ages identified with or to agencies of the U.S. Government. From the consumer's point of view this might be desirable in that the buyer would not be misled into believing that the item met DOD specifications when in fact it did not.

From a desirability standpoint it must be pointed out again that the item rejected may well be in full compliance with FDA and USDA laws and regulations and, the consumer is protected by the requirement that when a contractor sells such materials he must comply with the food and drug laws.

From the Agency's point of view, it is generally feasible to have the contractor obliterate certain Government identifying markings such as specification number, contract number, or Federal stock number. It is also feasible to remove Government labels from textile items such as coats and trousers. Under current procedures where such an item is classified as an "irreparable reject" the contractor is required to remove or obliterate all identification referring in any way to the Government prior to any use or resale of the garment.

Question II.—Your letter asked for DSA's views on the "legality and propriety" of sales by contractors in containers carrying "non-Government," private marking and labeling of items that were rejected by the Defense Supply Agency when the reason for the rejection raises questions as to the fitness or suitability of the items for private consumer use. The sale or shipment by a contractor of supplies that are in such condition that they violate a law, such as Federal or State food and drug laws are, of course, illegal.

In the absence of a violation of food or drug laws, or other laws such as those prohibiting false or misleading advertising, or those laws providing warranties such as under the Uniform Commercial Code, there is no legal prohibition against the sale of rejected items.

Moreover, the fact that the items were offered under a DSA contract does not, in the absence of a specific provision in the contract, give DSA any legal right to control their disposition.

You also asked about the feasibility of new legislation which would require disclosure to the consumer of the fact of previous rejection. Since the primary responsibility for protecting the general public under present laws rests with the Food and Drug Administration and the U.S. Department of Agriculture we would defer to the views of those agencies.

Question IIIA.—You asked whether on a continuing basis the Defense Supply Agency keeps the Food and Drug Administration or the Department of Agricuture advised of all food and drug rejections which involve questions of wholesomeness, purity or safety. You also asked if this is done under written procedures or well established practices. I must address my answers separately to procedures used in the subsistence area and those used in the drug area.

In the subsistence area there is a written procedure which requires field inspectors to report suspected violations of the Federal Food and Drug Act to the appropriate subsistence regional headquarters.

After analyzing the report the regional office of the Food and Drug Administration is notified if considered appropriate. This procedure was recently reviewed in detail with the Department of Agriculture and the Food and Drug Administration to improve and refine the day-to-day reporting of rejected food items. The new procedure for subsistence——