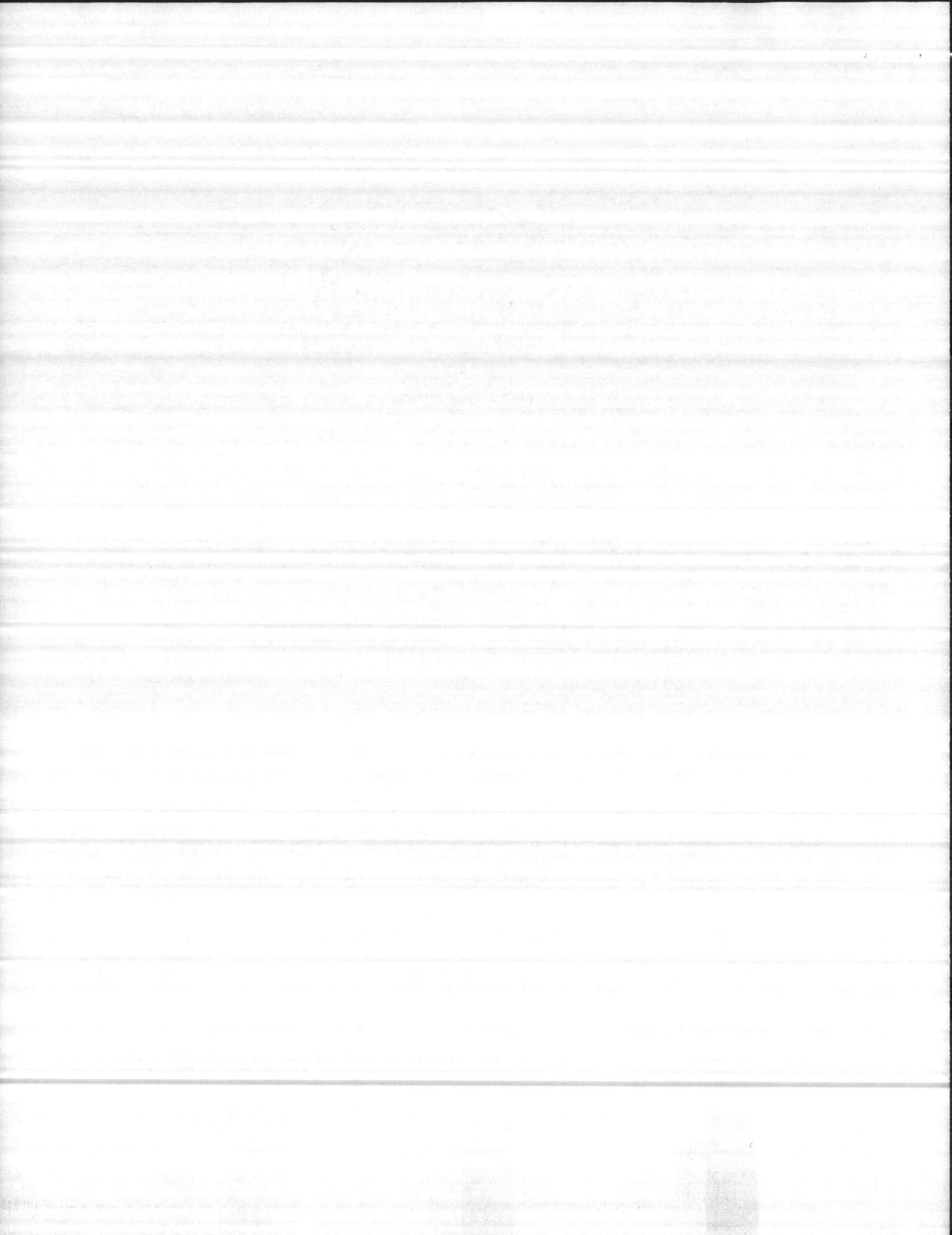
In connection with any request for the determination required as a condition of the negotiation of a lease by subparagraph 5(e) above, the supporting information furnished shall include the following:

- (1) Description of the property.
- (2) Identification of the proposed lessee.
- (3) Basis for determination requested.
- (4) Estimated value of the property.
- (5) Estimated rental value of the property.
- (6) Proposed term of lease.
- (7) Proposed use under lease.

(c). In the event any proposed leasing shall involve any deviation from the terms and conditions specified in enclosure (1), (2), (3), or (4) hereto, whichever shall be appropriate for the use in question; or a term, including all rights of renewal, in excess of five (5) years; or a total consideration, in cash rent and/or fixed maintenance obligation assumed by lessee, in excess of \$25,000.00 per annum, the District Public Works Officer, shall forward the leasing proposal, together with his recommendation and full justification therefor, to the Bureau. On receipt of such leasing proposal and supporting documentation, the Bureau will take such continuing action as may be necessary, and will advise the District Public Works Officer of the action taken by the Bureau.

## 9. INSURANCE.

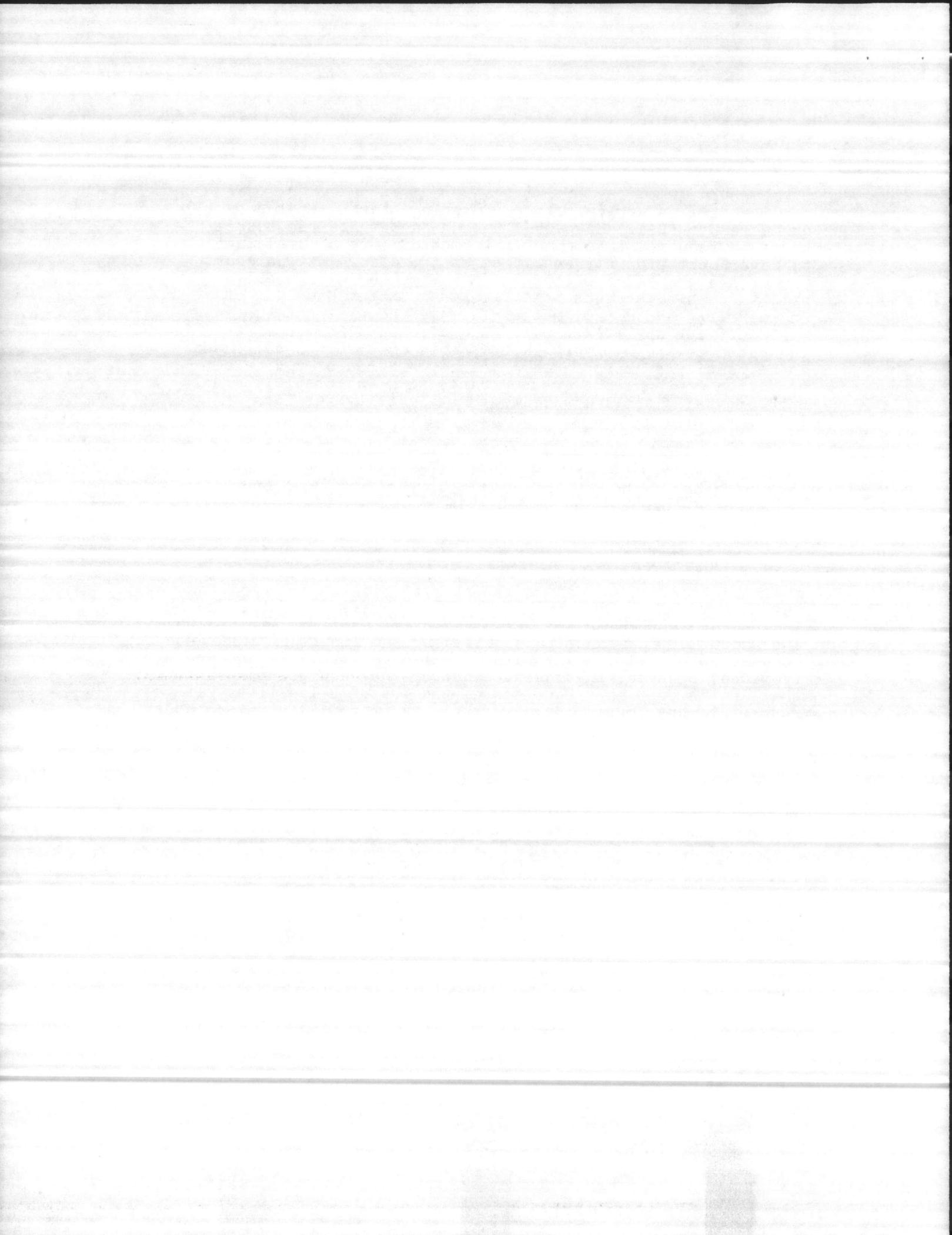
(a). Except as the District Public Works Officer shall consider that special circumstances necessitate the requirement of such coverage, no insurance covering any risk of loss to Government property or liability to third persons shall be



required in any Agricultural or Grazing Lease, (Enclosure (1) or Enclosure (2)). However, in each such lease the lessee shall be required to assume that risk of loss of or damage to Government property specified in Article 9L of enclosure (1) or Article 9I of enclosure (2), together with the liability to third persons specified in Article 9M or 9J, of enclosures (1) and (2), respectively. The District Public Works Officer shall impose such requirements for specific insurance coverage on any improvements on premises so leased as he considers appropriate, by incorporation of a special provision in the lease in accordance with Article 10 thereof. Such provision shall limit lessee's liability for loss or damage resulting from any risk expressly required to be insured to the amount of insurance required or the amount actually procured and maintained, whichever shall be greater, unless such loss or damage results from willful misconduct, lack of good faith, or failure to exercise due diligence by lessee or parties charged by him with supervision or direction of the leased property.

(b). In all leases of improved real property for any purpose other than agricultural or grazing use, the lessee shall be required to assume all risk of loss of or damage thereto. Lessee's liability for loss or damage expressly required to be insured against under the lease, however, shall be limited to the amount of insurance so required or the amount of insurance actually procured and maintained, whichever shall be the greater Provided; however, that maintenance of the required insurance shall not effect any reduction of the lessee's liability with respect to any loss or damage resulting from willful misconduct, lack of good faith, or failure to exercise due diligence by the lessee or parties charged by the lessee with the supervision or direction of the leased property.

(c). In all leases of improved real property for any purpose other than agricultural or grazing use, and in such of these as he shall impose insurance requirements in the manner specified above, the District Public Works Officer shall specify the types and minimum amounts of insurance coverage required to protect the Government property against all hazards customarily insured against in the locality for the type of property involved. Such types of coverage may include, but shall not be limited to: (i) fire and extended coverage; (ii) boiler insurance; (iii) crane insurance, against perils of overturn, upset, derailment and collision, in addition to fire and extended coverage; (iv) pier and wharf insurance, against collision, collapse, and flood, in addition to fire and extended coverage. The minimum amount of coverage requirements for each of the various



types of coverage specified above shall be not less than the actual cash value of the property. In the absence of unusual circumstances, such value will be computed as the difference between the current replacement value of the property and normal depreciation thereon to the effective date of the lease.

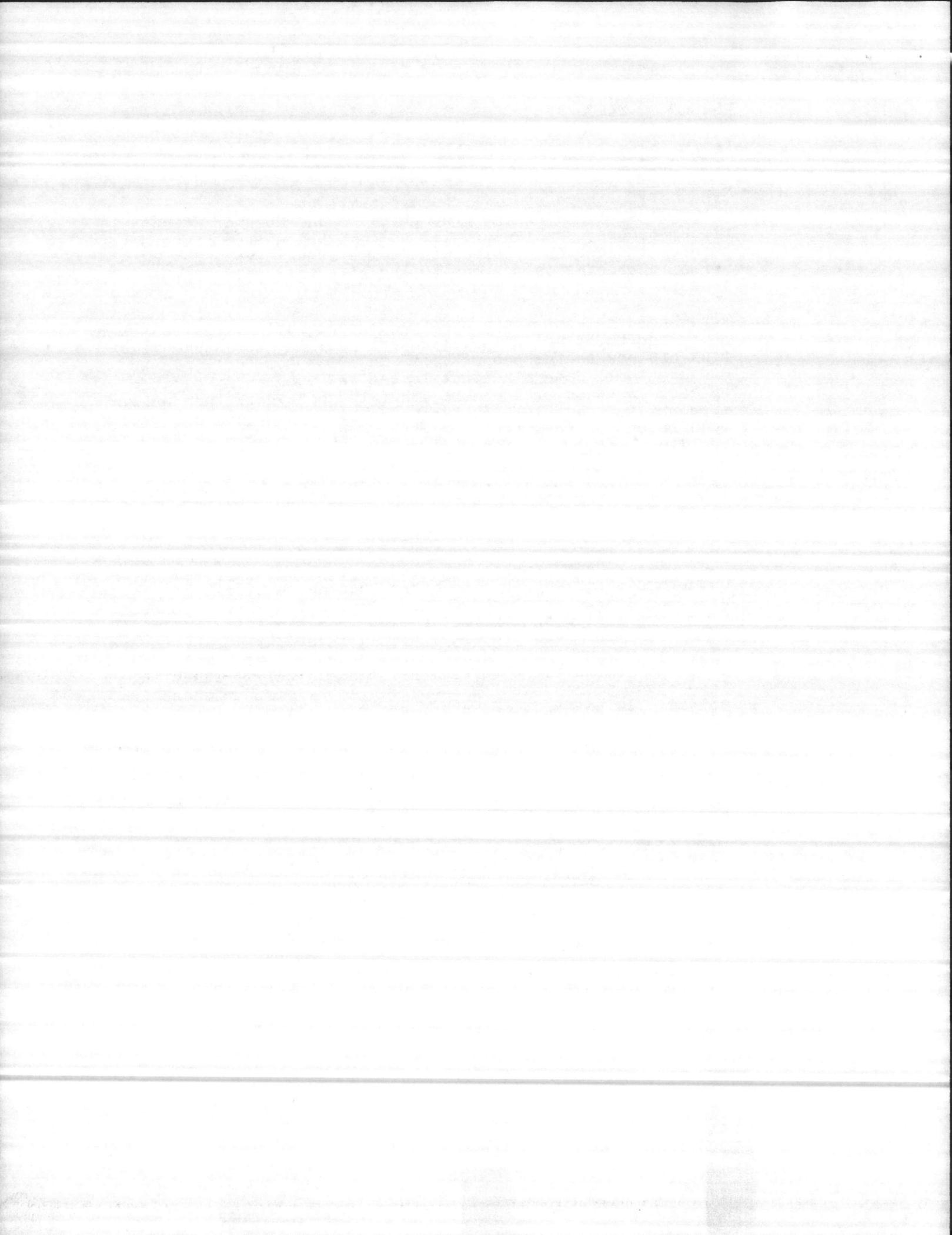
Where a lease is made of property constituting less than an entire building and the lessee is willing to assume all risk of loss to the property, if the District Public Works Officer shall determine that lessee is financially capable of assuming such risk and he otherwise considers such waiver appropriate, the District Public Works Officer may waive the requirement of specific insurance coverage on the portion of building leased.

In connection with any lease involving special aviation, marine or other risks not treated above, the District Public Works Officer shall refer the question of coverage requirements to the Bureau for resolution.

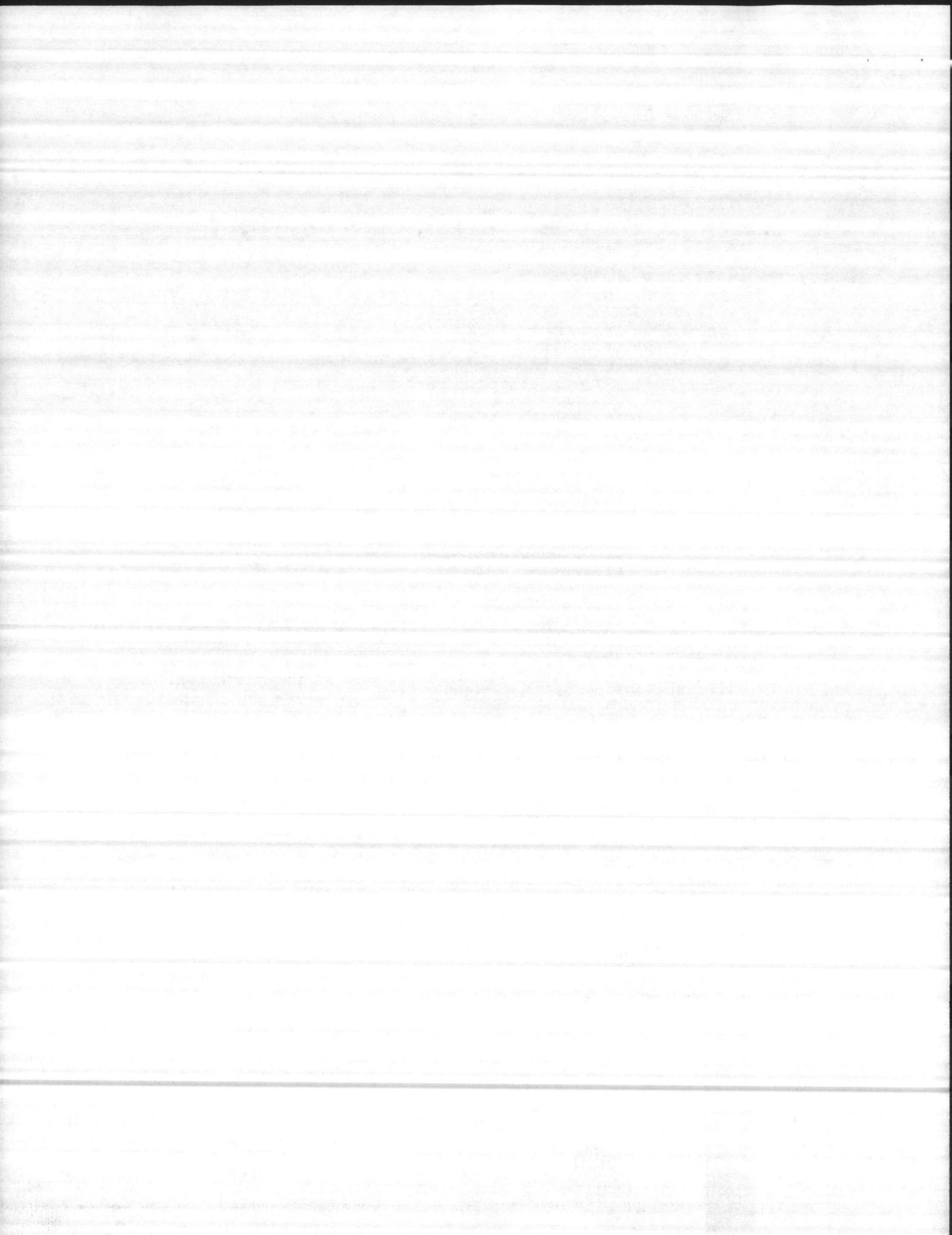
(d). Under any lease of real property, improved or unimproved, for any purpose other than agricultural or grazing use, the lessee shall be required to provide insurance protecting both lessee and the Government from liability to any third party for damage to property, bodily injury or death, in such specific minimum amounts as the District Public Works Officer shall determine to be sufficient to adequately protect the interests of the Government under all the circumstances involved. In no event, however, shall the amount of such bodily injury or death liability be less than \$50,000 per person/\$100,000 per accident, or the amount of such property damage liability be less than \$50,000 per accident.

(e). Each policy of insurance required under any lease shall satisfy the following requirements:

- (1) It shall be issued by an insurance company which is licensed to operate in the state where the property is located and which, in the opinion of the District Public Works Officer, based on the best information available to him, is of sufficient size and financial stability to assume the risk involved. Any question which may arise as to the acceptability of any insurer or proposed insurer shall be referred to the Bureau for resolution.



- (ii) It shall name both the lessee and the United States of America (Department of the Navy) as the insured.
- (iii) It shall contain a provision for thirty (30) days written notice to the Local Government Representative designated in the lease prior to the making of any material change in or the cancellation of the policy.
- (iv) All fire, extended coverage and allied forms of insurance on Government property shall contain a loss payable clause reading as follows:
- "Loss, if any, under this policy shall be adjusted with (name of lessee) and the proceeds, at the election of the Government, shall be payable to (name of lessee); any proceeds not paid to (name of lessee) shall be payable to the Treasurer of the United States of America:"
- (f). Under circumstances where the lessee shall so request and the District Public Works Officer shall determine that the lessee is financially capable of assuming the burden of risk which might result from operation of a co-insurance clause and attendant reduction in the amount of proceeds payable under the policy in the event of loss to an amount less than the amount of insurance coverage specifically required in the lease, the District Public Works Officer may consent to the use of a co-insurance clause in any policy of fire, extended coverage, or allied forms of insurance on Government property so required. Such consent shall be subject to the condition that any reduction in the amount of insurance payable under the policy from the operation of such clause shall be at the sole risk of lessee and shall not relieve lessee of its liability to the Government in the full amount of insurance required. Such consent shall be expressed in writing specifying that it shall be of no force and effect until the delivery to the District Public Works Officer of the written acceptance of the conditions thereof by the lessee.
- (g). The District Public Works Officer will be responsible for the administration of insurance requirements established herein. This responsibility includes, but is not limited to, the review and approval of insurance policies or certificates of insurance furnished by the lessee pursuant to the terms of a lease. Insurance policies or certificates of insurance will be retained by the District Public Works Officer.



10. SECURITY FOR PERFORMANCE. Unless he shall determine that the financial position and reputation of the lessee is such that a performance bond or security offers no greater assurance of performance than the lease instrument itself, the District Public Works Officer shall, in every lease in which the principal consideration moving to the Government shall be other than cash rent, payable in advance, require lessee to furnish security for such performance in the form of a satisfactory performance bond or a deposit of collateral security in cash or negotiable Government bonds.

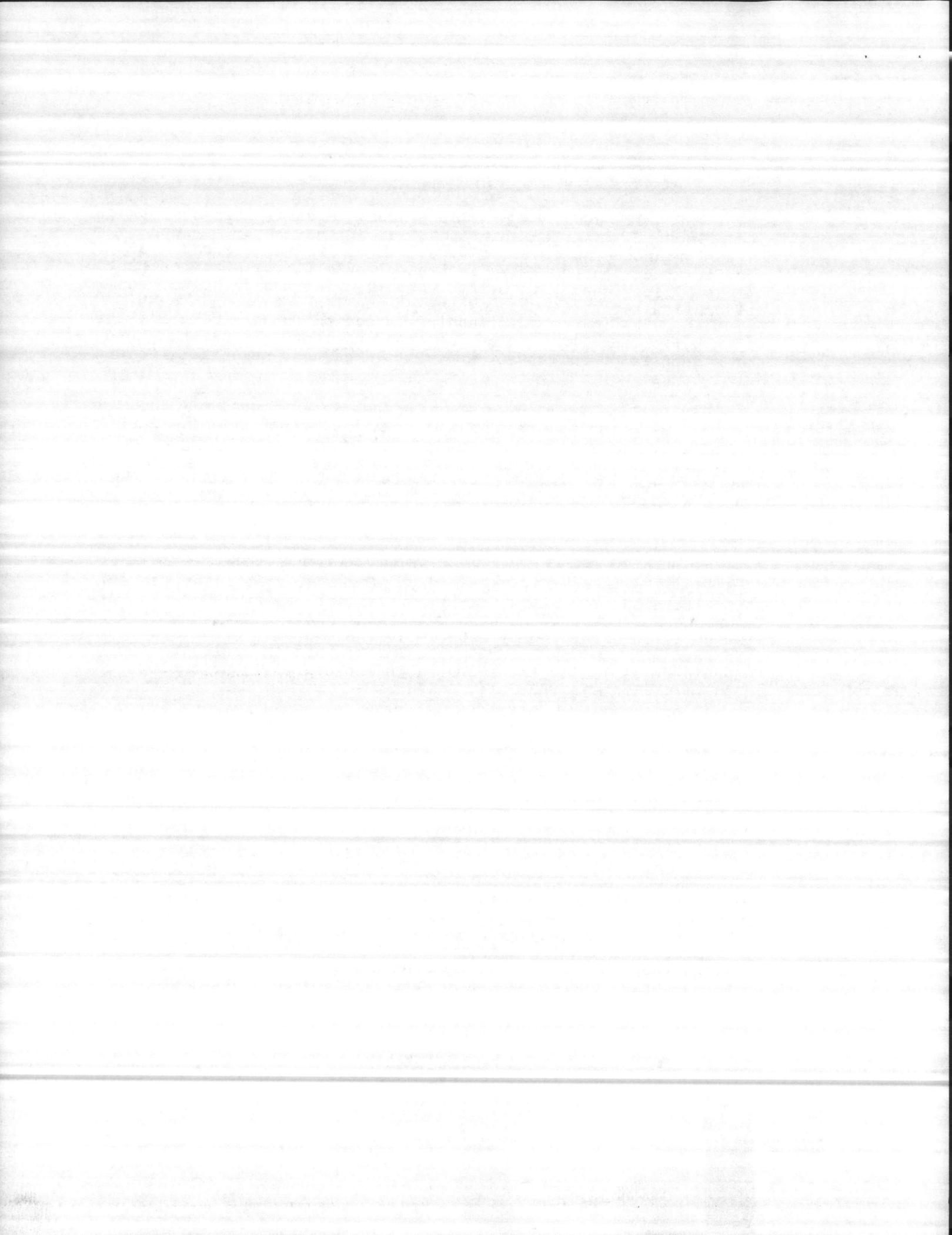
Since it is presumed that in most Agricultural and Grazing leases the principal consideration will be cash rent, payable in advance, no provision for Performance Bond or Security has been made in enclosure (1) or enclosure (2). Enclosure (3), however, contains a provision for Performance Bond or Security and the amounts determined to be required shall be inserted therein. If none is required, the word "none" shall be inserted therein.

Where a significant part of the consideration for an Agricultural or Grazing Lease consists of the assumption by lessee of a maintenance obligation in a fixed dollar amount or the performance of specific maintenance obligations, a provision for which is incorporated by Article 10 thereof, a provision for Performance Bond or Security similar to that in enclosure (3) should be similarly incorporated in enclosure (1) or enclosure (2) by Article 10 thereof.

Standard Form 25 "PERFORMANCE BOND", prescribed by General Services Administration Regulation No. 5 should be used if possible, but forms issued by any corporation authorized by the Secretary of the Treasury to act as surety are acceptable if they contain substantially the same provisions. Care should be taken to assure that the performance bond furnished is clearly identified with the lease secured thereby.

The original of any performance bond should be forwarded to the Surety Bonds Branch, Division of Deposits and Investments, Treasury Department, Washington 25, D. C., with a request for verification that the corporate surety is duly qualified to execute same and that evidence of the authority of the officers or agents signing on its behalf are there on file, together with a request that, upon such verification, the bond be forwarded to the Chief of Navy Audit Branch, Defense Accounting and Auditing Division, General Accounting Office, 1901 East Thirteenth Street, Cleveland 14, Ohio.

11. ADVERTISED LEASING. For property to be leased on an ad-



vertised, sealed bid basis, the District Public Works Officer shall effect advertising by means of a Notice of Availability and Invitation to Bid. He shall give the Notice and Invitation such circularization and publication as he shall consider appropriate under the circumstances, but shall not resort to the use of paid advertising unless specific approval thereof is first obtained from the Bureau.

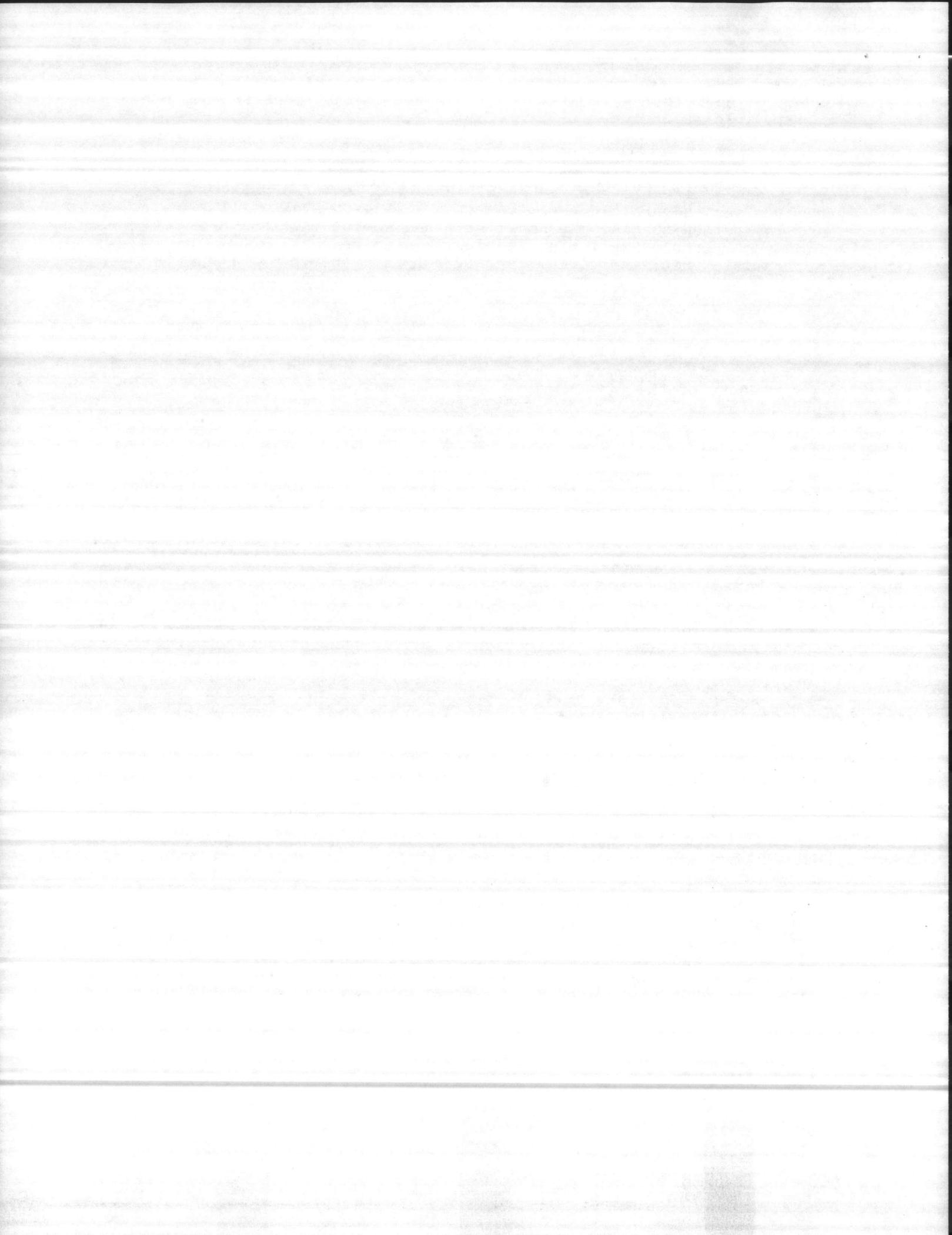
Promptly upon the issuance thereof two (2) copies of each Notice of Availability and Invitation to Bid shall be transmitted to the Bureau, and there shall be attached to each copy a statement of the estimated value of the property in question and of the estimated rental value thereof.

12. INSPECTION REPORT. At the time of the entrance into any General Purpose Lease, or any Agricultural or Grazing Lease involving improvements on leased property, a joint inspection shall be made by duly authorized representatives of the District Public Works Officer and the Lessee of: (a) all property leased under the former, and (b) all improvements leased under the latter. A Condition Report setting forth the condition of (a) or (b), as may be appropriate, as determined from such inspection, shall be prepared and signed by the inspecting parties.

Enclosure (3) contains provisions specifically incorporating such Condition Report into the lease (Article I of Part I), and imposing on lessee an obligation to restore the property to the condition reflected therein (Article I of Part II). No such provisions are included in enclosures (1) and (2). However, when such leases involve improvements on the leased property, a special provision reflecting the incorporation of the Condition Report into the lease and imposing a similar restoration obligation on the lessee should be incorporated therein by Article 10 thereof.

At the time of the expiration or termination of any lease, the District Public Works Officer shall effect a final inspection of the leased premises and a report thereon, the comparison of which with the initial report shall serve as the basis for the measure of Lessee's restoration obligations under the lease.

13. AGRICULTURAL LEASE PROHIBITION OF PRICE-SUPPORTED CROPS IN SURPLUS SUPPLY. In implementation of the general policy of the Bureau to prohibit agricultural lessees from use of their leasehold interests for participation in any subsidy program of the Federal Government, there has been incorporated in Article 9A of enclosure (1) hereto an express prohibition of such participation.



Subparagraph 1 of Article 9A of enclosure (1) specifically prohibits use of leased property for cultivation of price-supported crops which at the time of the planting thereof have been determined by the Secretary of Agriculture to be in surplus supply. The District Public Works Officers have been furnished with lists of such crops, and will be furnished with revisions of and changes in such lists as they are received from time to time from Department of Agriculture.

Subparagraph 1 of Article 9A of enclosure (1), however, is intended to be applicable only in leases of property located in the Continental United States and the Commonwealth of Puerto Rico. Accordingly, it may be deleted from agricultural leases of property located outside the Continental United States and the Commonwealth of Puerto Rico, by an appropriate special provision incorporated in enclosure (1) by Article 10 thereof.

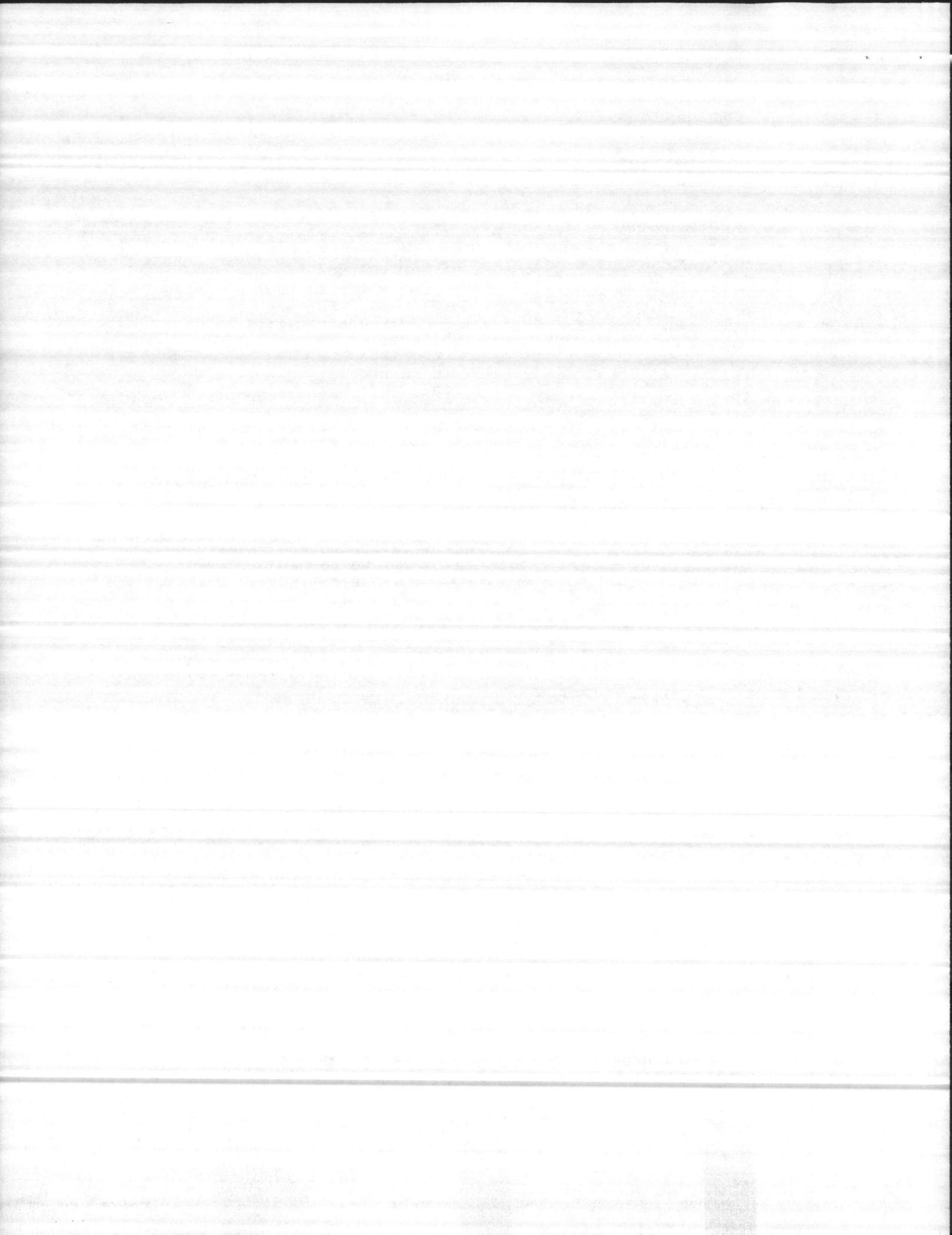
Any other exception from the prohibition must be approved in advance by the Assistant Secretary of the Navy (Material) and Assistant Secretary of Defense (Properties and Installations). All requests for such approval shall be forwarded to the Bureau, supported by full justification and the following information:

- (i) The crop(s) proposed to be cultivated.
- (ii) The acreage proposed to be devoted to such cultivation.
- (iii) The total acreage leased or proposed to be leased.
- (iv) The term of the existing or proposed lease.

Justification for any requested approval of exceptions from the prohibition shall include, but need not be limited to, determinations by the District Public Works Officer as to the following items:

- (i) Actual or estimated value of direct benefits to the Government resulting from the lease, the services rendered, improvements to be made, etc.
- (ii) The effect of such leasing on price-supported programs of the Department of Agriculture.
- (iii) Hardship factors, if any, to current or prospective lessees, or the community as a whole.

The District Public Works Officer should consult with appropriate local representatives of the Department of Agriculture, to



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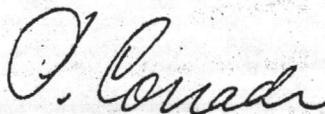
BUREAU OF YARDS AND DOCKS

develop local data and information to be used in justifying exceptions to the policy outlined in this paragraph 13.

14. DISTRIBUTION. Executed leases, amendments thereto and Notices of Termination of leases issued by the Government or a lessee will be distributed as follows:

- Original - To General Accounting Office  
1901 East Thirteenth Street  
Cleveland 14, Ohio
- Signed Copy - To Lessee
- Signed Copy - To District Public Works Officer
- Conformed Copy - To Management Bureau
- Conformed Copy - To Navy Regional Accounts Office,  
Washington, D. C., except when  
outside CONUS (see NAVCOMPT Manual,  
Paragraph 043132)
- Conformed Copy - To Activity
- Conformed Copy - To Bureau of Yards and Docks

15. FORMS. An initial distribution of enclosures (1) through (4) will be made direct to action addressees, approximately 31 July 1959. Continuing supplies may be obtained from Forms and Publications Supply Points as cognizance I material approximately 30 September 1959.



P. CORRADI  
Deputy Chief of Bureau

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